

**State of Ohio Department of Administrative Services
Addendum to The Ohio State University Medical Center
On Demand Software Subscription License Agreement**

This Addendum (the "**Addendum**") is entered into by and between the Ohio Department of Administrative Services ("**DAS**") on behalf of itself and Subscribing Entities and Cooperative Purchasing Members as defined herein, and ServiceNow, Inc. (as successor-in-interest to Service-now.com) ("**Service Provider**"), and is made effective as of the 29th day of August 2013 (the "**Addendum Effective Date**"). This Addendum is made as an addendum to The Ohio State University Medical Center On Demand Software Subscription License Agreement, Contract Number 15708TB, dated July 17, 2008 (the "**Agreement**"), and incorporates the terms and conditions of the Agreement herein except to the extent such terms and conditions may be expressly revised herein. In the event of a conflict or inconsistency between the terms and conditions of this Addendum and the terms and conditions of the Agreement, the terms and conditions of this Addendum shall prevail and take precedence over any such conflicting or inconsistent terms and conditions set forth in the Agreement. Termination or non-renewal of the Agreement shall not affect the effectiveness of the incorporation of the terms and conditions of the Agreement into this Addendum. The parties understand and agree that this Addendum does not in any manner modify, revise or expand upon the terms and conditions of the Agreement which terms and conditions remain unchanged and in full force and effect. DAS, Subscribing Entities and Cooperative Purchasing Members shall contract for Service Provider's subscription services by way of executing Service Provider's then-current Order Form, which Order Form shall be subject to and incorporate the terms and conditions of this Addendum. This Addendum shall remain in effect as long as any executory Order Form(s) is in effect, after which this Addendum shall automatically expire.

1.1. Subscribing Entities

A "Subscribing Entity" means State agencies, boards, and commissions that place requests through the State's ordering system described in another section ("Orders") under this Agreement for any of the Services identified in an Order Form executed by the State or Subscribing Entity and the Service Provider. And it includes other entities of the State, such as the legislative and judicial branches of State government and the independent offices of elected State officials that place Orders under this Agreement. It also means the Cooperative Purchasing Members, defined in the next section, that place Orders under this Agreement.

1.2. Cooperative Purchasing Members

"Cooperative Purchasing Members" are entities that qualify for participation in the State's cooperative purchasing program under Section 125.04 of the Ohio Revised Code ("ORC") and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under Chapter 1545 of the ORC, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They also may include any Ohio county board of elections, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools.

1.3. Subscribing Entities' Reliance on Agreement

Subscribing Entities may rely on this Agreement. But whenever a Subscribing Entity is a Cooperative Purchasing Member and relies on this Agreement to issue an Order, the Subscribing Entity will step into the shoes of the State under this Agreement for purposes of its Order, and, as to the Subscribing Entity's Order, this Agreement will be between the Service Provider and that Subscribing Entity. The Service Provider must look to that Subscribing Entity for performance, including but not limited to payment,. But the Subscribing Entity, through the Ohio Department of Administrative Services ("DAS"), will have the right to terminate this Agreement and seek such remedies on termination as this Agreement provides should the Service Provider fail to honor its obligations under an Order from any Subscribing Entity, whether a Cooperative Purchasing Member or not.

1.4. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all of the State's enrolled users in the event of failure at any one of the Service Provider locations, with effective contingency planning (including back-up and disaster recovery capabilities) and [24x7] trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry standards. They also must be supported with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Service Provider must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance. ServiceNow shall establish, maintain, and document sufficient controls to comply with ISO27001 ("**Statement of Applicability**"). No more than once per annum upon written request from Customer, ServiceNow shall provide a then-current copy of the Statement of Applicability. Additionally, upon Customer's request, ServiceNow shall provide to Customer a copy of its third-party ISO27001 certification attesting to ServiceNow's compliance with the standards set forth in ISO27001.

The Services must also operate at the [moderate level baseline] as defined in National Institute of Standards and Technology ("NIST") 800-53 Rev. 3 ["moderate baseline requirements"], be consistent with Federal Information Security Management Act ("FISMA") requirements, and offer a customizable and extendable capability based on open-standards APIs that enable integration with third party applications. Additionally, they must provide the State's systems administrators with 24x7 visibility into the services through a real-time, web-based "dashboard" capability that enables them to monitor, in real or near real time, the Services' performance against the established SLAs and promised operational parameters.

The Service Provider has and will continue to use reasonable commercial efforts through Service Provider's quality assurance procedures to ensure that there are no viruses or malware or undocumented features in its infrastructure and Services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the Subscribing Entities.

User access to the Services must be capable of being integrated with a Subscribing Entity's Active Directory (or other LDAP service) to support single sign-on capability for users and to ensure that every user is tied to an Active Directory or other LDAP account

and to prevent user access when a user is disabled or deleted in the applicable Subscribing Entity's Active Directory or other LDAP service.

The Service Provider must obtain an annual *Statements on Standards for Attestation Engagements* ("SSAE") No. 16, Service Organization Control 1 Type 1, audit. The audit must cover all operations pertaining to the Services covered by this Agreement. The audit will be at the sole expense of the Service Provider and a copy of it must be provided to the State within 30 days of Service Provider's receipt of the State's written request.

At no cost to the State, the Service Provider must promptly remedy any issues, material weaknesses, or other items identified in each audit as they pertain to the Services.

1.5. Insurance

The Service Provider must provide the following insurance coverage at its own expense throughout the term of this Agreement to the State:

(A) Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Service Provider also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.

(B) Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

\$ 2,000,000 General Aggregate
\$ 2,000,000 Products/Completed Operations Aggregate
\$ 1,000,000 per Occurrence Limit
\$ 1,000,000 Personal and Advertising Injury Limit

Service Provider shall notify the State immediately after becoming aware of cancellation or material change to the policy. And the Service Provider's Commercial General Liability must be primary over any other insurance coverage.

(C) Commercial Automobile Liability insurance with a combined single limit of \$500,000. The policy must be endorsed to include a waiver of subrogation.

(D) Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Service Provider's policy is written on a "claims made" basis, the Service Provider must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason during the term of this Addendum the policy expires, or coverage is terminated, the Service Provider must purchase and maintain replacement coverage through the term of this Addendum.

All certificates must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers and must identify this Agreement. All carriers must have at least an "A-" rating by A.M. Best (or equivalent rating).

Any Subscribing Entity that is a Cooperative Purchasing Member that orders Services also may require a certificate of insurance from the Subscribing Entity naming it as an additional insured.

1.6. RESERVED.

1.7. Indemnification for Infringement

Subject to the exclusions set forth below, Service Provider shall: (i) defend The State and the Subscribing Entities, their officers, directors and employees against any third party suit, claim, action or demand ("**Claim**") alleging that the State and the Subscribing Entities' use of the Subscription Service in accordance with this Agreement infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States, Canada, Australia, the European Union or Switzerland; and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim. Any defense of the State or a State Subscribing Entity requires and is subject to the approval and consent of the Ohio Attorney General. If any portion of the Subscription Service becomes the subject of a Claim, Service Provider may: (a) contest the Claim; (b) obtain permission from the claimant for the State and the Subscribing Entities' continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Subscription Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms in Service Provider's reasonable judgment, then (d) terminate the State and the Subscribing Entities' use of the affected Subscription Service upon forty-five (45) days' written notice and pay to the State and the Subscribing Entities a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Subscription Service after the date of termination. Notwithstanding the above, Service Provider shall have no indemnification obligation or liability for any Claim arising in whole or in part from: (i) any use of the Subscription Service which exceeds the authorized use permitted under this Agreement; (ii) the State and the Subscribing Entities Data; (iii) use of the Subscription Service by the State and the Subscribing Entities in violation of applicable law; (iv) modifications to the Subscription Service by any person other than Service Provider or a person acting at Service Provider's direction; (v) modifications made by or at the request of the State and the Subscribing Entities pursuant to a Professional Service by a third party; or (vi) use of the Subscription Service in combination with any hardware, software, application or service made or provided other than by Service Provider. All of the foregoing indemnity obligations of Service Provider are conditioned on the State and Subscribing Entities notifying the Service Provider promptly in writing of any actual or threatened Claim, the State and Subscribing Entities giving the Service Provider sole control of the defense thereof and any related settlement negotiations upon consultation with and the approval of the Office of the State's Attorney General, and the State and Subscribing Entities cooperating and, at the Service Provider's request and expense, assisting in such defense. This Section states Service Provider's entire liability and the State and Subscribing Entities' exclusive remedy for third party infringement claims and actions.

1.8. Limitation of Liability - State

Section 6 (Limitation of Liability) of the Agreement shall control.

1.9. Limitation of Liability - Service Provider

Section 6 (Limitation of Liability) of the Agreement shall control.

1.10. Confidentiality

The State may disclose to the Service Provider written material or other tangible information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Service Provider will remain with the State. The Service Provider must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Service Provider may not disclose any Confidential Information to third parties and must use it solely to perform under this Agreement.

If any Service delivered under this Agreement contains data, documentation, or other written information that is confidential in nature, then it also will be Confidential Information for purposes of this section if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of Service Provider. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Agreement. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Agreement ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

- (1) Was already in the possession of the Receiving Party without an obligation of confidence;
- (2) Is independently developed by the Receiving Party without any use of or reference to the Confidential Information, and provided documentary evidence exists to support the independent development;
- (3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;
- (4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence to the Disclosing Party;
- (5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- (6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:
 - (a) Notifies the Disclosing Party of the order immediately upon receipt of it, unless it is legally prohibited from doing so; and

- (b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things, is nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Agreement. Therefore, item (3) in the preceding paragraph does not apply, and each Party must treat such information as Confidential Information whether it is available elsewhere or not.

Subject to the terms of the Agreement respecting Customer Data, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to seek temporary and permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages or posting a bond. However, this provision does not diminish or alter any right to claim and recover damages.

This Agreement is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

1.11. Handling of Subscribing Entity Data

The Service Provider must maintain an incident response capability for all security breaches involving Subscribing Entity Data. The Service Provider must detail this capability in a written policy that defines procedures for how the Service Provider will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access Subscribing Entity Data or the infrastructure associated with Subscribing Entity Data.

In case of an actual security breach that may have compromised Subscribing Entity Data, including but not limited to loss or theft of devices or media, the Service Provider must notify the Subscribing Entity in writing of the breach within 24 hours of the Service Provider becoming aware of the breach, and fully cooperate with the Subscribing Entity to mitigate the consequences of such a breach. This includes any use or disclosure of the Subscribing Entity Data that is inconsistent with the terms of this Agreement and of which the Service Provider becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Agreement by an employee, agent, or subcontractor of the Service Provider.

The Service Provider must give affected Subscribing Entities full access to the details of the breach and provide administrative assistance to each Subscribing Entity in making any notifications to potentially affected people and organizations that the affected

Subscribing Entities deem are necessary or appropriate. The Service Provider must document all such incidents, including its response to them, and make that documentation available to the affected Subscribing Entities on request.

All Subscribing Entity Data will remain the property of the Subscribing Entity. The Service Provider must ensure that the Subscribing Entity retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to other systems.

All Subscribing Entity Data at rest in systems supporting the Service Provider's Services must reside within the contiguous United States with a minimum of two data center facilities at two different and distant geographic locations and be handled in accordance with the requirements of this section at all Service Provider locations.

1.12. Sales, Use, Excise, and Property Taxes

The State and most Subscribing Entities are exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Service Provider in connection with any Service, such will be the sole and exclusive responsibility of the Service Provider, and the Service Provider will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the Services are rendered or a later time. If State and Subscribing Entity is a tax-exempt entity or claims exemption from any taxes under this Addendum, State and Subscribing Entity shall provide a certificate of exemption upon execution of Order Form executed in connection with this Addendum and, after receipt of valid evidence of exemption, Service Provider shall not charge State or Subscribing Entity any taxes from which it is exempt.

1.13. Executive Order 2011-12K Compliance

The Service Provider affirms it has read and understands Executive Order 2011-12K and will abide by those requirements in the performance of this Agreement. The State does not waive any other rights or remedies provided the State in this Agreement.

The Service Provider agrees to complete the attached Executive Order 2011-12K Affirmation and Disclosure Form, which is incorporated and becomes a part of this Agreement.

2. Revisions to the Agreement

Solely for the purposes of this Addendum, the parties agree to the following revisions to the Agreement:

2.1 The Agreement is amended by substituting the name "ServiceNow, Inc." for Service-now.com in the introductory paragraph to the Agreement and all references to Service-now.com shall mean ServiceNow, Inc. wherever it appears throughout the Agreement.

2.2 On the first line of Section 2.1 of the Agreement, System Availability, the availability percentage "99.97%" is hereby deleted and replaced with the availability percentage "99.8%".

2.3 Section 8.3, Product Escrow, is hereby deleted in its entirety.

Order Form: Payment terms are net thirty (30) days

IN CONSIDERATION OF THE ABOVE, the Parties have caused this Addendum to be executed by their duly authorized representatives.

Ohio Department of Administrative Services

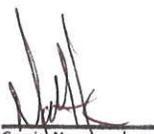
By: 
Name: Bob Blair
Title: Director
Date: 9/12/13 *asg*

The Ohio State University Medical Center

By: 
Name: Patrick Bradford
Title: Mgr. Sourcing
Date: 9-12-13

ServiceNow, Inc.

By: 
Name: Lindsay Beletsky
Title: VP of Finance
Date: 9/11/13

 
ServiceNow Legal
Approval