



CONTRACT FOR COMMERCIAL SALE  
OF SECRETARY OF STATE RECORDS

THIS CONTRACT FOR THE COMMERCIAL SALE OF SECRETARY OF STATE RECORDS ("Contract") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, ("Effective Date"), by and between the State of West Virginia, by and through its Secretary of State, hereinafter the STATE, and \_\_\_\_\_, a \_\_\_\_\_ corporation, with its principal place of business at \_\_\_\_\_, hereinafter VENDOR.

WHEREAS, the STATE, through its constitutional officer, the Secretary of State, is responsible for receiving and maintaining records related to Business Organization and Uniform Commercial Code (UCC) Data;

WHEREAS, VENDOR provides \_\_\_\_\_ (Services) \_\_\_\_\_, through \_\_\_\_\_ (Method) \_\_\_\_\_;

WHEREAS, VENDOR contracts to make the West Virginia Business Organizations and Uniform Commercial Code databases available to subscribers of their services;

WHEREAS, the records maintained by the Secretary of State are prepared and indexed at the expense of the state, and those records shall not be obtained for purchase or commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance (W. V. Code §59-1-2).

WHEREFORE, for good and valuable consideration, including but not limited to VENDOR'S obligations to pay to the STATE all amounts due the STATE pursuant to this Contract, the STATE agrees to provide VENDOR with its records in electronic data format subject to the following terms and conditions:

**Article I. Agreement**

This agreement supersedes all previous agreements that may exist between the STATE and VENDOR for the purchase and resale of the West Virginia Business Organizations Database or the Uniform Commercial Code Data as designed by request for purchase of Bulk Data Form(s).

**Article II. Format of Records**

The STATE will provide data in only an electronic format via the Internet to VENDOR.

### **Article III. Manner of Delivery**

The STATE agrees to deliver, upon an executed contract and full payment by the VENDOR, the database or databases contracted for to VENDOR.

### **Article IV. Initial Purchase Price**

VENDOR agrees to pay the STATE the Initial Purchase Price of Twelve Thousand Dollars (\$12,000.00), for the Business Organizations database or Twelve Thousand three hundred sixty dollars (\$12,360.00) for the Uniform Commercial Code database for the VENDOR's use of these databases. All payments under this Article are payable to the STATE upon the execution of this contract. If VENDOR allows their contract's annual renewal to lapse, a new contract must be negotiated and the Initial Purchase Price must be paid again to the STATE. The annual renewal date is the anniversary of the effective date of this contract.

### **Article V. Update Price**

*[Update Price for May – June 2012]* VENDOR agrees to pay an Update Price to the STATE of Twelve Thousand Dollars (\$12,000.00) to update its version of the West Virginia Business Organizations Database or Twelve Thousand Three Hundred Sixty Dollars (\$12,360.00) to update its version of the Uniform Commercial Code Database.

Beginning July 1, 2012 and hereafter for the term of this contract, VENDOR agrees to pay an Update Price to the STATE of Twenty-One Thousand Dollars (\$21,000.00) to update its version of the West Virginia Business Organizations Database or Fifteen Thousand Dollars (\$15,000.00) to update its version of the Uniform Commercial Code Database. The Update Price paid by the VENDOR provides a monthly update to the databases contracted for by the VENDOR for a period of twelve months from the effective date of the contract. The Update Price payment must be made before the data is delivered to the VENDOR and is due in advance at the time of the contract execution or the contract's annual renewal.

In the event the STATE terminates this contract for any reason other than breach by VENDOR, the Update Price paid for the month in which this Contract is terminated shall be equitably prorated and the balance, if any, shall be immediately refunded to VENDOR.

### **Article VI. Resale Fee**

In addition to the amounts payable by VENDOR under Articles IV and V above, if the VENDOR contracts to Commercially Resell any or all data contained in the West Virginia Business Organizations Database or the Uniform Commercial Code Database, the VENDOR

agrees to pay to the STATE an annual Resale Fee in the amount of One Thousand Eight Hundred Dollars (\$1800.00) per database per year. "Commercial Resale" is defined as any instance in which the VENDOR sells, to its customers, information from the West Virginia Business Organizations Database and/or the Uniform Commercial Code Database in the format specified under this contract (Attachment A).

Resale Fees required hereunder shall be paid in full and advance with the Initial Purchase Price for the first year of this Contract, and shall be paid before the annual renewal date of this contract for each subsequent year. All payments shall be sent to the STATE at the Secretary of State's Office, Building 1, Suite 157-K, 1900 Kanawha Blvd., East, Charleston, WV 25305-0770, Attn: Business Division.

### **Article VII. Sales Tax Requirement**

All payments paid to the STATE pursuant to this contract are subject to the West Virginia Consumers Sales and Service Tax, if applicable. VENDORS who are unsure of their West Virginia Consumers Sales and Service Tax liability should request clarification from the West Virginia Tax and Revenue Department. Any Consumers Sales and Service Taxes that are due to the STATE pursuant to this contract are due at the time of its execution.

### **Article VIII. Use and Restriction**

The data provided hereunder is subject to the following:

(a) Subject to the remaining terms of this Contract, VENDOR may use and authorize use of the data from STATE's database or databases, or any portion thereof, in its Product. For the purposes hereof, "Product" means all of VENDOR'S products and services offered to customers and others;

(b) VENDOR shall only distribute the data in its Product;

(c) VENDOR may not authorize its users, customers or others who obtain the data from VENDOR to resell the data in its original bulk data format. VENDOR may utilize the data from the original bulk data file format in its own products.

(d) At the STATE'S option, this Contract may be terminated immediately upon discovery that the data has been disclosed or sold by VENDOR in breach of the terms of this Contract or in violation of State or Federal Law. At the STATE's discretion, any remaining balances held by the STATE may be forfeited to mitigated damages.

### **Article IX. Warranty/Limitation of Warranty**

This Contract is subject to the following warranties and limitations:

(a) The STATE warrants that, upon complete payment of the Initial Purchase Price, Update Price and Resale Fees, it will deliver the data and all updates thereto as provided for herein;

(b) The STATE disclaims all other warranties and conditions, either express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose; and

(c) The exclusive remedy of VENDOR for breach of the warranty described in this Article shall be (i) return of VENDOR'S Initial Purchase Price if the STATE fails to make initial delivery within 30 days of the Effective Date, (ii) return of VENDOR'S Update Price, in the event the STATE fails to deliver any updates within 30 days of their availability, or (iii) repair or replacement of the data if it is delivered in a format other than that specified herein.

#### **Article X. Indemnification**

VENDOR agrees to indemnify, defend and hold harmless the STATE, its officers, directors, employees and agents (collectively "Indemnities") for all claims, losses, damage, injury and liability asserted against Indemnities arising out of or relating to:

(a) any inaccuracies in the data caused by VENDOR;

(b) the criminal or willful misuse of the data by VENDOR, its officers, directors, employees and agents, and VENDOR'S customers, officers, directors, employees and agents;

(c) damages, costs, lost production, or any other loss suffered by VENDOR due to failure of (i) the STATE'S system; (ii) the system relied upon by the STATE to access the data electronically; or (iii) the STATE'S equipment or software, but only to the extent such failures result in the STATE'S inability to deliver the data to VENDOR or inaccuracies in the data, as received by VENDOR; or

(d) damages suffered by VENDOR which are the result of acts of God, strikes, lockouts, riots, acts of war, epidemics, other disasters or regularly scheduled downtime which results in the STATE'S inability to deliver the data to VENDOR or inaccuracies in the data, as received by VENDOR.

#### **Article XI. Notice of Claims**

VENDOR agrees to immediately notify the STATE of any claim of which VENDOR has actual knowledge that has been or will be asserted against VENDOR or any of its officers, directors, employees or agents as a result of its use of the West Virginia Business Organizations Database and/or UCC Database.

## **Article XII. Assignment**

This Contract is not assignable by VENDOR without the STATE'S prior written consent. Provided, however, that VENDOR may assign this Contract to the purchaser of its business or assets to which this Contract pertains without the STATE'S prior consent so long as such purchaser agrees to assume all responsibilities of VENDOR under this Contract.

## **Article XIII. Term**

This Contract shall be effective on the Effective Date and shall remain in effect for a period of one (1) year. The Effective Date is defined as the date the contract is executed. This Contract shall thereafter renew for consecutive periods of one year under the exact terms of this Contract for a period not to exceed five (5) years, provided that full payment required under this contract is received by the STATE prior to the beginning of the Renewal Term. Either party may terminate this contract at the end of the Initial Term or any subsequent one year Renewal Term by written notice to the other party no later than 60 days prior to the end of the then current term. At the expiration of such time the parties may renew the contract under terms to be negotiated.

The parties' obligations hereunder shall terminate on the expiration date of this Contract with the exception of those obligations that accrued prior to the expiration date. Notwithstanding, VENDOR may use, subsequent to the expiration date of this contract, all portions of the data delivered to it by STATE during the term of this Contract.

## **Article XIV. Amendment**

This Contract may not be revised or amended except by mutual written consent of both parties.

## **Article XV. Governing Law**

This Contract shall be interpreted in accordance with the laws of West Virginia, and venue of any lawsuit filed by any party arising in whole or in part out of this contract shall be in the Circuit Court of Kanawha County, West Virginia. In the event any part of this Contract is invalidated by order of a court of competent jurisdiction, or by legislative action, the remainder of this Contract shall remain in binding effect.

## **Article XVI. Entire Agreement**

This Contract constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between them with regard to the subject matter discussed herein.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly signed and sealed the day and year first above written.

\_\_\_Business Organizations Database  
\_\_\_Resale of Business Data

Period \_\_\_\_\_

STATE OF WEST VIRGINIA

\_\_\_\_\_  
Mac Warner, Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305

\_\_\_Uniform Commercial Code Database  
\_\_\_Resale of UCC Data

Period \_\_\_\_\_

VENDOR

By: \_\_\_\_\_