

CONTRACT FOR COMMERCIAL RESALE
OF SECRETARY OF STATE RECORDS

THIS CONTRACT FOR COMMERCIAL RESALE 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

----- Name of Reseller
----- Address of Reseller
----- City, State, Zip Code

hereinafter RESELLER.

WHEREAS, the STATE, through its constitutional officer, the Secretary of State, is responsible for receiving and maintaining records related to Business Organization, Administrative Law and Uniform Commercial Code Data.

WHEREAS, the records maintained by the STATE are prepared and indexed in electronic data format at the expense of the STATE; and,

WHEREAS, West Virginia Code § 59-1-2 provides, in part, as follows:

[T]he 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 commercial resale without the written agreement of the state to a contract including reimbursement to the state for each instance of resale.

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

Article I. Agreement. This agreement supersedes all previous agreements between the STATE and RESELLER for the purchase and resale of the .

Article II. Format of Records. The STATE will provide data in a format mutually agreeable to the parties,

Article III. Manner of Delivery. The STATE agrees to deliver, at its sole expense, the data to RESELLER.

Article IV. Initial Purchase Price. RESELLER agrees to pay the STATE the initial purchase price of (see attached Purchase Price List) (“Initial Purchase Price”), payable in advance. STATE will acknowledge that the RESELLER paid, and that the STATE received, the Initial Purchase Price prior to the Effective Date.

Article V. Update Price. RESELLER agrees to pay the STATE the annual, monthly, or weekly price of data (“Update Price”), which shall be payable before the data is delivered to the Reseller. (See Attached Purchase Price List)

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

Article VI. Resale Fee.

- (a) In addition to the amounts payable by RESELLER under Articles IV and V above, RESELLER agrees to pay the STATE a resale fee for Each Instance of Commercial Resale of the data. “Each Instance of Commercial Resale” shall be defined as any instance that RESELLER provides the data in Product to customers and others to disseminate or republish, or provides the data in Product in “bulk” in the format in which it was received from the STATE to customers or others, excluding the use of the data in products distributed to educational institutions pursuant to noncommercial use agreements, and the use of the data in RESELLER’S promotional, demonstration, and training activities.
- (b) As used in this Contract, Resale Revenue means all amounts received by RESELLER for the use of the data from Each Instance of Commercial Resale, other than amounts (1) from educational institutions pursuant to noncommercial use agreements, (2) for computer connect time charges, telecommunications charges and account maintenance charges, and (3) for taxes charged to users.
- (c) STATE shall earn resale fees on Resale Revenue at the rate of ten percent (10%) .
- (d) Resale fees earned hereunder shall be paid quarterly not later than 75 days after the end of each calendar quarter. Payments shall be made in U.S. dollars. Following each calendar quarter, RESELLER shall provide STATE with a statement showing Resale Revenue for the quarter. Payments, resale fee, and Resale Revenue statements 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.

- (e) Taxes, if any, due on resale fees payable hereunder are the responsibility of STATE. To the extent required by law, RESELLER will withhold taxes due on resale fees. STATE agrees to provide to RESELLER such documentation as is reasonably required to document any claim by STATE to favorable treatment under applicable tax laws.
- (f) For any calendar year in which resale fees are payable to STATE pursuant to this Contract, RESELLER shall provide STATE with a report prepared by RESELLER's independent auditors. The report will indicate, in accordance with generally accepted auditing standards then in effect, whether, in the opinion of the auditors, Resale Revenue earned for the calendar year by licensors of RESELLER, as a whole, are fairly stated in all material respects on the basis specified in the agreements between RESELLER and its licensors.

Article VII. Use and Restriction. The data provided hereunder is subject to the following:

- (a) Subject to the remaining terms of this Contract, RESELLER may use and authorize use of the data, and any portion thereof, in its Product. For the purposes hereof, "Product" means all of RESELLER's products and services offered to customers and others.
- (b) RESELLER shall only distribute the data in Product.
- (c) RESELLER may not authorize its users, customers or others who obtain the data from RESELLER to resell the data.
- (d) At the STATE's option, this Contract may be terminated immediately upon discovery that the data has been disclosed or sold by RESELLER in breach of the terms of this Contract or in violation of State or Federal Law.

Article VIII. Warranty/Limitation of Warranty. This Contract is subject to the following warranties and limitations thereof.

- (a) The STATE warrants that, upon complete payment of the Initial Purchase Price, Update Price, and the resale fees earned by STATE hereunder, it will deliver the data and all updates thereto as provided for herein.
- (b) To the maximum extent permitted by applicable law, 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.
- (c) The exclusive remedy of RESELLER for breach of the warranty described herein shall be (i) return of RESELLER's Initial Purchase Price if the STATE fails to make initial delivery within 30 days of the Effective Date, (ii) return of RESELLER's Update Price, in the event the STATE fails to deliver any updates within 30 days of their availability, and (iii) repair or replacement of the data if it is delivered in a format other than that specified herein.

Article IX. Indemnification. RESELLER agrees to indemnify, defend and hold harmless the STATE, its officers, directors, employees and agents (collectively "Indemnitees") 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 RESELLER;
- (b) the criminal or willful misuse of the data by RESELLER, its officers, directors, employees and agents;
- (c) damages, costs, lost production, or any other loss suffered by RESELLER 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 RESELLER or inaccuracies in the data, as received by RESELLER;
- (d) damages suffered by RESELLER 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 RESELLER or inaccuracies in the data, as received by RESELLER.

Article X. Notice of Claims. RESELLER agrees to immediately notify the STATE of any claim of which RESELLER has actual knowledge asserted against RESELLER or any of its officers, directors, employees or agents as a result of its use of the

Article XI. Assignment. This Contract is not assignable by RESELLER without the STATE's prior written consent; provided, however, RESELLER 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 RESELLER under this Contract.

Article XII. Term. Subject to Article VII(d) above, this Contract shall be effective on the Effective Date and shall remain in effect for a period of one year. This Contract shall thereafter automatically renew for consecutive periods of one year unless either party gives the other party written notice of non-renewal not later than 60 days prior to the end of the then current term.

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

Article XIV. 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, except that suits seeking monetary damages against the STATE shall be brought in the West Virginia Court of Claims. In the event any part of this Contract is invalidated by order of a court or competent jurisdiction, or by legislative action, the remainder of this Contract shall remain in binding effect.

Article XV. 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.

STATE OF WEST VIRGINIA

RESELLER

By: _____
NATALIE E. TENNANT, Secretary of State (Signature)

(Name & Title)