STATE OF OHIO
STANDARD TERMS AND CONDITIONS

I. GLOSSARY

The following definitions are applicable to all components of the Contract:

A. Acceptance: Approval and retention by the Ordering Agency of any Deliverables, delivered to fulfill Contract requirements.

B. Contract: The contract to which these Standard Terms and Conditions are attached and/or incorporated.

C. Contract Data: State Data that the Contractor has access to, transmits, processes, possesses, creates or stores in providing services to the State.

D. Contracting Agency: The agency with which the Contractor enters into the Contract and that has the authority to enforce the Terms and Conditions of this Contract. The Contracting Agency may also be the Ordering Agency.

E. Contractor: The person or entity with whom the State has entered into the Contract, including subcontractors or other personnel under the authority or control of the Contractor performing or providing the Deliverables under this Contract.

F. Default: The omission or failure to perform any obligation under this Contract.

G. Deliverable: Any Contractor-provided products, supplies, services, work or product described in the specifications of the Contract.

H. Ordering Agency: The entity that purchases and accepts the Deliverables under this Contract and that is responsible for payment. The Ordering Agency may also be the Contracting Agency.

I. State: The State of Ohio, which may include the Contracting and/or Ordering Agency as applicable.

J. State Data: All data and information provided by, created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State, including, but not limited to, Confidential Data (defined in Exhibit A).

K. Time and Materials Contract: A contract in which Contractor is paid the following: (1) an hourly rate for labor actually performed; and (2) if applicable and with prior approval by the Ordering Agency, the cost of the materials or supplies actually used by the Contractor. Such rates and costs will be established through Contractor's submission of a price sheet, written quote, estimate, or invoice, as approved by the State. Hourly rates may include wages, overhead, general and administrative expenses, and reasonable profit. Materials or supplies may include the Contractor's direct and indirect costs attributable to the work performed.

II. REGULATORY CONTRACT REQUIREMENTS

A. ANTITRUST. The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. Pursuant to Section 109.81 of the Ohio Revised Code, the Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

B. APPROPRIATION OF FUNDS. The State's funds are contingent upon the availability of lawful appropriations. If the General Assembly or any third party who is providing funding fails at any time to continue funding for the payments due by the State under this Contract, the State will be released

from its obligations on the date funding expires. If appropriations are approved, the State may continue this Contract or the Ordering Agency may continue its order, as applicable, past the current biennium. Any obligations of the State are subject to Section 126.07 of the Ohio Revised Code.

C. CAMPAIGN CONTRIBUTIONS. Unless this Contract was solicited by competitive bid pursuant to Section 125.07 of the Ohio Revised Code, Contractor hereby certifies that all applicable parties are in full compliance with Section 3517.13 of the Ohio Revised Code.

D. COMPLIANCE WITH LAW. The Contractor must comply throughout the duration of the Contract with all applicable federal, state, and local laws and Executive Orders while performing under this Contract.

E. CONFLICT OF INTEREST/ETHICS. Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws or otherwise presents a conflict of interest.

F. CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY. Throughout the Contract term, the Contractor warrants that the Contractor is not subject to an unresolved finding for recovery pursuant to Section 9.24 of the Ohio Revised Code. If the warranty is false on the date the parties signed this Contract, the Contract is void *ab initio,* and the Contractor must immediately repay any funds paid under this Contract.

G. DEBARMENT. Throughout the Contract term, the Contractor represents and warrants that neither it, nor any of its subcontractors, are debarred from consideration for contract awards by any governmental agency. If this representation and warranty is found to be false on the date the parties signed this Contract, this Contract is void *ab initio,* and the Contractor must immediately repay any funds paid under this Contract.

H. DRUG FREE WORKPLACE. The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and must make a good faith effort to ensure that all Contractor employees, while working on State property or performing work on behalf of the State, will not purchase, transfer, use, be under the influence of, or possess illegal drugs, non-medical cannabis (recreational marijuana), or alcohol, or abuse prescription drugs or medical marijuana in any way.

I. PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES. No State Cabinet Agency, Board or Commission will enter into any contract to purchase services provided outside of the United States or that allows State Data to be sent, taken, accessed, tested, maintained, backed up, stored, or made available outside of the United States, unless the State obtains a duly signed waiver. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs or for State Data located outside of the United States for which a waiver was not received. The State does not waive any other rights and remedies provided to the State in this Contract.

Further, no State agency, board, commission, State educational institution, or pension fund will make any purchase from or investment in any Russian institution or company. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to Contractor for purchases or investments in a Russian institution or company in violation of this paragraph.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor changes the location(s) disclosed on the

Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form to the Contracting Agency reflecting such changes. The applicable provisions of this section will expire if the applicable Executive Order is no longer effective.

J. GOVERNING LAW. This Contract is governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio.

K. INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including, but not limited to, any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees that any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), Contractor must have any individual performing services under the Contract complete and submit to the Ordering Agency the Independent Contractor/Worker Acknowledgement form.

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement form at the time Contractor executes this Contract will serve as Contractor's certification that Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code.

L. REGISTRATION WITH THE SECRETARY OF STATE. Contractor certifies that it is one of the following:

1. A domestic corporation that is properly registered with the Ohio Secretary of State; or
2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
3. Exempt from the registration requirements of the Ohio Secretary of State.

M. TAXES. Pursuant to Section 5739.02 of the Ohio Revised Code, the State is exempt from sales tax. Pursuant to Section 5741.02(C) of the Ohio Revised Code, the State is exempt from use tax.

N. TRADE. Pursuant to Section 9.76(B) of the Ohio Revised Code, Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Contract period.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States or transact business with any entity or individual subject to financial sanctions imposed by the United States. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, will acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those entities and individuals subject to sanctions can be found at

https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists. These sanctions generally preclude most transactions involving Cuba, Iran, and Sudan, and most imports from Burma or North Korea.

O. USE OF MBE AND EDGE VENDORS. Section 125.081 of the Ohio Revised Code requires State agencies to set-aside purchases for Minority Business Enterprises (MBE) and Executive Order 2008-13S encourages use of Encouraging Diversity, Growth and Equity (EDGE) businesses. Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified MBE and EDGE vendors.

P. LEGAL REPRESENTATION AND RIGHTS. The Ohio Attorney General is the chief law officer for the State of Ohio, its agencies, boards and commissions, and only the Ohio Attorney General has the authority to appoint outside legal counsel to represent the State. Contractor agrees that any provisions in this Contract or any documents incorporated by reference that provide or allow for outside legal representation to defend or settle claims on behalf of the State or provide for a third party to have sole control of a defense or settlement of a claim do not meet the requirements of state law and are considered stricken. Contractor also agrees that, unless specifically agreed to in writing by the State, any provisions that require or provide for a waiver of any legal rights, remedies, or litigation defenses (i.e., waiver of a jury trial) do not meet the requirements of state law and are considered stricken.

Q. STATUTE OF LIMITATIONS. Statutes of limitations generally do not apply to actions brought by the State and any such provisions in this Contract or in any documents incorporated by reference are considered stricken.

R. ACCESSIBILITY REQUIREMENTS. If applicable, the Contractor warrants it will comply with federal and state disabilities laws and regulations and also warrants that the Deliverables provided under this Contract conform to the applicable accessibility requirements of WCAG 2.1 Level AA or the most current version (the "Accessibility Standards"), Section 508 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. The Contractor must promptly respond to and resolve any complaint regarding accessibility of its products and services. If at any time, the Deliverables provided under this Contract do not fully conform to the Accessibility Standards, the Contractor must immediately notify the State in writing of the nonconformance and provide to the State a plan to achieve conformance to the Accessibility Standards, including an intended timeline for conformance. The Contractor further agrees to indemnify and hold harmless the State from any claims or damages arising out of Contractor's failure to comply with the requirements of this section. Failure to comply with these requirements will constitute a material breach of this Contract for which the State may terminate this Contract.

III. CONTRACT CONSTRUCTION

A. TERM OF CONTRACT. The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the ending date stated in the Contract unless earlier terminated pursuant to the terms of the Contract. Notwithstanding the foregoing, the expiration or early termination of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or ordered before the expiration or termination, or limit the State's rights in such, including any warranty services, licensed material, paid subscriptions, the support or maintenance thereof, or other services.

If not otherwise set forth in the Contract, the State may solely renew this Contract at its discretion for a period of one month. This Contract may be further renewed at the discretion of the State. The State will issue a notice to the Contractor if the State decides to renew this Contract and the Contractor may decline such renewal if it so desires. The Contractor must not obligate resources in anticipation of a renewal until notice is provided.

B. CONTRACT AMENDMENTS / WAIVER.

1. **Amendments.** No change to any provision of this Contract will be effective unless it is in writing and signed by the parties to the Contract. Unless specifically provided otherwise in this Contract or agreed to in writing by the Contracting or Ordering Agency, no terms or conditions included on a Contractor's quote or ordering document will be valid or enforceable against the State and are specifically excluded from this Contract. Further, no "click-through," "shrink-wrap," "browse-wrap," or other terms that have not been specifically negotiated by the Contractor and the State, whether before, on, or after the date of this Contract, will be effective to add or modify the terms of this Contract, regardless of any party's "acceptance" of those terms by electronic means.

2. **Waiver.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms or to any other terms of this Contract. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

C. ASSIGNMENT / DELEGATION. The Contractor must not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

D. BINDING EFFECT. Subject to the limitations on assignment provided elsewhere in this Contract, this Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

E. LANGUAGE CONSTRUCTION. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

F. DAYS AND TIMES. When this Contract refers to days, it means calendar days, unless it expressly provides otherwise. When this Contract refers to times, it means Columbus, Ohio local time.

G. HEADINGS. The headings in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

H. INJUNCTIVE RELIEF. Nothing in this Contract is intended to limit the State's right to injunctive relief if such is necessary to protect its interests or to keep it whole.

I. NOTICES. For any notice under this Contract to be effective, the notice must be made in writing and delivered to the appropriate contact provided in the Contract.

J. ORDER OF PRIORITY. If there is any inconsistency or conflict between these Standard Terms and Conditions and any provision incorporated by reference or included by the Contractor, these Standard Terms and Conditions will prevail.

K. PUBLICITY. The Contractor must not do the following without prior, written consent from the State:

1. Advertise that the Contractor is doing business with the State;
2. Use this Contract as a marketing or sales tool; or
3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.

L. SEVERABILITY. If any provision of the Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

M. SUBCONTRACTING. The State recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor must submit a list identifying the Contractor's subcontractors. The Contractor may not enter into subcontracts related to the Contract after award without written approval from the State. If any change occurs during the term of the Contract that requires a change to identified subcontractors, the Contractor must amend its list of subcontractors and request written approval from the State. The State reserves the right to reject any subcontractor submitted by the Contractor.

All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all sub-contracting and third-party manufacturer work performed or product delivered under the Contract. All agreements with subcontractors must incorporate the applicable terms of this Contract by reference and include the following provisions: (1) the subcontractor agrees to be bound by all applicable terms and conditions of this Contract; and (2) the terms of this Contract prevail over any conflicting terms of the agreement with the subcontractor. The Contractor will be the sole point of contact with regard to all contractual matters.

N. SURVIVORSHIP. All sections herein relating to payment, confidentiality, license and ownership, indemnification, maintenance, publicity, warranties and limitations on damages will survive the termination of this Contract. In addition, to the extent necessary to carry out the purpose of this Contract, all other terms, conditions, representations or warranties contained in this Contract will survive the expiration or termination of this Contract.

O. COUNTERPARTS. This Contract may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IV. ORDER AND PAYMENT PROVISIONS

A. CERTIFICATION OF FUNDS/PURCHASE ORDER REQUIREMENTS. None of the duties or obligations in this Contract are binding on the State and the Contractor will not begin performance on this Contract until all of the following conditions are met:

1. All statutory provisions under the Ohio Revised Code have been met.
2. All necessary funds are made available by the appropriate Ordering Agency.
3. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.
4. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate Ordering Agency, which is certification that the above requirements have been met.

B. CONTRACT ORDERS. Ordering Agencies will order supplies or services under this Contract from the Contractor directly, unless otherwise provided in the Contract. All orders must be in writing and the Contractor may receive orders by Ordering Agencies electronically, in person, by payment card (if applicable), or by purchase order from the Ordering Agency. If different than the Ordering Agency, the Contracting Agency will not be responsible for orders placed by unauthorized employees of the Ordering Agency. The Contractor must ensure that any entity placing an order under this Contract has the authority to do so.

If Contractor's quote or ordering document contains or incorporates by reference any terms or conditions other than a description of the goods or scope of services and the prices for those goods and/or services, those terms or conditions are excluded from this Contract and are of no effect.

C. INVOICE REQUIREMENTS. The Contractor or dealer authorized to submit invoices must submit an invoice to the office designated in the purchase order. The Contractor will only be compensated for the Deliverables accepted by the State. To be a proper invoice, the invoice must include the following:

1. The purchase order number authorizing the delivery of supplies or services;
2. State of Ohio Contract Number (if applicable);
3. Ordering Agency Name;
4. Ordering Agency Billing Address;
5. Delivery location of supplies or services;
6. Contractor Name;
7. Contractor Address;
8. Contractor's Unique Invoice Number;
9. Date that services were provided or that supplies were delivered;
10. Itemization of supplies or services provided, including cost;
11. For leases, the invoice must also include the payment number (e.g., 1 of 36);
12. For Time and Materials Contracts, the invoice must reflect labor hours actually worked and, if applicable, supplies used; and
13. Clear statement of total payment expected.

D. PAYMENT DUE DATE AND PROCESS. Unless otherwise stated in this Contract and in accordance with Section 126.30 of the Ohio Revised Code, payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The State's preferred method of payment is by electronic funds transfer. However, the Ordering Agency may also make payment by State of Ohio payment card or by warrant issued by the Office of Budget and Management. At the time of Contract award, Contractor must be able to accept all forms of payment from the State and Ordering Agency.

E. REIMBURSABLE EXPENSES. The State will not pay reimbursable expenses unless specifically identified in the Contract. The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable.

F. TRAVEL. Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval of the Contractor's submitted travel expenses. The State will pay for all additional travel expenses that it requests and approves in accordance with Section 126.31 of the Ohio Revised Code and Rule 126-1-02 of the Ohio Administrative Code.

V. LIABILITY PROVISIONS

A. GENERAL REPRESENTATIONS AND WARRANTIES. The Contractor warrants that:

1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with the Contractor's standard business practices.

4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
5. The Deliverables comply with all governmental, environmental and safety standards.
6. The Contractor has the right to enter into this Contract.
7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
8. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to the State.
10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.
11. If this Contract is labeled as a mandatory use contract by the State, the Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the Ordering Agencies required to use this Contract such that the services duplicate the work done or to be done under the other contracts.
12. For one year from the delivery date of any products or software, the products or software will be free of material defects, including the media on which it is delivered, if applicable.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above. Further, if any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

Any other express warranties offered by the Contractor will be a minimum of one year from acceptance or the Contractor's standard warranty whichever is longer.

B. <u>INDEMNITY</u>.

1. **General Indemnity.** The Contractor must indemnify the State for all liability and expense arising out of the performance of this Contract, provided that such liability or expense is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.

2. **Security Incident Indemnity.** Contractor must indemnify the State for all third party liability and expense resulting from a Security Incident (defined in Exhibit A) arising from Contractor's performance under this Contract and involving Contract Data. Damages resulting from the Security Incident will be considered direct damages under this Contract and include the following: (i) expenses for legally-required notification of impacted individuals; (ii) responding to inquiries from such notifications; (iii) government fines and penalties assessed against the State; (iv) costs to the State for investigations, audits or forensic services as applicable related to the Security Incident; (v) mitigation measures, including 12 months of credit monitoring and identity theft protection for individuals impacted by the Security Incident; (vi) costs to the State to reconstruct data that was lost or to repair any damaged State information technology infrastructure; and (vii) other such expenses incurred by the State as a result of the Security Incident involving Contract Data. Regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection services on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Contractor's indemnification obligations

under this paragraph apply whether the expenses or costs incurred by the State are performed by State employees or hired contractors. Contractor must also work with the State to directly notify impacted individuals or persons as required by Chapters 1347 and 1349 of the Ohio Revised Code or as otherwise directed by the State.

3. **Infringement Indemnity.** The Contractor must indemnify, release, protect, and hold the State harmless from any third party claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one of the following four actions within an acceptable timeframe:

   a. Modify the Deliverable so that the Deliverable is no longer infringing;
   b. Replace the Deliverable with an equivalent or better item;
   c. Acquire the right for the State to use the infringing Deliverable as intended; or
   d. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.

4. **Indemnity Procedure.** For the Contractor's indemnification obligations in this section, the State agrees to: (i) give the Contractor notice of any claim under this section as soon as reasonably practicable; (ii) give the Contractor the authority to settle or otherwise defend any such claim only upon consultation with and approval by the Ohio Attorney General; and (iii) assist with and cooperate in such defense or settlement as reasonably necessary and at Contractor's expense. The State has the right to participate in the defense or settlement or any claim at its own expense.

C. **INSURANCE.** Until all obligations under this Contract are satisfied, and without limiting Contractor's indemnification obligations herein, Contractor must procure and maintain, for the duration of the Contract, the insurance policies set forth below. Contractor must procure and maintain insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees. All commercial insurance required must be provided by insurers with a rating of not less than A:VII from A.M. Best or a comparable rating agency, unless otherwise accepted by the State.

Coverage must be at least as broad as:

1. Commercial General Liability: written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of no less than $2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit will apply separately to this project/location or the general aggregate limit will be twice the required occurrence limit. Defense costs are outside of the policy limit. The State of Ohio, its officers, officials and employees are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.

2. Automobile Liability: covering Symbol 1 (any auto), or if Contractor has no owned autos, Symbol 8 (hired) and 9 (non-owned), with a limit of no less than $1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation: as required by the State of Ohio, or the state in which the work will be performed, with statutory limits, and Employer's Liability Insurance with a limit of no less than

$1,000,000 per accident for bodily injury or disease. If Contractor is a sole proprietor, partnership, or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold the State harmless from loss or liability for such.

The insurance obligations under this Contract are the minimum insurance coverage requirements and/or limits shown in this Contract. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, will be available to the State of Ohio. No representation is made that the minimum insurance requirements of this Contract are sufficient to cover the obligations of the Contractor under this Contract.

Pursuant to Section 2743.02(D) of the Ohio Revised Code, all applicable insurance or other means of recovery will apply to any claim arising from the Contractor's activities relating to this Contract on a primary basis. The insurance or self-insurance maintained by the State will not contribute to claims made due to the Contractor's negligence, errors, or omissions. No subrogation demands will be made against the State of Ohio, except where there is negligence on the part of the State, and any such demands will be reduced by all collateral recovery sources available to or received by the claimant.

Umbrella or Excess Insurance Policies. Umbrella or excess commercial liability policies may be used in combination with primary policies to satisfy the limit requirements above. Such umbrella or excess commercial liability policies must apply without any gaps in the limits of coverage and be at least as broad as and follow the form of the underlying primary coverage required above.

Notice of Cancellation. Contractor must provide the State of Ohio with written notice of cancellation of any insurance policy required above as soon as possible and must use best efforts to notify the State at least 30 days in advance of such cancellation. A lapse in any required insurance coverage during this Contract will be a breach of this Contract.

Deductibles and Self-Insured Retentions. Self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language must provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the State. Any and all deductibles and self-insured retentions will be the sole responsibility of the Contractor or subcontractor who procured such insurance and will not apply to the indemnified additional insured parties. The State may deduct from any amounts otherwise due to the Contractor to fund the self-insured retentions. Policies must not contain any self-insured retention provision that limits the satisfaction of the self-insured retention to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the self-insured retention. The State reserves the right to obtain a copy of any policies and endorsements for verification.

Claims Made Policies. If any of the required policies provide coverage on a claims-made basis:

1. The retroactive date must be shown and must be before the date of the Contract or the beginning of Contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Contract work.
3. If coverage is canceled or non-renewed and not replaced with another claims-made policy with a retroactive date prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five years after completion of Contract work. The discovery period must be active during the extended reporting period.

Verification of Coverage. Contractor must furnish the State of Ohio with certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning will not waive the Contractor's obligation to provide them. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors. Contractor must require and verify that all subcontractors maintain insurance with sufficient limits for the nature of the products or services they are providing, and Contractor must ensure that the State of Ohio is an additional insured on commercial general liability insurance required from subcontractors. Contractor will indemnify the State for damages that exceed a subcontractor's policy limits.

Special Risks or Circumstances. The State reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, as mutually agreed with the Contractor and incorporated into the Contract by written amendment.

D. **LIMITATION OF LIABILITY.** The parties agree as follows:

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. Notwithstanding any other limitation provisions and pursuant to Section 9.27 of the Ohio Revised Code, the Contractor is liable for any direct loss to the State for bodily injury, death, or damage to property of the State caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of the Contractor or Contractor's employees or agents during its performance under this Contract.
3. Notwithstanding any other limitation provisions, the Contractor is liable for any other direct loss or damage to the State caused by the gross negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of the Contractor or Contractor's employees or agents during its performance under this Contract.
4. Any limitation provisions contained in the documents and materials incorporated by reference into this Contract are considered stricken and of no force and effect.
5. All limitation provisions in this Contract are only to the extent such limitations do not impose an unlawful indemnification obligation on the State.

E. **PRODUCT RECALL.** In the event a Deliverable has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or in the case of consumable product, found to be unfit for human consumption by the packer, processor, manufacturer or by any state or federal regulatory agency, the Contractor must notify the Contracting Agency and all Ordering Agencies within two business days after notice has been given. The Contractor must, at the option of the Ordering Agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. The Contractor must remove and/or replace the affected product within a reasonable time as determined by the Ordering Agency. At the option of the Ordering Agency, the Contractor may be required to reimburse storage and handling fees to be calculated from time of delivery and acceptance to actual removal. The Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a Default.

VI. PERFORMANCE AND COMPLIANCE

A. AUDITS. The Contractor must keep all financial records related to this Contract in a manner consistent with Generally Accepted Accounting Principles (GAAP) or equivalent accounting principles. Additionally, the Contractor must keep separate business records for this Contract, including records of disbursements and obligations incurred that must be supported by contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Contract and until the expiration of three years after final payment under this Contract, the Contractor agrees to provide the State, or any authorized representatives providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract.

The Contractor must, for each subcontract in excess of $25,000.00, require its subcontractors to agree to the same provisions of this Section. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to contracts where federal funds are used and the federal government requires audits of all subcontracts regardless of the amount of the contract.

The Contractor must provide access to the requested records at the location specified by the State no later than five business days after the request by the State, the State's designee or any party with audit rights. If an audit reveals any of the following: (i) any material deviation from the Contract requirements; (ii) any misrepresentations; or (iii) any overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages as well as the cost of the audit.

B. F.O.B. DESTINATION/PRE-PAID/ALLOWED. The Contractor must provide Deliverables under this Contract F.O.B. Destination/Pre-Paid/Allowed. The place of destination will be specified by the Ordering Agency on its purchase order or other ordering document. Cost of the freight must be borne and paid by the Contractor unless otherwise stated.

All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State. Unless otherwise provided in this Contract, the State will determine whether the Contractor provided each Deliverable required in this Contract and has fully met all work requirements of this Contract. Title to any Deliverables will pass to the State on Acceptance of the Deliverable.

C. RETURNED GOODS. When the use of this Contract involves the purchase of goods, the following applies:

1. Returned goods, when due to Contractor error (i.e., over-shipment, defective merchandise, unapproved substitution, etc.), must be returned to the Contractor at the Contractor's expense. The Contractor must make arrangements to remove the returned goods from the Ordering Agency premises within seven calendar days after notification. The Contractor must not apply any restocking or other charges to the Ordering Agency. At the option of the Ordering Agency, replacement items may be accepted and will be shipped within seven calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the Ordering Agency will dispose of the items accordingly.

2. For orders of custom manufactured items, the Contractor must provide a production sample of the item to the Ordering Agency for acceptance. The production sample must be identical to the item to be provided. The Ordering Agency will provide written acceptance of the item prior

to the Contractor continuing with production. Once delivery and acceptance has been completed and the Ordering Agency determines for any reason that any remaining quantities will not be used, the Ordering Agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the Ordering Agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

3. Returned goods of regular catalog stock merchandise, when due to Ordering Agency error (i.e., over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the Ordering Agency within six months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. Return of regular stock catalog merchandise, when delivery and acceptance exceed six months, will be at the option of the Contractor.

D. CUSTOM DELIVERABLES. All custom work done by the Contractor and covered by this Contract, including any software modifications, and documentation, will belong to the State with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable, including distribution to third parties as required by funding mandates. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable. Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

E. FORCE MAJEURE (EXCUSABLE DELAY). Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. For purposes of this section, the term "force majeure event" includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.

If the State or the Contractor cannot perform any part of its obligations under this Contract because of force majeure, that party is excused from those obligations to the extent that performance is prevented by the force majeure event and that party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event. If there is only a delay in performance, such delay may extend only for that time lost because of the force majeure event. If a party is unable to perform those above-referenced obligations, it must also do the following:

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information about the force majeure event;
3. Provide a proposed revised performance date to make up for performance delays due to the force majeure event. When applicable, the revised schedule must provide for performance time not to exceed the time lost as a result of the force majeure event.

F. CONTRACT PERFORMANCE MANAGEMENT. The Contracting and Ordering Agencies are responsible for administering and monitoring the Contractor's compliance and performance on this Contract. Therefore, the Contractor must respond to complaints about performance of the obligations in this Contract to such entities in a timely manner. If the Contractor fails to perform any one of its obligations under this Contract, it will be in Default.

If the Contractor fails to satisfactorily correct the performance or compliance issue within the time designated by the Agency, the Contracting Agency may employ all available options and remedies, including termination of the Contract if necessary to resolve the Contractor's continued nonperformance or noncompliance.

G. QUALITY ASSURANCE. At the option of the Contracting or Ordering Agency, samples may be taken from deliveries made and submitted for laboratory tests. The Ordering Agency will bear the cost of testing to determine if samples are in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the terms and conditions of the Suspension/Termination provision of this Contract will be applied.

H. CONTRACT REMEDIES.

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's Default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with self-performance or acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's Default.

2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, or are otherwise not addressed in the Contract, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the Default, for every day that the Default is not cured by the Contractor.

3. **Right to Withhold or Offset.** The Ordering Agency may withhold payment or set off the amount of any liquidated damages, other damages, or any other obligation of the Contractor or its subsidiaries to the Ordering Agency, including any amounts the Contractor owes to the Ordering Agency under this Contract and any overpayments to the Contractor made by the State, against any payments due to the Contractor under this Contract.

I. SUSPENSION/TERMINATION. In the event of suspension or termination, the State will issue a notice. Any notice of suspension or termination, in full or in part, will be effective as specified in the notice. The Contractor must immediately cease all work, refuse any additional orders, and take all steps necessary to minimize the costs the Contractor will incur related to this Contract as directed by the notice. Suspension or termination of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or ordered before the effective date of such suspension or termination or limit the State's rights in such.

At the State's request, the Contractor must immediately prepare a final report and deliver such report to the State. The report must detail the work completed and/or the orders received and not

processed prior to the time of notice. If applicable, the report must include the percentage of the work under the Contract's completion, estimated time for delivery of all orders received but not processed, any costs incurred by the Contractor in doing the work under the Contract to date, and any Deliverables completed or partially completed but not delivered to the State at the time of notice. Based on the State's approval of the final report and as directed, the Contractor must deliver work, whether completed or not, to the State. Any delivered Deliverables will be subject to approval by the State. The Contractor may be entitled to payment for any Deliverables that have been delivered and accepted at a pro-rated amount based on the compensation structure of this Contract.

1. Contract or Order Suspension.

a. Suspension for Cause. If the Contractor fails to perform any one of the Contractor's obligations under this Contract or an order, the Contractor will be in Default and the State may suspend rather than terminate this Contract or an order. In the case of suspension for Default, the State will be entitled to all remedies available under this Contract.

b. Suspension for Convenience. In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section I.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.

The notice of suspension, whether with or without cause, will be effective immediately, on the Contractor's receipt of the notice.

The State may not suspend the Work for its convenience more than twice during the term of this Contract, and any suspension for the State's convenience may not continue for more than 30 calendar days. If the Contractor does not receive notice to resume or terminate the Work within the 30-day suspension, then this Contract will terminate automatically for the State's convenience at the end of the 30-calendar day period.

2. Contract or Order Termination.

a. Termination for Convenience. The Contracting Agency may terminate this Contract, in whole or in part, or an Ordering Agency may terminate an order placed under this Contract, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the Ordering Agency or the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract or order had been fully performed, and the State will not be entitled to any refund of fees already paid by the State before the date of termination. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.

b. Termination for Cause - State. If the Contractor fails to perform any of its obligations under this Contract or an order under this Contract, the Contractor will be in Default, and the Contracting Agency may terminate this Contract, in whole or in part, or an Ordering Agency may terminate an order in accordance with this Section. For purposes of this subsection (b), the term "Agency" means both the Contracting Agency and the Ordering Agency interchangeably. On written notice of the Default, the Contractor will have 30 calendar days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 calendar days after written notice, or if the breach is not one that is curable, the Agency will have the right to terminate

this Contract immediately on notice to the Contractor. The Agency also may terminate this Contract in the case of Defaults that are cured within 30 calendar days but are persistent. "Persistent" in this context means that the Agency has notified the Contractor in writing of the Contractor's Default three times. After the third notice, the Agency may terminate this Contract on written notice to the Contractor without a cure period if the Contractor again Defaults. The three notices do not have to relate to the same Default. Some provisions of this Contract may provide for a shorter cure period than 30 calendar days or for no cure period at all, and those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

If this Contract or an order under this Contract is terminated for cause, the Agency will be entitled to a pro rata refund of any prepaid fees for the applicable orders subject to the termination. Termination for cause includes but is not limited to:

i. **Termination for Persistent Default.** An Agency may terminate for Defaults that are cured but are persistent. “Persistent” means three or more Defaults. After providing notification to the Contractor of its third Default, an Agency may terminate without providing the Contractor with an opportunity to cure. The three Defaults are not required to be related to each other in any way.

ii. **Termination for Endangered Performance.** An Agency may terminate if it determines that the performance is endangered through no fault of its own.

iii. **Termination for Financial Instability.** An Agency may terminate if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the Agency finds other evidence of the Contractor’s financial instability.

iv. **Termination for Delinquency, Violation of Law.** An Agency may terminate if it determines that the Contractor is delinquent in its payment of federal, state or local obligations, including but not limited to taxes, workers’ compensation insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. An Agency also may terminate if it determines that the Contractor has violated any law during the performance of this Contract.

v. **Termination for Subcontractor Default.** An Agency may terminate for Default caused by the Contractor’s subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.

vi. **Termination for Failure to Retain Certification, License, and Permits.** An Agency may immediately terminate if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications (Including CRP, MBE, EDGE and Veteran Friendly Business Enterprise certifications), and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.

c. **Termination for Cause - Contractor.** If an Ordering Agency materially Defaults in the performance of any of its duties or obligations under this Contract, the Contractor must give the Ordering Agency written notice of such Default and a reasonable opportunity to cure the Default of no less than 30 days. If the Ordering Agency cures the Default within the prescribed timeframe or is making good faith efforts to cure the Default, the applicable order will remain in full force and effect. If an Ordering Agency fails to cure the Default, Contractor may terminate the affected order or Deliverable(s) provided to that Ordering Agency under this Contract by giving at least 30 days prior written notice of the termination. Upon a termination for cause, the Ordering Agency will remain responsible for any accrued but unpaid fees as of the termination date of the applicable order or Deliverable(s).

J. TIME IS OF THE ESSENCE. Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with the Ordering Agency. If the Contractor is not able to or does not provide the Deliverables to the Ordering Agency or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, the State may obtain any remedy as described herein or any other remedy at law.

K. OHIOBUYS. OhioBuys is an electronic procurement system that provides electronic contract and catalog hosting and management services. Ordering Agencies access this system to place orders for the procurement of goods and services using State of Ohio contracts. The Contractor agrees to establish, maintain and support its contract and catalog, if applicable, in OhioBuys.

VII. DATA AND INFORMATION CONTROL

A. CONFIDENTIALITY.

1. Confidentiality Generally.

The parties may disclose or learn of information, documents, data, records, or other material that the disclosing party considers confidential ("Confidential Information") in the performance of this Contract. The receiving party must treat the Confidential Information as such if it is so marked, otherwise defined as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of either party, the public, other parties, or individuals or organizations about whom the disclosing party keeps information. Title to the Confidential Information and all related materials and documentation remains with the disclosing party.

The receiving party may only use the Confidential Information to perform its obligations under this Contract and may not use or disclose any Confidential Information received as a result of this Contract without the written permission of the disclosing party. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interest of the public, other parties, or individuals or organizations about whom the State keeps information is Confidential Information. In addition, the receiving party may not use or disclose any documents or records that Ohio law prohibits from disclosure.

The receiving party's obligation to maintain the confidentiality of the Confidential Information will not apply where the information:

- **a.** Was already in the receiving party's possession without the obligation of confidence;
- **b.** Is independently developed by the receiving party with documentary evidence to support the independent development;
- **c.** Is or becomes publicly available without breach of this Contract, except as provided in the next full paragraph;
- **d.** Is rightfully received by the receiving party from a third party without an obligation of confidence;
- **e.** Is disclosed by the receiving party with the written consent of the disclosing party; or
- **f.** Is released in accordance with a valid order of a court or governmental agency, provided that the receiving party:

    - **i.** Notifies the disclosing party of such order immediately upon receipt of the order; and

ii. Makes a reasonable effort to assist the disclosing party in obtaining a protective order, if requested, from the issuing court or agency limiting disclosure and use of the Confidential Information to the portion of the Confidential Information needed to satisfy the original order of production and solely for the purposes intended to be serviced by the order.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the receiving party must not disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, item 3 above does not apply, and the receiving party must treat such sensitive personal information as Confidential Information whether it is available elsewhere or not. The receiving party must restrict circulation of Confidential Information within its organization and then only to people in the receiving party's organization who have a need to know the Confidential Information to perform under this Contract.

The receiving party must return all Confidential Information provided by the disclosing party, or if return of the Confidential Information is not possible, destroy the Confidential Information upon termination or expiration of this Contract. Upon request, the Contractor must provide certification or written confirmation to the State of such return or destruction of the Confidential Information. Notwithstanding the foregoing, the receiving party may keep a copy of the Confidential Information to comply with contractual, legal, or record keeping obligations, and any such retained Confidential Information is subject to the requirements of this Contract for so long as the receiving party has the Confidential Information in its possession.

The receiving party will not incorporate any portion of any Confidential Information into any work or product, other than a Deliverable, and will have no proprietary interest in any of the Confidential Information. Furthermore, the receiving party may be required to have its personnel and subcontractors who have access to any Confidential Information execute a confidentiality agreement incorporating the obligations in this section.

The receiving party will be liable for the disclosure of any Confidential Information not specifically authorized by this Contract. The parties agree that the disclosure of Confidential Information may cause the disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and the receiving party agrees that in the event of a breach of the receiving party's obligations hereunder, the disclosing party will be entitled to temporary and permanent injunctive relief to enforce this Contract without the necessity of proving actual damages. This provision will not, however, diminish or alter any right to claim and recover damages.

This Contract, including all terms and conditions, pricing, and attachment or exhibits, is not Confidential Information.

The State may require the Contractor, its employees, subcontractors and agents to sign a confidentiality agreement and/or policy acknowledgements before accessing facilities, data, or systems. Each Ordering Agency may require a different confidentiality agreement or acknowledgement, and the Contractor, its employees, subcontractors and agents may be required to sign a different confidentiality agreement or acknowledgement for each Ordering Agency. The Contractor must immediately replace anyone who refuses to sign a required confidentiality agreement or acknowledgment.

2. Permitted Disclosure of Contract Data to Third Parties.

Disclosure of Contract Data (defined in Exhibit A) is permitted as set forth in this Contract. Additionally, disclosure of Contract Data is also permitted when required by applicable law,

regulation, court order, or subpoena. If the Contractor or any of its representatives are ordered or requested to disclose any information provided by the State, whether Confidential Data (defined in Exhibit A) or otherwise, pursuant to court or administrative order, subpoena, summons, or other legal process or otherwise believes that disclosure is required by any law, ordinance, rule or regulation, the Contractor must notify the State within 24 hours of receipt of the order or request in order for the State to seek a protective order or take other appropriate action, as desired. The Contractor must also cooperate in the State's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the information provided by the State.

If, in the absence of a protective order, the Contractor is compelled as a matter of law to disclose Contract Data, the Contractor may disclose to the party compelling disclosure only the part of such Contract Data as is required by law to be disclosed (in which case, prior to such disclosure, the Contractor must advise and consult with the State and its counsel as to the scope of such disclosure and the nature of wording of such disclosure) and must use commercially reasonable efforts to obtain confidential treatment for the Contract Data disclosed.

In addition to the permitted disclosures described in the Contract, the Contractor may also disclose Confidential Data to the following people, subject to the requirements of this Contract:

a. To State or federal auditors or regulators;
b. To service providers and agents of either party as permitted by law, provided that such service providers and agents are subject to binding confidentiality obligations similar to those in the Contract; or
c. To the professional advisors of either party, provided that such advisors are obligated to maintain the confidentiality of the information they receive.

B. **DATA OWNERSHIP AND ONSITE SECURITY.** All State Data is and will remain the property of the State and, unless specifically provided otherwise in the Contract, Contractor acquires no right, title, or interest in or to State Data.

When on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

C. **DATA SECURITY AND PRIVACY TERMS.** Contractor must comply with the Data Security and Privacy Terms attached as Exhibit A and incorporated as if fully rewritten, to the extent they apply to the products and services provided under the Contract.

D. **PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION.** The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that this Contract, as well as any information, Deliverables, records, reports, and financial records related to this Contract are presumptively deemed public records. The Contractor understands that these records will be made freely available to the public unless the State determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure. The Contractor must comply with any direction from the State or an Ordering Agency to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information. Should the Contractor receive a public records request or subpoena with respect to any State Data, the Contractor must immediately notify the Contracting Agency and fully cooperate with the State's directions regarding such request.

E. **USAGE REPORTS.** At no cost to the State and in addition to other reports required by the Contract, the Contractor must provide monthly, quarterly, bi-annual or annual usage reports as requested by all Contracting or Ordering Agencies. The report may include customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such

information. Electronic media is the preferred method for these reports. Failure to provide the requested reports may be deemed as an event of Default.

STATE OF OHIO
STANDARD TERMS AND CONDITIONS

EXHIBIT A
Data Security and Privacy Terms (v2.0)

The below Data Security and Privacy Terms (the Terms) set forth the standards and responsibilities of the Contractor to maintain the confidentiality, integrity, and availability of data when providing services to the State of Ohio (State). These Terms are in addition to the Contract terms and conditions. In the event of a conflict between the Contract and these Terms, the most stringent standard will prevail.

I. Definitions

A. Contract means the contract entered into between the Contractor and the State to which these Terms are attached and/or incorporated.

B. Contract Data means State Data to which the Contractor has access, transmits, processes, possesses, creates or stores in providing services to the State. Contract Data may include Confidential Data.

C. Contractor means the person or entity with whom the State has entered into the Contract and, for purposes of these Terms, includes employees, subcontractors, agents or other personnel under the authority or control of the Contractor performing the work or providing the services under this Contract.

D. Confidential Data means any type of data that is required to be protected by law or regulation, is intended for confidential use, or may not be copied or removed from the State's operational control without authorized permission. Confidential Data includes Personal Information as defined in Ohio Revised Code 1347.01 that is required to be protected as confidential by law or regulation. Confidential Data also includes data that, if compromised, may result in loss of life, serious injury, or other harm to an individual or group, or disruption to critical agency operations.

E. Security Incident means a confirmed, successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system involving Contract Data, either by Contractor personnel and/or within the Contractor's administratively controlled environment(s).

F. State Data means all data and information provided by, created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State, including Contract Data and Confidential Data.

II. Requirements

A. Information Security Program

The Contractor must maintain a reasonable information security program consisting of policies, procedures, tools, and personnel designed to maintain the confidentiality, integrity, and availability of data and of services provided to the State. The Contractor's information security program must reasonably align to the current version of one or more of the following industry-recognized cybersecurity frameworks, as applicable to the work under the Contract:

1. National Institute of Standards (NIST) Special Publication 800-53 (NIST 800-53);
2. NIST 800-171
3. NIST Cybersecurity Framework (NIST CSF);
4. International Organization for Standardization 27001 (ISO27001);
5. Center for Information Security (CIS) Critical Security Controls;
6. Health Information Trust Alliance (HiTRUST);
7. Cybersecurity Maturity Model Certification (CMMC);

8. Cloud Security Alliance (CSA) Cloud Controls Matrix (CCM); and/or
9. Payment Card Industry Data Security Standard (PCI-DSS).

B. Background Investigations of Contractor Personnel

Prior to any individual doing any of the following, the Contractor must validate and confirm the identity of the individual by initiating and receiving a Federal Bureau of Investigation (FBI) national fingerprint-based background check:

1. Working onsite at a State-owned, leased, or managed location;
2. Remotely accessing an internal State information system; or
3. Accessing Confidential Data, and at the Contractor's expense.

If an FBI national fingerprint-based background check cannot be initiated (i.e., an FBI Background Check Reason Code[1] is not available), then the Contractor must initiate and receive an Ohio Bureau of Criminal Investigation fingerprint-based background check or the individual's state of residence equivalent, where permitted by law. For the duration of the Contract, the Contractor must ensure all of the following for each individual performing work under the Contract:

1. The individual is eligible to perform work in the United States;
2. The individual is physically located in the United States while performing work on the Contract unless a waiver of this requirement is received from the State pursuant to the Contract;
3. The individual is not currently charged with, in a diversion program for, or convicted of any of the following:
    a. felony;
    b. crime of violence; or
    c. offense involving fraud, theft, or dishonesty;
4. The individual is not designated as a Specially Designated National by the Office of Foreign Asset Control (OFAC); and
5. The individual is not suspected of working for a foreign government or criminal organization.

The State reserves the right to conduct investigations of any individual working onsite at a State owned, leased, or managed location or remotely accessing a State information system or Confidential Data. Such investigation may include fingerprinting; criminal, tax, and driving record checks; drug testing; licensing and credential checks; and/or employment history verification. Access to any of the aforementioned locations, information systems, or data may be denied at any time if, in its sole discretion, the State determines it would be in its best interests.

If any individual who intends to perform work does not initially meet or if at any point during the performance of work, does not meet, the requirements detailed in this section, the Contractor must either not permit those individuals to begin to perform the work under the Contract or must terminate the individual's performance of the work under the Contract immediately, as applicable.

C. Security Incidents

The Contractor is responsible for Security Incidents that occur during the performance of the work under the Contract, including the detection of, response to, and recovery from Security Incidents to minimize the impact to the State.

The Contractor must report to the State in writing within 48 hours of the Contractor becoming aware of a Security Incident and must reasonably cooperate with the State to mitigate the impact to the State of

[1] FBI Reason Fingerprint Codes available at: Publications for BCI and Background Checks - Ohio Attorney General

the Security Incident. The Contractor must work with the State at the beginning of each engagement to establish Security Incident reporting procedures. If no procedure is established, the Contractor must report Security Incidents to the State via email at CSC@ohio.gov and/or by calling 877-644-6860.

Within five business days after an initial Security Incident report to the State, the Contractor must begin providing follow-up reports of the Security Incident to the State containing pertinent information about the scope, data elements, indicators of compromise, threat actors, and remediation efforts, as available.

The Contractor must preserve sufficient evidence about the Security Incident to:

1. Ensure the Security Incident records are accurate,
2. Facilitate an investigation into the Security Incident, and
3. Determine the extent of the Security Incident.

The Contractor is responsible for all associated costs of the Security Incident, including notification to impacted individuals and applicable credit monitoring for those impacted individuals.

The Contractor must comply with all applicable laws that require the notification of individuals, or with other reasonable direction of the State for notification when Confidential Data is involved.

The State reserves the right to conduct an independent investigation of the Security Incident, and the Contractor must reasonably cooperate with the investigation. The independent investigation may be conducted by a State agency or a third-party acting on behalf of the State.

D. Privacy

The Contractor must publish a privacy policy that includes the Contractor's procedure for responding to requests to access, correct, or delete Confidential Data.

E. Generative Artificial Intelligence

The Contractor must disclose the use of generative artificial intelligence (AI) to the State when producing work that will be owned by the State or the integration of generative AI in products, services, or solutions used by the State. The Contractor will reasonably cooperate in the State's review of the generative AI solution by responding to associated requests. The Contractor must not utilize Confidential Data in training generative AI models except as specifically approved by the State.

F. Data Return or Destruction

Upon completion of the work under the Contract or upon termination or expiration of the Contract, the Contractor must promptly destroy or return to the State, in a format designated by the State, all Contract Data received from or through the State. Notwithstanding the foregoing, the Contractor may keep a copy of the Contract Data to comply with contractual, legal, or record keeping obligations, and any such retained Contract Data is subject to the requirements of this Contract for so long as the Contractor has the Contract Data in its possession.

III. Requirements for Contractor or Cloud Hosted Solutions

A. Data Hosting

All Contract Data must be hosted within the contiguous United States at a minimum of two data center facilities at two different and distant geographic locations, in high-availability configurations. The Contractor must ensure appropriate physical and environmental controls are implemented to maintain the confidentiality, integrity, and availability of Contract Data.

B. Data Security

All Contract Data in Contractor's possession must be encrypted at rest and during transit using industry standard validated encryption methods that meet or exceed the requirements set forth by NIST Federal Information Processing Standards (FIPS) 140-2.

The Contractor may not sell, rent, lease, or disclose any Contract Data to any third party, except as permitted under the Contract or required by applicable law, regulation, or court order.

Prior to promoting or releasing source code into production, the Contractor must utilize industry best practices to scan source code for vulnerabilities and remediate vulnerabilities using a risk-informed approach at no cost to the State.

C. Independent Third-Party Audit

The Contractor must obtain, at its expense, an independent third-party audit of its security controls in place for the hosted solution, product, or service. This audit must be conducted at least biennially for the duration of the Contract, renewed as required, and be one of the following audit types:

1. Federal Risk and Authorization Management Program (FedRAMP);
2. GovRAMP;
3. Service Organization Control (SOC 2) Type II;
4. ISO 27007;
5. HiTRUST;
6. CSA STAR Level 2 or Level 3; or
7. CMMC Level 2 or Level 3.

The Contractor, at its sole expense, must address material issues and weaknesses identified in each audit as they pertain to the services provided under this Contract.

The results of the audits must be provided to the State at Compliance@das.ohio.gov within 30 days of the Contractor's receipt of its audit results. The results of the audit provided to the State are considered Confidential Information under the Contract.

When required by law, rule, or regulation, or if the Contractor fails to obtain the required audit or obtains an adverse opinion on an independent third-party audit, the State may perform an information security audit of the hosted solution at its own expense. The State will provide a 30-day written notice prior to beginning the audit and the audit will take place during the Contractor's normal business hours. Before beginning the audit, the State and Contractor will reasonably agree on the scope, duration, and other parameters of the audit. The State reserves the right to utilize a third-party contractor to perform the audit subject to reasonable approval by the Contractor.