# STATE OF OHIO
# DEPARTMENT OF ADMINISTRATIVE SERVICES
# STATE TERM SCHEDULE TERMS AND CONDITIONS

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## BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State will enter into a contract with the manufacturer provided that the manufacturer offers its goods and ancillary services at the same prices that the manufacturer offers those goods and services to its distributors, or if the manufacturer has no distributors, the prices that the manufacturer offers to its similarly situated most favored customers for each product or service.

This state term contract (the "Contract") establishes terms and conditions under which a State agency (including any board, instrumentality or other political body) or political subdivision may acquire the Contractor's goods or services at the Contractor's best pricing. But this Contract only permits such; it in no manner obligates any State agency to do so.

## STANDARD TERMS & CONDITIONS

### I. CONTRACT TERM PROVISIONS:

A. **APPROPRIATION OF FUNDS.** The State of Ohio's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires.

B. **OBM CERTIFICATION.** None of the rights, duties, or obligations in this Contract will be binding on the State, and the Contractor will not begin its performance, until all the following conditions have been met:

1. All statutory provisions under ORC Section 126.07, have been met.
2. All necessary funds are made available by the appropriate state agencies.
3. If required, approval of this Contract is given by the Controlling Board of Ohio; and
4. If the State is relying on Federal or third-party funds for this Contract the State gives the Contractor written notice that such funds have been made available.

C. **TERMINATION / SUSPENSION.**

1. **Contract Termination.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may terminate this Contract in accordance with this section. The termination will be effective on the date delineated by the State.

   a. **Termination for Default.** If Contractor's default is unable to be cured in a reasonable time, the State may terminate the Contract by written notice to the Contractor.

   b. **Termination for Unremedied Default.** If Contractor's default may be cured within a reasonable time, the State will provide written notice to Contractor specifying the default and the time within which Contractor must correct the default. If Contractor fails to cure the specified default within the time required, the State may terminate the Contract. If DAS does not give timely notice of a default to Contractor, the State has not waived any of the State's rights or remedies concerning the default.

   c. **Termination for Persistent Default.** The State may terminate this Contract by written notice to Contractor for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified Contractor of its third default, the State may terminate this Contract without providing Contractor with an opportunity to cure, if Contractor defaults for a fourth time. The four defaults are not required to be related to each other in anyway.

   d. **Termination for Endangered Performance.** The State may terminate this Contract by written notice to the Contractor if the State determines that the performance of the Contract is endangered through no fault of the State.

   e. **Termination for Financial Instability.** The State may terminate this contract by written notice to Contractor if a petition in bankruptcy or similar proceeding has been filed by or against the Contractor.

   f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract by written notice, if it determines that Contractor is delinquent in its payment of federal, state or local taxes, workers' compensation, insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a state agency or political subdivision. The State also may cancel this Contract, if it determines that Contractor has violated any law during the performance of this Contract.

However, the State may not terminate this Contract if the Contractor has entered into a repayment agreement with which the Contractor is current.

g. **Termination for Subcontractor Default.** The State may terminate this contract for the default of the Contractor or any of its subcontractors. The Contractor will be solely responsible for satisfying any claims of its subcontractors for any suspension or termination and will indemnify the State for any liability to them. Subcontractors will hold the State harmless for any damage caused to them from a suspension or termination. The subcontractors will look solely to the Contractor for any compensation to which they may be entitled.

h. **Termination for Failure to Retain Certification.** Pursuant to ORC Section 123.151 and 123.152, the State may certify businesses for participation in state sponsored business assistance programs. After certification is obtained it is the responsibility of the Contractor to maintain certification. If the Contractor is awarded a contract pursuant to a certification program and fails to renew its certification and/or is decertified, the State may immediately cancel the contract.

i. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing written notice to the Contractor. If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any product or service that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only after the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount determined by the State to be owing to the Contractor.

j. **Termination, Effectiveness, Contractor Responsibilities.** The notice of termination whether for cause or without cause will be effective as soon as Contractor receives it. Upon receipt of the notice of termination, Contractor will immediately cease all work on the Project, if applicable, and refuse any additional orders and take all steps necessary to minimize the costs the Contractor will incur related to this Contract. The Contractor will immediately prepare a report and deliver it to the State. The report must detail either the work completed at the time of termination or the orders received and not processed prior to termination, and if applicable, the percentage of the Project's completion, estimated time for delivery of all orders received prior to termination, any costs incurred by the Contractor in doing the Project to date and any product or services completed or partially completed but not delivered to the State at the time of termination. Any and all work, whether completed or not, will be delivered to the State along with the specified report. However, if delivery in that manner would not be in the State's interest, then the Contractor will propose a suitable alternate form of delivery.

2. **Contract Suspension.** If Contractor fails to perform any one of its obligations under this Contract, it will be in default and the State may suspend rather than terminate this Contract where the State believes that doing so would better serve its interest.

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 this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension, less any damage to the State resulting from the Contractor's breach of this Contract or other fault.

The notice of suspension, whether with or without cause, will be effective immediately on the Contractor's receipt of the notice. The Contractor will immediately prepare a report and deliver it to the State as is required in the case of termination.

## II. CONTRACT REMEDIES:

A. **ACTUAL DAMAGES.** Contractor is liable to the State of Ohio for all actual and direct damages caused by Contractor's default. The State may buy substitute supplies or services, from a third party, for those that were to be provided by Contractor. The State may recover the costs associated with acquiring substitute supplies or services, less any expenses or costs saved by Contractor's default, from Contractor.

B. **LIQUIDATED DAMAGES.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages in the amount of 1% of the value of the order, product or service or milestone that is the subject of the default, for every day that the default is not cured by the Contractor.

C. **DEDUCTION OF DAMAGES FROM CONTRACT PRICE.** The State may deduct all or any part of the damages resulting from Contractor's default from any part of the price still due on the contract, upon prior written notice being issued to the Contractor by the State.

## III. PAYMENT PROVISIONS:

A. **INVOICE REQUIREMENTS.** The Contractor must submit an original invoice to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

1. The purchase order number authorizing the delivery of products or services.

2. A description of what the Contractor delivered, including, as applicable, the time period, serial number, unit price, quantity, and total price of the products and services. If the invoice is for a lease, the Contractor must also include the payment number (e.g., 1 of 36).

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information.

B. **PAYMENT DUE DATE.** Payments under this Contract will be due on the 30th calendar day after the later of:

1. The date of actual receipt of a proper invoice in the office designated to receive the invoice, or the date the service is delivered and accepted in accordance with the terms of this Contract.

2. The date of the warrant issued in payment will be considered the date payment is made. Interest on late payments will be paid in accordance with ORC Section 126.30.

## IV. CONTRACTOR WARRANTY AND LIABILITY PROVISIONS:

A. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** Contractor warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If the warranty was false on the date the parties signed this Contract, the Contract is void *ab initio*.

B. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that the *recommendations, guidance, and performance of the Contractor under this Contract will:*

1. Be in accordance with the sound professional standards and the requirements of this Contract and without any material defect.

2. No products or services will infringe on the intellectual property rights of any third party.

3. All warranties are in accordance with Contractor's standard business practices attached.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

5. The Contractor has the right to enter into this Contract.

6. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.

7. 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.

8. The Contractor has good and marketable title to any goods delivered under this Contract and which title passes to the State.

9. The Contractor has the right and ability to grant the license granted in product or service in which title does not pass to the State.

If any work of the Contractor or any product or service fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure with all due speed or will refund the amount of the compensation paid for the Product or service. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

C. **INDEMNITY.** The Contractor will indemnify the State for any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Contractor's performance under this Contract, providing such bodily injury or property damage is due to the negligence of the Contractor, its employees, agents, or subcontractors.

The Contractor will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any product or service under this Contract. This obligation of indemnification will not apply where the State has modified or misused the product or service and the claim of infringement, is based on the modification or misuse. The state agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. 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 will take one (1) of the following four (4) actions:

1. Modify the product or service so that is no longer infringing.

2. Replace the product or service with an equivalent or better item.

3. Acquire the right for the State to use the infringing product or service as it was intended for the State to use under this Contract; or

4. Remove the Product or service and refund the fee the State paid for the product or service and the fee for any other Product or service that required the availability of the infringing product or service for it to be useful to the State.

D. **LIMITATION OF LIABILITY.** Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this contract, 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. The contractor further agrees that the contractor shall be liable for all direct damages due to the fault or negligence of the contractor.

V. GENERAL PROVISIONS:

A. **AMENDMENTS.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties.

B. **ANTITRUST ASSIGNMENT TO THE STATE.** Contractor assigns to the State of Ohio, through the Department of Administrative Services, all of its rights to any claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws if the claims or causes of action relate to the supplies or services provided under this Contract. Additionally, the State of Ohio will not pay excess charges resulting from antitrust violations by Contractor's suppliers and subcontractors.

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

D. **AUDITS.** The Contractor must keep all financial records in a manner consistent with generally accepted accounting principles. Additionally, the Contractor must keep separate business records for this project, 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 Agreement and until the expiration of three (3) years after final payment under this Agreement, the Contractor agrees to provide the State, its duly authorized representatives or any person, agency or instrumentality 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 Agreement.

The Contractor shall, for each subcontract in excess of two thousand five hundred dollars ($2,500), require its subcontractors to agree to the same provisions of this Article. The Contractor may not artificially divide contracts with its subcontractors to avoid requiring subcontractors to agree to this provision.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State or any other party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations or 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.

E. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by it as a result of this Contract, without the written permission of the State. The Contractor must assume that all state information, documents, data, records or other material is confidential.

The Contractor's obligation to maintain the confidentiality of the information will not apply where it: (1) was already in the Contractor's possession before disclosure by the State, and it was received by the Contractor without the obligation of confidence; (2) is independently developed by the Contractor; (3) is or becomes publicly available without breach of this Contract; (4) is rightfully

received by the Contractor from a third party without an obligation of confidence; (5) is disclosed by the Contractor with the written consent of the State; or (6) is released in accordance with a valid order of a court or governmental agency, provided that the Contractor (a) notifies the State of such order immediately upon receipt of the order and (b) makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be served by the original order of production. The Contractor will return all originals of any information and destroy any copies it has made on termination or expiration of this Contract.

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

F. **CONTRACT CONSTRUCTION.** This Contract will be constructed in accordance with the plain meaning of its language and neither for nor against the drafting party.

G. **CONTRACTOR DISCLOSURE; LOCATION OF SERVICES, DATA.** As part of this Agreement, Contractor shall disclose the following:

1. The location(s) where all services will be performed; and

2. The location(s) where any state data applicable to the contract will be maintained or made available; and

3. The principal location of business for the contractor and all subcontractors.

Contractor shall not, during the performance of this Contract, change the location(s) of the country where the services are performed or change the location(s) of the country where the data is maintained or made available without prior written approval of the State.

H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug – free workplace and shall make a good faith effort to ensure that all its employees, while working on state property, will not purchase, transfer, use or posses illegal drugs or alcohol or abuse prescription drugs in any way.

I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity, including ORC Section 125.111 and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by going to the Equal Opportunity Departments web site: http://www.das.ohio.gov/Eod/AAEEO.htm

J. **FORCE MAJEURE.** If the State or Contractor is unable to perform any part of its obligations under this Contract by reason of force majeure, the party will be excused from its obligations, to the extent that its performance is prevented by force majeure, for the duration of the event. The party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Contract. The term "force majeure" means without limitation: acts of God; such as epidemics; lightning; earthquakes; fires; storms; hurricanes; tornadoes; floods; washouts; droughts; any other severe weather; explosions; restraint of government and people; war; strikes; and other like events;

or any other cause that could not be reasonably foreseen in the exercise of ordinary care, and that is beyond the reasonable control of the party.

K. **GOVERNING LAW / SEVERABILITY.** This Contract shall be 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. If any provision of the Contract or the application of any provision is held by that court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect

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

M. **NOTICES.** For any notice under this Contract to be effective it must be made in writing and sent to the address of the appropriate contact provided elsewhere in the Contract.

N. **ORDER OF PRIORITY.** If there is any inconsistency or conflict between this document and any provision incorporated by reference, this document will prevail.

O. **PUBLICITY.** The Contractor will not advertise that it is doing business with the State or use this Contract as a marketing or sales tool without the prior, written consent of the State.

P. **STRICT PERFORMANCE.** 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 construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.

Q. **SUBCONTRACTING.** The State, through DAS-Procurement Services 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 shall submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes occur during the term of the Contract, the Contractor shall supplement its list of subcontractors or joint venture business partners. In addition, all subcontractors or joint venture business partners agree to be bound by all of the Terms and Conditions and specifications of the Contract. The State, through DAS-Procurement Services, reserves the right to reject any subcontractor submitted by the Contractor.

R. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, publicity, construction warranties, limitations of warranties and limitations on damages shall survive the termination of this contract.

S. **TAXES.** The State is exempt from all state and local taxes and does not agree to pay any taxes.

T. **ELECTIONS LAW.** The Contractor hereby certifies that neither Contractor nor any of the Contractor's partners, officers, directors or shareholders, nor the spouse of any such person has made contribution in excess of the limitations specified in ORC 3517.13.

The Contractor is solely responsible to know the requirements and limitations set forth in the above-referenced Divisions of O.R.C. Section 3517.13, and to comply with those requirements and restrictions. The Contractor shall not accept a Contract and/or any purchase order issued under the Contract if the Contractor is unable to certify compliance with all provisions set forth in O.R.C. Section 3517.13. If the Contractor is unable to certify such compliance and accepts a Contract and/or purchase order issued under the Contract, DAS shall deem the Contractor in breach. As such, DAS may deem the Contract invalid and immediately cancel the Contract. If DAS cancels the Contract and applicable purchase order(s), the Contractor will be subject to all legal remedies available to the Department of Administrative Services up to and including debarment from doing business with the State of Ohio. Also, any Contractor unable to certify compliance with the above-referenced provisions in O.R.C. Section 3517.13, that accepts the Contract and any purchase

orders issued under the Contract, will be held financially liable for any additional costs incurred by the DAS or other governmental entities placing orders under the Contract. These additional costs include those costs associated with re-awarding the Contract and/or seeking replacement items related to the cancellation of the Contract and/or related purchase orders.

U. In accordance with ORC Section 2909.33 (C) I certify that I meet one of the following Conditions:

1. I have **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars ($100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;

or

2. (1) I have received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars ($100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

## SPECIAL TERMS AND CONDITIONS

### I. CONTRACT COMPLIANCE PROVISIONS:

A. **CONTRACT COMPLIANCE.** The participating state agency and/or political subdivision that utilize this State Term Schedule will be responsible for the administration of the Contract and will monitor the Contractor's performance and compliance with the terms, conditions and specifications of the Contract. If an agency observes any infraction(s), such shall be documented and conveyed to the Contractor for immediate correction. If the Contractor fails to rectify the infraction(s), the agency will notify the State through DAS-Procurement Services, by executing a Complaint to Vendor (CTV) to help resolve the infraction(s). The State will apply the terms and conditions of the Termination provision of this Contract to resolve the infractions(s).

B. **CERTIFICATION OF ACCURACY.** The Contractor hereby certifies the following:

1. The Contractor's prices under this Contract are the best prices for which it or any of its distributors has sold each product or provided each service to any of its or its distributor's similarly situated most favored customers within the year before the date the Contractor executed this Contract and added the product or service to this Contract.
2. If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor warrants that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further represents and warrants that all future pricing information submitted to revise this Contract would also be true, correct, current, accurate, and complete.

C. **CONTRACTOR QUARTERLY SALES REPORT.** The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the sales, to include both state agencies and political subdivisions, under this Contract by calendar quarter (e.g. January-March, April-June, July-September and October-December). The dollar value of the sale is the price paid by the Contract user for the products and/or services listed on the purchase order or other encumbering document, as recorded by the Contractor.

The Contractor will receive an email with a User ID and password and must report the quarterly dollar value of sales to the Department of Administrative Services (DAS) via the Internet using the web form at the Ohio DAS Contract Management Contractor Portal, https://cm.ohio.gov/. If no sales occur, the Contractor must show zero. The report must be submitted thirty (30) days following the completion of the reporting period. The Contractor is responsible for emailing the Analyst listed on page one of your contract with any company contact changes.

The Contractor shall also submit a close-out report within one hundred and twenty (120) days after the expiration of this Contract. The Contract expires upon the physical completion of the last outstanding task or delivery order of the Contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close-out report.

The Contractor must forward the Quarterly Sales Report to the following address:

Department of Administrative Services
GSD Business Office
4200 Surface Road
Columbus, OH 43228

The contractor must remit any monies due as the result of the close-out report at the time the close-out report is submitted to DAS. The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the Ohio Contract Management Remittance Report

If the Contractor fails to submit sales reports, falsifies reports or fails to submit sales reports in a timely manner, DAS may suspend, terminate or cancel this Contract.

D. **CONTRACTOR REVENUE SHARE.** The Contractor must pay the Department of Administrative Services (DAS) a revenue share of the sales transacted under this contract. The Contractor must remit the revenue share in U.S. dollars within thirty (30) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total quarterly sales reported. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering agencies which includes both state agencies and political subdivisions using this Contract.

The contractor must remit any monies due as the result of the close-out report at the time the close-out report is submitted to DAS. The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the Ohio Contract Management Remittance Report

The Contractor should make the check payable to: Treasurer, State of Ohio and forward the check to the following address:

Department of Administrative Services
GSD Business Office
4200 Surface Road
Columbus, OH 43228

If the full amount of the revenue share is not paid within thirty (30) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner, DAS may suspend, terminate or cancel this Contract.

E. **DELIVERABLES.** Attached is the Contractor's price list for the products and services that the Contractor may provide to the State under this Contract. For convenience, those goods and services are referred to as "Deliverables" under this Contract. The Contractor may not provide any other goods or services under this Contract without an amendment to this Contract. Also, the Contractor may not charge any other prices for these Deliverables other than the prices on the Contractor's price list. If Contractor's price list contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, product/service description, and product/service prices, they are excluded from this Contract and are of no effect. The Contractor's price list attached is identified as the following commercial price list(s).

F. **INSURANCE.** The Contractor will provide the following insurance coverage at its own expense throughout the term of this Contract:

1. Workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a $1,000,000.00 limit.

2. Personal injury, bodily injury, and property damage liability insurance, including automobile coverage, with personal injury and bodily injury of not less than $1,000,000.00 combined single limit, and property damage of at least $500,000.00 for any one (1) occurrence.

The Contractor will also furnish a certificate of insurance to the State for the required insurance evidencing coverage from an insurance carrier, or carriers authorized to do business in Ohio. The certificate must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carrier(s). The certificate must also provide thirty (30) days notice to the State before cancellation.

G. **LEASES.** The State may elect to obtain equipment and software on a lease basis subject to the terms of the State of Ohio, Department of Administrative Services (DAS), Master Lease Agreement (Revised 09/2012), when the parties execute the applicable agreement.

H. **SPECIFIC CHANGES.** The Contractor will not sell to the State any notebook computers with less than a 1.2 GHz internal clock-speed. The Contractor will not sell to the State any PCs or servers using CPUs with less than a 1.6 GHz internal clock speed. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

The Contractor will not offer to the State any products that are not year 2000 compliant. All such items listed in the Contractor's Price List are deleted for purposes of this contract.

## II. PARTIES TO THE CONTRACT:

A. **DEALERS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, address, and telephone number of any such dealer, as well as the dealer's purchase order and payment address(s) and federal tax identification number. The Contractor must also submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Administrator, Office of State Procurement.

In doing so, the Contractor warrants that:

1. The dealer has been given a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
2. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
3. The Contractor agrees to remain liable under this Contract for the services of any dealer to perform and any breach of the dealer under this Contract.
4. Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due the Contractor once the State has paid the dealer.
5. To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor would indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

B. **INDEPENDENT STATUS OF THE CONTRACTOR.** The parties will be acting as independent contractors. The partners, employees, officers, and agents of one party will act only in the capacity of representatives of that party and not as employees, officers, or agents of the other party and will

not be deemed for any purpose to be such. Each party assumes full responsibility for the actions of its employees, officers, and agents, and agents while performing under this Contract and will be solely responsible for paying its people. Each party will also be alone responsible for withholding and paying income taxes and social security, workers' compensation, disability benefits and the like for its people. Neither party will commit, nor be authorized to commit, the other party in any manner.

C. **POLITICAL SUBDIVISIONS.** This Contract may be relied on by Ohio Political Subdivisions, including Ohio cities and counties ("Political Subdivisions"). Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor will look solely to the Political Subdivision's performance, including but not limited to payment, and will hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision where the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

## III. PRICING PROVISIONS:

A. **ECONOMIC PRICE ADJUSTMENT.** The State will be entitled to a price decrease any time the Contractor or any of its distributors sells a product or a service to any similarly situated most favored customer for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its distributors sells a product or provides a service to any customer or dealer for less than it is available to the State under this Contract, the Contractor must notify the State of that event within thirty (30) calendar days of its occurrence and immediately reduce the price of the affected goods or services to the State under this Contract. The Contractor will also notify the State within thirty (30) calendar days of any general reduction in the price of any product or service covered by this Contract even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State will ask to renegotiate the price under this Contract of the goods and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, the State will have the right, on notice to the Contractor, to immediately remove the affected products and services from this Contract.

B. **NOTIFICATION OF PRICE INCREASE.** If this Contract permits any price increases, the Contractor must notify the DAS-State Procurement and any affected State customers of the increase at least sixty (60) days before the effective date of the price increase. State customers must be notified at their purchase order "bill to" address contained in the applicable purchase order(s). This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

## IV. MERCHANDISE PROVISIONS:

A. **EQUIPMENT WARRANTY.** If any electrical equipment, mechanical device, computer hardware, telecommunications hardware, or other type of physical machinery ("Equipment") will be a part of any Product or service, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such

Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that is modified or damaged after title passes to the State.

The Contractor will do the following if any Equipment does not meet the above warranties:

1. Cause the Equipment to perform substantially in accordance with the user manuals, technical materials, and related writings published by the manufacturer with respect to the Equipment, or it that is not commercially practicable; then
2. Grant the State a refund equal to the amount the State paid for the Equipment.

For all Equipment, the warranty period will be the longer of one (1) year after acceptance or the Equipment's standard warranty period.

B. **PRODUCT RECALL**. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or found to be unfit for human consumption by the packer, processor, manufacturer or by any State or Federal regulatory agency, the Contractor shall be responsible to notify the State through DAS, Office of State Purchasing and all ordering agencies/entities within two business days after notice has been given. Contractor shall, at the option of the ordering agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the ordering agency. At the option of the ordering agency, Contractor may be required to reimburse storage and/or handling fees to be calculated from time of delivery and acceptance to actual removal. 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.

C. **QUALITY ASSURANCE**. At the option of DAS or the participating agency, samples may be taken from deliveries made and submitted for laboratory tests. The State will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the State will apply the terms and conditions of the Termination provision of this Contract.

D. **RETURN GOODS POLICY**. The State will apply the following Return Goods Policy on all purchases made under the Contract. The Contractor acknowledges to have read, understood, and agrees to this Policy.

1. Return goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.) shall be returned to the Contractor, at the Contractor's expense. The Contractor shall make arrangements to remove the return goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall 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 (7) 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 accordingly.
2. Return goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. The ordering agency will be responsible for all transportation costs associated with both the original shipment of items to the agency and the subsequent return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee associated with the return of the items to the location designated by the Contractor. The Contractor may assess a restocking fee not to exceed their standard published restocking fee or equivalent restocking fee that is assessed to other customers of the Contractor. Return of regular stock

catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

3. For orders of custom manufactured items, the Contractor will provide a production sample of the item to the ordering agency for acceptance. The production sample will 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 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. If the Contractor agrees to the return of these items, the agency will be responsible for all costs associated with packaging, shipment and transportation, to include the original shipment to the agency and subsequent return of goods to the location designated by the Contractor. The Contractor may assess restocking fees that are equivalent to restocking fees that are normally assessed to other customers or as published by 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.

## V. MAINTENANCE PROVISIONS:

A. **EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical Equipment (use of the word "Equipment" means all the foregoing) as a Product or service, then, during the warranty period and during any period covered by annual maintenance, the Contractor will provide Equipment maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance will include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance will also include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working condition means Equipment that performs in accordance with the manufacturer's published specifications.

The Contractor will exert its best efforts to perform all fault isolation and problem determination attributed to the Equipment covered under this Contract. The following services are outside the scope of this Contract:

1. Maintenance to bring the Equipment into compliance with any law, rule, or regulation if such law, rule, or regulation was not in effect on the acceptance date.
2. Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe or included in the Contractor's proposal, or causes other than ordinary use of Equipment.
3. Furnishing platens, supplies, or accessories, making specification changes, or adding, or removing approved accessories, attachments or other devices except as set forth herein.
4. Maintenance or increase in maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment.
5. Activities required restoring the Equipment to good operating condition if the problem has resulted from someone other than Contractor's authorized service personnel repairing, modifying or performing any maintenance service on the Equipment.

B. **EQUIPMENT MAINTENANCE CONTINUITY.** This section applies if Equipment will be a Product or service under this Contract. If the Contractor is unable to provide maintenance services to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance

requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. But the State will also be entitled to the following items from the Contractor:

1. All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals and system and unit schematics with all changes noted.
2. A listing of suppliers capable of supplying necessary spare parts.
3. Adequate information to permit the State to have spare parts manufactured elsewhere; and
4. A listing of spare parts and their recommended replacement schedule that will enable the State to create a centralized inventory of spare parts.

Any information in items (1) through (4) above that are rightfully identified by the Contractor as proprietary information will be maintained in confidence by the State except where disclosure to a third-party is necessary for the State to continue the maintenance. However, the State will require any third-party to whom disclosure is made to agree to hold the proprietary information in confidence and to make no further disclosure of it. Further, the State agrees that any such proprietary information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed on completion of such use.

C. **EQUIPMENT MAINTENANCE STANDARDS.** This section applies if Equipment will be a Product or service under this Contract. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight (8) business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight (8) hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight (8) hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

D. **MAINTENANCE ACCESS (GENERAL).** The section applies if any software or Equipment will be a Product or service under this Contract. The State will provide the Contractor with reasonable access to the Product or service to perform maintenance. All maintenance that requires the Product or service to be inoperable must be performed outside the State's customary working hours except when the Product or service is already inoperable. Preventative or scheduled maintenance will be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

E. **PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** This section applies if software or Equipment will be a Product or service under this Contract. Maintenance will be available nine (9) working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be considered billable but will be included in the price of the maintenance.

## VI. IT PROVISIONS:

A. **LICENSE IN COMMERCIAL MATERIAL.** As used in this section, "Commercial Material" means anything that has been developed at private expense by the Contractor or a third party, commercially available in the marketplace, subject to intellectual property rights, and readily copy able through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, and computer source code and documentation.

Any commercial Material that the Contractor intends to deliver as a Product or service must have the scope of the license granted in such material disclosed in the price list or as an attachment referenced in the price list, if that scope of license is different than the scope of license contained in

this section for Commercial Materials. Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the Federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the Federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the perpetual rights in item (1) through (8) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

1. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred.
2. Used or copied for use in with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative.
3. Reproduced for safekeeping (archives) or backup purposes.
4. Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use.
5. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
6. Used or copied for use in or transferred to a replacement computer.

**However:**

7. If Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions; and
8. If any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions unless a statement substantially as follows accompanies the copyright notice: "Unpublished-rights reserved under the copyright laws of the United States". The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

In case any other scope of license (e.g., MIP's, tier, concurrent users, enterprise, site, or otherwise) the foregoing will apply except as modified expressly by the applicable license description, which must be incorporated as part of the price list. If the Contractor provides greater license rights in an item included in the price list to its general customer base for the Software's list price, those additional license rights will also be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use if the use is other than a CPU license.

B. **SOFTWARE WARRANTY.** If an order includes work to develop custom software as a Product or service, then, on delivery and for one (1) year after the date of acceptance of any Product or service that includes custom software, the Contractor warrants that:

1. The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation.
2. The software will be free of any material defects.
3. The Contractor will deliver and maintain relevant and complete software documentation, commentary, and source code.
4. The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and

5. The software and all maintenance will be provided in a professional, timely, and efficient manner.

   For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor (if applicable) to make the following warranties and maintenance obligations directly to the State. During the warranty period described in the next paragraph, the Contractor will:

6. Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation.
7. Supply technical bulletins and updated user guides.
8. Supply the State with updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code.
9. Correct or replace the software and/or remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
10. Maintain or obtained a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than $5,000.00 per license or per copy, the warranty period will be the longer of one (1) year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than $5,000.00 per license or per copy, the warranty period will be the longer of three (3) months after acceptance of the licensor's standard warranty period.

For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation will provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The source code will be provided in the language in which it was written and will include commentary that will allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

C. **SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Product or service, then, during the warranty period, the Contractor will correct any material programming errors that are attributable to the Contractor, within a reasonable time, provided that the State notifies the Contractors, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ work-arounds to fully use the software, Contractor will respond will respond to requests for resolution within four (4) business hours and begin working on a proper solution within one (1) business day, dedicating the resources of one (1) qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor will respond within two (2) business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than $5,000.00 per copy or license, the Contractor will provide maintenance during the warranty period at no cost to the State. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. But, at a minimum, that maintenance program must include all new releases, updates, patches, and fixes to the commercial Software. It will also include a commitment to keep the software current with the operating environment in which it is designed to function and to correct material defects that the State finds in the software in a timely fashion.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the product for at least five (5) years after the warranty period. The Contractor will limit or obtain a commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent (5%) annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one (1) of the following two (2) things: (a) give the State a pro rata refund of the license fee based on a five (5) year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining the copy(ies) of the software for which the State has a proper license. For purposes of receiving the source code, the State agrees to treat is as confidential and to be obligated to the requirements under the Confidentiality Section of this Contract with respect to the source code. That is, with respect to the source code that the State gets under this section, the State will do all the things that the Confidentiality Section requires the contractor to do in handling the State's Confidential Information. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than $5,000.00 per copy or license, the Contractor will provide the maintenance and/or user assistance during the warranty period at no additional cost to the State that the Contractor or the third-party licensor makes generally available at no additional charge to its other customers. That maintenance will be the standard maintenance program that the licensor, whether the Contractor or a third-party, normally provides to its client base.

D. **UPGRADES.** After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform on which to use the Commercial Software. When the Contractor or third-party licensor make the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

1. The Contractor's (or third party's) standard upgrade or migration fee.
2. The upgrade or migration fee in the price list.
3. Or the difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire. This will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than $5,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee which is made available to other similarly situated most favored customers or dealers, as appropriate.

## VII. OWNERSHIP/TITLE PROVISIONS:

A. **ACCEPTANCE.** The acceptance procedure for Product or services will be an informal review by the agency acquiring the Product or services to ensure that each Product or service meets the warranties in this Contract. The State will have up to thirty (30) days after installation to do this. The State will not issue a formal letter of acceptance, and passage of thirty (30) days will imply acceptance, though the State will issue a notice of noncompliance if a Product or services does not meet the warranties in this Contract. If the State issues a letter of noncompliance, then the Contractor will have thirty (30) calendar days to correct the problems listed in the noncompliance letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Product or service will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letters has been cured. If the problems have been fixed during the thirty (30) day period, the State will issue the acceptance letter within fifteen (15) days after all defect have been fixed.

B. **DELIVERIES.** All deliveries will be F.O.B. Destination. Freight Prepaid.

C. **OWNERSHIP OF DELIVERABLES.** Notwithstanding this contract cannot be used for software development, all custom work done by the Contractor and covered by this Contract will be treated as "work for hire" on behalf of the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's custom work being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in custom developed material. The Contractor will provide the State with all assistance reasonably needed to vest such rights of ownership in the State. But 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 Product or service ("Pre-existing Materials").

   The Contractor will grant the State a worldwide, non-exclusive, royalty-free perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Product or service rather than grant the State ownership of the Pre-existing Materials. The Contractor will not include in any custom Product or service 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 Product or service, the Contractor must disclose that and obtain written approval from the State for doing so in advance. On request of the Contractor, the State will incorporate any proprietary notice of the Contractor may reasonably want for any Pre-existing Materials included in a custom Product or service in all copies the State makes of that Product or service.

   Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Product or services available to the general public without any proprietary notices of any kind.

D. **PASSAGE OF TITLE.** Title to any Product or service will pass to the State only on acceptance of the Product or service. All risk of loss will remain with the Contractor until title to the Product or service passes to the State.

## VIII. GENERAL PROVISIONS:

A. **CONTRACT RENEWAL.** This Contract may be renewed solely at the discretion of DAS for a period of one month. Any further renewals will be by mutual agreement between the contractor and DAS for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed two years.

B. **CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board's continuing authorization to use state term contracts. If the

Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate, and the Contractor may not take any more orders under this Contract.

C. **OHIO ETHICS**. All Contractors who are actively doing business with the State of Ohio or who are seeking to do business with the State of Ohio are responsible to review and comply with all relevant provisions of O.R.C. Sections 102.01 to 102.09. Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

D. **OHIO PAYMENT CARD**. Participating state agencies purchasing supplies from the Contract may use the Ohio Payment Card. Such purchases may not exceed $2,500 unless the Office of Budget & Management has approved the agency to exceed this limit. In the event that OBM increases the dollar limit for payment cards for all state agencies, notice of such increase will be posted on the DAS-State Procurement website. Participating state agencies are required to use the Ohio Payment Card in accordance with the Ohio, Office of Budget and Management's current guidelines for the Ohio Payment Card and the participating agency's approved plan filed with the Office of Budget of Management. Contractor may process a payment in the payment card network only upon delivery and acceptance of the supplies or services ordered. For partial deliveries or performance, Contractor may process a payment for the amount delivered or completed only and not for the entire amount ordered by the participating agency. Upon completion of the delivery of remaining supplies or services, Contractor may process a payment request in the payment card network for the remainder of the order. Contractor will receive payment through its merchant bank within the time frame agreed upon between Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transaction which may not be passed on to the agency making the purchase.

E. **TRAVEL EXPENSES**. Any travel or per diem required by the Contractor to do 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. All additional travel and per diem that the State requests in addition to what this Contract requires the Contractor to provide at the Contractor's expense will be paid in accordance with the Office of Budget and Management's Travel Rules in ORC Section 126-1-02 of the Ohio Administrative Code.

F. **ENTIRE AGREEMENT**. This Contract consists of this document; the Contract Signature Page, the Contractor's offer letter, and if applicable the Contractor's letter(s) designating authorized dealers and price list. The foregoing constitutes the entire agreement between the parties, and any changes or modifications to this Contract must be in writing.

G. **EXECUTIVE ORDER REQUIREMENTS.** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States.

The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses

reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.

If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of 1% of the value of the Contract.

The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

The Contractor will not assign any of its rights, nor delegate any of its duties and responsibilities under this Contract, without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

Click link below for complete form.

Affirmation and Disclosure Form for EO2011-12K

H. **SWEATSHOP FREE:** By the signature affixed to the State Term Schedule offer letter, the Offeror certifies that all facilities used for the production of the supplies or performance of services offered in the State Term Schedule are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by the Offeror in furnishing the supplies or services described in the State Term Schedule and awarded to the Offeror. If DAS receives a complaint alleging non-compliance with sweatshop free requirements, DAS may enlist the services of an independent monitor to investigate allegations of such non-compliance on the part of the Contractor, any sub-contractors or suppliers used by the Contractor in performance of the Contract. If allegations are proved to be accurate, the contractor will be advised b DAS of the next course of action to resolve the complaint and the Contractor will be responsible for any costs associated with the investigation. Items that will be considered in an investigation include, but are not limited to, standards for wages, occupational safety and work hours.

ADDENDUM TO STANDARD TERMS AND CONDITIONS
MUTUALLY AGREED UPON BY DAS AND VITAFLO USA
ONLY FOR THE PURPOSE OF THIS STATE TERM SCHEDULE

1. [Page 2, Section C. Paragraph 1 Contract Termination, (i.) Termination for Convenience]. The Contractor (Vitaflo, USA) and the state of Ohio (DAS) agree to mutual termination for convenience.

2. [Page 4, Section II. A. Actual Damages] Deleted. Note: Confirmed that inability of the Contractor to achieve 100% case fill rate for limited period of time does not constitute a default.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME

**IN WITNESS WHEREOF,** the parties have executed this Contract Addendum as of the dates below.

| | |
|---|---|
| Vitaflo USA, LLC<br>(Contractor) | Department of Administrative Services<br>(State of Ohio Agency) |
| Jennifer L Szymanski<br>(Signature) | (Signature) |
| Jennifer Szymanski<br>(Printed Name) | Robert Blair<br>(Printed Name) |
| General Manager<br>(Title) | Director, Department of Administrative Services<br>(Title) |
| 7/9/12<br>(Date) | (Date) |