

STATE TERM CONTRACT

THIS CONTRACT ("Contract" or "Agreement") is between the State of Ohio ("State"), through its Department of Administrative Services, Office of Information Technology, at 30 East Broad Street, 40th Floor, Columbus, Ohio, 43215 and Trimble Navigation Limited ("Contractor"), with offices at 935 Stewart Drive, Sunnyvale, CA, 94085.

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 may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. If the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

- 1.1 **TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until June 30, 2017. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.
- 1.2 **CONTRACT RENEWAL.** In the State's sole discretion, it may renew this Contract for a period of one month at the end of each biennium during which this Contract remains in place. Any further renewals will be only by written agreement between the State and the Contractor. Such renewals may be for any number of times for any period not to exceed the time remaining in the State's then-current biennium.

2 - PRICING AND PAYMENT

- 2.1 **CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:
 - X The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;
 - The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or
 - The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

If the Contractor is offering prices based on its most favored customer prices, the Contractor represents that it does not have a GSA Multiple Award Schedule or SmartBuy contract.

If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor represents that the information in the letter about Contractor is accurate and the manufacturer represents that a duly authorized representative of the manufacturer signed the letter.

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

- 2.2 PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing or its GSA SmartBuy pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract for purchases occurring after the date of the price decrease. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule or SmartBuy pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract for purchases occurring after the date of the price decrease.

If the Contractor has relied on its most favored customer pricing, the State will be entitled to a price decrease any time the Contractor or any of its dealers or distributors under this Contract sells a product or a service to any of its customers for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its dealers or distributors under Section 3.1 of this Contract sells a product or provides a service to any customer for less than it is then available to the State under this Contract, the Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

- 2.3 PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than the Master Software License Agreement (including any End User License Agreements attached thereto or referenced therein) ("MSLA") between the parties, a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

Insert Description of Price List (Name, Date), but Not Actual Price List

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State as a standalone product. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract. State and Contractor agree that the prohibition on selling or licensing Microsoft software herein will not apply to Microsoft software pre-loaded on equipment as a standard component.

- 2.4 NOTIFICATION OF PRICE INCREASES.** If this Contract permits any price increases, the Contractor must notify the State and any affected State agencies of the increase at least 60 days before the effective date of the price increase. The Contractor must notify affected State agencies at their purchase order "bill to" address contained in the applicable purchase orders. This notification must specify, when applicable, the product serial number, location, current price, increased price, and applicable purchase order number.

- 2.5 Payment Due Date.** Payments will be due on the 30th day after the later of:

- (a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
- (b) The date the State accepts the Deliverable.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the

payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code (the "Code") § 126.30.

- 2.6 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:
- (a) Name and address of the Contractor as designated in this Contract;
 - (b) The Contractor's federal tax identification number as designated in this Contract;
 - (c) The Contractor's invoice remittance address as designated in this Contract;
 - (d) The purchase order number authorizing the delivery of the Deliverables;
 - (e) A description of the Deliverables, including, as applicable, the time period, serial number (if applicable), unit price, quantity, and total price of the Deliverables;
 - (f) If the invoice is for a lease, the Contractor also must include the payment number (e.g., 1 of 36); and
 - (g) Only labor hours actually worked may be billed by the Contractor.

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see section 2.4), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

- 2.7 NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders, provided however that the State shall pay for any Deliverables ordered prior to the State's written notification to Contractor of such termination.
- 2.8 OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.
- 2.9 CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it, provided however that the State shall pay for any Deliverables ordered prior to the State's written notification to Contractor of such termination.
- 2.10 TRAVEL EXPENSES.** 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. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule 126-1-02 of the Ohio Administrative Code (the "Administrative Code").
- 2.11 TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.
- 2.12 OFFSET.** The State may, upon prior reasonable notice to Contractor, set off any undisputed, past-due amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

- 3.1 DEALERS AND DISTRIBUTORS.** 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, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number for such dealers. The Contractor also must 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 Deputy State Chief Information Officer, Office of Information Technology.
- In doing so, the Contractor warrants that:

- (a) The Contractor has provided the dealer with 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.
- (b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- (c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
- (d) 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 to the Contractor once the State has paid the dealer.
- (e) 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 will 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.

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

- 3.2 AUDITS.** During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 30 days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation or overcharge to the State, the State will be entitled to recover the reasonable cost of the audit plus a refund of any overcharges.

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

- a. Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Contractor also must maintain employer's liability insurance with at least a \$1,000,000.00 limit.
- b. Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

- \$ 2,000,000 General Aggregate
- \$ 2,000,000 Products/Completed Operations Aggregate
- \$ 1,000,000 Per Occurrence Limit
- \$ 1,000,000 Personal and Advertising Injury Limit
- \$ 100,000 Fire Legal Liability
- \$ 10,000 Medical Payments

The Contractor shall, for each policy required by this Contract, provide the State with 30-days prior written notice of cancellation, material change, or non-renewal, except a ten (10) day notice for non-payment of premium. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

- c. Commercial Automobile Liability insurance with a combined single limit of \$500,000.

- d. Professional Liability insurance covering all staff with a minimum limit of \$1,000,000 per incident and \$3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

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

- 3.4 CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.
- 3.5 POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. 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 must look solely to the Political Subdivision for performance, including but not limited to payment, and must 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, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.
- 3.6 RECALLS.** If a Deliverable is recalled, seized, or embargoed by a governmental agency, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, as soon as practicable but in any event within twenty business days after the Contractor learns of any of the above events. At the option of the Contractor, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove (or arrange for return at Contractor's cost) and, if applicable, replace all affected Deliverables within a reasonable time. Furthermore, the Contractor must bear all costs associated with the removal, return and/or proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time as a default.
- 3.7 TERMINATION.** Either party may terminate this Contract or any order under this Contract by written notice if the other party defaults in meeting its obligations and fails to timely cure its default. Either party also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the other party and not dismissed within 60 days. And either party may terminate this Contract or any order under it if the other party violates any law or regulation while performing under this Contract. In all of the foregoing cases, the termination will be for cause.

On written notice, the defaulting party will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the defaulting party fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the non-defaulting party will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the defaulting party. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

Either party also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that a party has notified the defaulting party in writing of the defaulting party's failure to meet any of its obligations two times. After the second such notice, the non-defaulting party may terminate this Contract by written notice without a cure period if the defaulting party again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order (prior to shipment of Deliverables under such order) under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it (prior to shipment of Deliverables under such order) if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the

State also may terminate this Contract or any order under it (prior to shipment of Deliverables under such Order) should that third party fail to release any funds related to this Contract or an order under it.

Any written notice of termination by a party will be effective as soon as the other party receives it. On receipt of the written notice of termination from the State, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause. The costs and liabilities and right to cover described in this paragraph are subject to Section 7.5.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the State has ordered 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 once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount the parties determine that the State owes the Contractor.

3.8 INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT

3.8.1 It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or the Ohio Department of Administrative Services. 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 employment tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from DAS to any public employee retirement system.

3.8.2 Contractor acknowledges and agrees any individual providing personal services under this agreement 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 ORC 145.037 ("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 shall have any individual performing services under this agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement found at the following link:

<https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>

3.8.3 Contractor's failure to complete and submit the Independent/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this agreement, shall serve as Contractor's certification that contractor is a "Business entity" as the term is defined in ORC Section 145.037.

3.9 **Excusable Delay.** Neither party will be liable for any delay in its performance that arises from causes beyond its control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. In the event of any such excusable delay, the date of performance or of delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it is taking to remove the cause. The delayed party must not rely on a claim of excusable delay to avoid liability for a delay if the delayed party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's subcontractors will be considered controllable by the Contractor, except for third-party manufacturers supplying commercial items and over whom the Contractor has no legal control.

3.10 **LOCATION OF SERVICES AND DATA.** As part of this Contract, the Contractor must disclose the following:

- (a) All locations where any services will be performed;
- (b) All locations where any State data applicable to the Contract will be maintained or made available; and
- (c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide. The State understands and agrees that incidental services (follow the sun) to State

under this Agreement may be provided by Contractor through employees or contractors of Contractor or an affiliated entity who are located outside the United States of America.

4 - DELIVERY AND ACCEPTANCE

- 4.1 **ACCEPTANCE.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract applicable to such Deliverable. The State will have up to 30 days after installation to do this. The State will not issue a formal letter of acceptance, and passage of 30 days will imply acceptance, though the State will issue a notice requesting warranty service if a Deliverables does not meet the warranties in this Contract applicable to such Deliverable.

Contractor shall provide the State with its standard limited product warranty for the Deliverables.

- 4.2 **TITLE.** Title to any Deliverable will pass to the State upon delivery of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.
- 4.3 **DELIVERIES.** The Contractor must make all deliveries F.O.B. destination.

5 - INTELLECTUAL PROPERTY

- 5.1 **COMMERCIAL MATERIAL.** As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense and that is commercially available in the marketplace, subject to intellectual property rights. Examples include the written reports, books, pictures, videos, movies, computer software programs, and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material as provided in the MSLA or as disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

The MSLA shall apply to software and firmware provided to State under this Agreement.

The State will treat any Commercial Materials as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Materials are clearly and conspicuously labeled as confidential or secret.

- 5.2 **CUSTOM DELIVERABLES.** The parties agree that no custom deliverables will be provided under this Agreement.
- 5.3 **CONFIDENTIALITY.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("State Confidential Information"). Title to the State Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such State Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any State Confidential Information to third parties and must use it solely to perform under this Contract.

If any Deliverables contain data, documentation, or other written information that is confidential in nature and properly labeled as such, then it will be Contractor Confidential Information for purposes of this section. The State will keep all such Contractor Confidential Information in confidence and will not use it other than as authorized under this Contract. Nor will the State disclose any such Contractor Confidential Information to any third party contractor without a need to know for the purposes of this Agreement or who are competitors of Contractor.

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

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

- (b) Reasonably cooperates with Disclosing Party's efforts to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

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

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

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

5.4 CONFIDENTIALITY AGREEMENTS.

When the Contractor performs services under this Contract that require the Contractor's and its subcontractors' personnel to access facilities, data, or systems that the State in its sole discretion deems sensitive, the State may require the Contractor's and its subcontractors' personnel with such access to sign an individual confidentiality agreement and policy acknowledgements, and have a background check performed before accessing those facilities, data, or systems. Each State agency, board, and commission may require a different confidentiality agreement or acknowledgement, and the Contractor's and its subcontractors' personnel may be required to sign a different confidentiality agreement or acknowledgement for each agency. The Contractor must immediately replace any of its or its subcontractors' personnel who refuse to sign a required confidentiality agreement or acknowledgment or have a background check performed.

- 5.5 **USE OF NAME.** The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

6 – TRANSACTION REPORTING

- 6.1 **Contractor's SALES REPORT.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, <https://cm.ohio.gov>. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. Notwithstanding the expiration of this Agreement pursuant to Section 1.1, Contractor will continue to fulfill outstanding orders at the time of expiration pursuant to the terms of this Agreement. The closeout 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 sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

- 6.2 **Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

**Department of Administrative Services
L-3686
Columbus, OH 43260-3686**

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

7 - WARRANTIES AND LIABILITIES

7.1 WARRANTIES. The Contractor warrants that the services of the Contractor under this Contract will:

- (i) Be in accordance with the sound professional standards and the requirements of this Contract;
- (ii) Be the work solely of the Contractor or its subcontractors, unless otherwise provided in this Contract.

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

- (a) The Contractor has the right to enter into this Contract;
- (b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;
- (c) 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;
- (d) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
- (e) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

NOTICE REGARDING PRODUCTS EQUIPPED WITH SATELLITE OR WIRELESS TECHNOLOGY. The State's use of certain Deliverables is dependent on the availability and coverage of wireless networks, telecommunications networks, satellite positioning systems and the Internet, which involve facilities owned and operated by third parties. CONTRACTOR IS NOT RESPONSIBLE FOR THE OPERATION, AVAILABILITY OR FAILURE OF SUCH THIRD PARTY SYSTEMS OR FACILITIES.

WARRANTY DISCLAIMER: THE LIMITED WARRANTY TERMS IN THIS SECTION 7 ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES OF CONTRACTOR ARISING OUT OF, OR IN CONNECTION WITH THE DELIVERABLES AND STATE CONTRACTOR'S ENTIRE LIABILITY AND THE STATE'S EXCLUSIVE REMEDIES RELATING TO THE DELIVERABLES. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THESE TERMS, THE DELIVERABLES AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED "AS-IS" AND WITHOUT EXPRESS OR IMPLIED WARRANTY OF ANY KIND, EITHER BY CONTRACTOR OR ANYONE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, INSTALLATION, OR DISTRIBUTION OF THE DELIVERABLES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NONINFRINGEMENT. ADDITIONALLY, CONTRACTOR MAKES NO EXPRESS OR IMPLIED WARRANTY THAT SOFTWARE PROVIDED TO THE STATE IN CONNECTION WITH THIS CONTRACT IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, FREE OF ERRORS, OR FREE OF VIRUSES, OR OTHER MALWARE OR PROGRAM LIMITATIONS.

7.2 SOFTWARE WARRANTY.

For Commercial Software developed by the Contractor or licensed from a third party, the warranty provided in the MSLA shall apply.

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 product guides, operating manuals or other documentation included with the software media or presented to the State during the installation or use of the software.

7.3 EQUIPMENT WARRANTY. If any computer hardware or other type of electrical equipment (but not third party equipment) ("Equipment") will be a part of any Deliverable, the Contractor's standard limited product warranty provided with the Equipment applies. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. Contractor's standard Limited Warranty for Equipment is as follows:

(1) **Limited Warranty.** Subject to the terms and conditions in this Section 7.3, Contractor warrants that for a period of one (1) year from date of purchase the Equipment will substantially conform to Contractor's publicly available specifications for the Equipment and that the hardware and any storage media components of the Equipment will be substantially free from defects in materials and workmanship.

(2) **Warranty Remedies.** If the Equipment fails during the warranty period for reasons covered by this limited warranty and the State notifies Contractor of such failure during the warranty period, Contractor will repair OR replace the nonconforming Equipment with new, equivalent to new, or reconditioned parts or Equipment, OR refund the Equipment purchase price paid by the State, at Contractor's option, upon the State's return of the Equipment in accordance with Contractor's product return procedures then in effect.

(3) **Warranty Exclusions.** This Limited Warranty shall only apply in the event and to the extent that (a) the Equipment is properly and correctly installed, configured, interfaced, maintained, stored, and operated in accordance with Contractor's applicable operator's manual and specifications, and; (b) the Equipment is not modified or misused. This Limited Warranty shall not apply to, and Contractor shall not be responsible for, defects or performance problems resulting from (i) the combination or utilization of the Equipment with hardware or software products, information, data, systems, interfaces, or devices not made, supplied, or specified by Equipment; (ii) the operation of the Equipment under any specification other than, or in addition to, Contractor standard specifications for its products; (iii) the unauthorized installation, modification, or use of the Equipment; (iv) damage caused by: accident, lightning or other electrical discharge, fresh or salt water immersion or spray (outside of Equipment specifications); or exposure to environmental conditions for which the Equipment is not intended; (v) normal wear and tear on consumable parts (e.g., batteries); or (vi) cosmetic damage. Contractor does not warrant or guarantee the results obtained through the use of the Equipment, or that software components will operate error free.

(4) . . . To obtain warranty service for the Equipment, please contact the local Trimble Authorized Dealer or contact Contractor to request warranty service by emailing the request to repair_services@trimble.com. Please be prepared to provide: (i) your name, address, and telephone numbers; (ii) a description of the nonconforming Equipment including the model number; and (iii) an explanation of the problem. Contractor's customer service representative may need additional information depending on the nature of the problem.

7.4 INDEMNITY. The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to tangible property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim that the Deliverables (except third party software or equipment) infringe a copyright, patent, trade secret, or other intellectual property rights enforceable in the United States. This obligation of indemnification will not apply where the State has modified or misused the Deliverable, has combined the Deliverables with non-Contractor products and such combination is the basis of the infringement claim, or is using an unsupported release of the Software. The State will give the Contractor notice of any such claim as soon as reasonably practicable (but in any event in sufficient time for Contractor to respond without prejudice). The State shall provide reasonably necessary cooperation to Contractor. 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 do one of the following four things:

- (a) Modify the Deliverable so that it is no longer infringing;
- (b) Replace the Deliverable with an equivalent or better item;
- (c) Acquire the right for the State to use the Deliverable; or
- (d) Refund the fee the State paid for the Deliverable, provided that the State removes and returns the Deliverable to Contractor at Contractor's cost, or in the case of software, destroys the software..

THIS SECTION 7.4 SETS FORTH CONTRACTOR'S SOLE LIABILITY AND THE STATE'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

7.5 LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

- (a) 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 SUCH DAMAGES.

- (b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT, PROVIDED THAT,
- (i) CONTRACTOR'S ENTIRE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT IS LIMITED TO TWO TIMES THE AMOUNTS ACTUALLY PAID BY THE STATE UNDER THIS CONTRACT IN THE TWELVE MONTHS PRECEDING THE CLAIM. THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR CONTRACTOR'S SALE OF PRODUCTS TO THE STATE, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- (ii) THE LIMITATION OF LIABILITY PROVISION IN SUBSECTION (b)(i) OF THIS SECTION 7.5 SHALL NOT APPLY TO A BREACH OF CONFIDENTIALITY, OR TO DAMAGES ARISING FROM PERSONAL INJURY OR TANGIBLE PROPERTY DAMAGE, OR TO AN INDEMNIFICATION OBLIGATION.

8 - MAINTENANCE

- 8.1 **SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Deliverable, then during the warranty period, the Contractor will provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

For Commercial Software, the Contractor will provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers. The State may purchase Extended Maintenance upon payment of the applicable fees. The standard maintenance service is as follows:

- (1) **Software Maintenance.** During the Limited Warranty period and/or Extended Maintenance period, the State will be entitled to receive, at no additional charge, such Fix Updates and Minor Updates to the Software as Contractor may develop for general release, subject to the procedures for delivery to purchasers of Contractor products generally. If the State has purchased the Extended Maintenance from an authorized Contractor distributor rather than from Contractor directly, Contractor may, in its sole discretion, forward the Software Fix Update or Minor Update to such distributor for final distribution to the State. Major Upgrades, new products, or substantially new software releases, as identified by Contractor are expressly excluded from this Software maintenance process.
- (2) **Software Maintenance Exclusions.** Contractor will not be obligated to provide maintenance for any Software that (a) has been altered or modified in any way without Contractor's authorization; (b) has problems resulting from interaction with third party software or hardware not supported by Contractor; or (c) has problems caused by misuse, or improper or inadequate, installation, maintenance or storage by the State.
- (3) If Software maintenance or warranty coverage has expired by more than 30 days, renewal of maintenance coverage under Extended Maintenance will require additional reinstatement charges.
- (4) **Technical Support.** Software Maintenance includes Technical Support which means assistance provided over email, internet chat, remote diagnostic tools, or telephone by Contractor.
- (5) **Definitions.**
- (a) "Fix Update" means an error correction or other update created to fix a previous software version that does not substantially conform to its published specifications.
- (b) A "Major Upgrade" occurs when significant new features are added to Software, or when a new product containing new features replaces the further development of a current product line. Contractor reserves the right to determine, in its sole discretion, what constitutes a significant new feature and a Major Upgrade.
- (c) A "Minor Update" occurs when enhancements are made to current features in a software program.

- 8.2 **SOFTWARE 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 for the Commercial Software. When the Contractor or third-party licensor makes 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. Exhibit I shall be amended accordingly. 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:

- (a) The Contractor's (or third party licensor's) standard upgrade or migration fee (if any);
- (b) The upgrade or migration fee in Exhibit I (if any); or
- (c) The then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than \$10,000.00, 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 on which such are made available on Contractor's GSA Schedule.

8.3 EQUIPMENT MAINTENANCE. If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance purchased by the State, the Contractor must provide maintenance to restore the Equipment to good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs substantially in accordance with the manufacturer's published specifications. Except as set forth in Section 7.3(3), Equipment Maintenance covers a) damage from repetitive use in accordance with the operator's manual and specifications resulting in the Equipment not functioning to specification, b) damage from dust, heat, humidity, and salt air as long as the Equipment is being used in accordance with the operator's manual and specifications, and c) power surge damage due to a surge in Contractor manufactured power supplies. Contractor will at its option either repair or replace Equipment that prove to be defective. If Contractor is unable to repair or replace the Equipment, Contractor will refund the price paid for this Equipment Maintenance. These are the State's sole remedies, and Contractor's sole liability, for any breach of this Equipment Maintenance. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

- (a) 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;
- (b) 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 in the Equipment's documentation, or causes other than ordinary use of Equipment;
- (c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
- (d) Maintenance or increased 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;
- (e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

Calibration for Total Stations. If the Equipment covered by this Extended Maintenance is a total station, the State will be entitled to one (1) inspection, cleaning and calibration service for the Equipment for each year in which Extended Maintenance is purchased. The inspection, cleaning and calibration service must be performed by a Contractor authorized service provider that is certified to perform such services.

Extended Maintenance coverage can only be purchased if the Equipment is currently under factory warranty or another extended limited warranty or maintenance.

8.4 EQUIPMENT MAINTENANCE STANDARDS. Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed pursuant to Contractor's standard maintenance program after notification by the State that maintenance is required. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 RESERVED.

8.6 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL). Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Time.

8.7 MAINTENANCE ACCESS (GENERAL). For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance.

9 - ASSIGNMENT AND SUBCONTRACTING

9.1 ASSIGNMENT. The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide, provided however that Contractor may assign this Contract to an affiliate without Customer's written consent upon written notice.

9.2 SUBCONTRACTING. The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such

subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 – CONSTRUCTION

- 10.1 HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.
- 10.2 ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.
- 10.3 BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.
- 10.4 AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.
- 10.5 SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.
- 10.6 CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.
- 10.7 NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally. All notices, requests and other communications pursuant to this Contract will, unless otherwise provided herein, be in writing and will be deemed to have been duly given on the date of service, if served personally, or three days after mailing, if mailed by first class mail, postage prepaid, or one day after mailing by reputable overnight courier. A copy of notices to Contractor shall be sent to: Trimble Navigation Limited, Attn: General Counsel – Legal Notices, 935 Stewart Drive, Sunnyvale, CA 94085.
- 10.8 CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.
- 10.9 PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.
- 10.10 DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

11 - LAW AND COURTS

- 11.1 EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Ohio Revised Code Section 125.111 and all related Executive Orders.
- 11.2 DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.
- 11.3 OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor hereby certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with Ohio Revised Code Section 3517.13.

- 11.4 SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And 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.
- 11.5 LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.
- 11.6 UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.
- 11.7 RESERVED.**
- ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. 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.
- 11.8 Governing the Expenditure of Public Funds on Offshore Services (EO 2011-12K).** The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract. The State understands and agrees that incidental services (follow the sun) to State under this Agreement may be provided by Contractor through employees or contractors of Contractor or an affiliated entity who are located outside the United States of America.

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

- 11.9 REGISTRATION WITH THE SECRETARY OF STATE.** By providing a Charter Number and signature within the Certification Offer Letter, the Contractor attests that the Contractor is:

An Ohio corporation that is properly registered with the Ohio Secretary of State; or

A foreign corporation, not incorporated under the laws of the state of Ohio, but is registered with the Ohio Secretary of State pursuant to Ohio Revised Code Sections 1703.01 to 1703.31, as applicable.

Any foreign corporation required to be licensed under O.R.C. § 1703.01-1703.31, which transacts business in the state of Ohio, without being so licensed, or when its license has expired or been canceled, shall forfeit not less than \$250.00 nor more than ten thousand dollars. No officer of a foreign corporation (<http://codes.ohio.gov/orc/1703.01>) shall transact business in the state of Ohio, if such corporation is required by O.R.C. § 1703.01-1803.31 to procure and maintain a license, but has not done so. Whoever violates this is guilty of a misdemeanor of the fourth degree. Questions regarding registration should be directed to (614) 466-3910, or visit <http://www.sos.state.oh.us>

To SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

CONTRACTOR

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF STATE PURCHASING

BY: 
RONALD J. BISIO VP, GEOSPATIAL

BY: 
ROBERT BLAIR, DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 12/16/15

DATE: 12/23/15

Exhibit I

[Insert Price list]

Exhibit II

[Insert scope of license]

Exhibit III

**STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K**

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

935 Stewart Drive
(Address)

Sunnyvale, California, 94085
(City, State, Zip)

2. Location where services will be performed by Contractor:

5475 Kellenburger Road
(Address)

Dayton, Ohio, 45424
(City, State, Zip)

"Follow the sun" services may performed in New Zealand

11 Birmingham Drive
(Address)

Birmingham, Christchurch, 8024,
New Zealand
(City, State, Zip, Country)

In some circumstances, if Trimble's Dayton office or dealer is unable to perform warranty repairs for certain products, additional specialized, warranty repair services may be required at a Trimble locations outside the US such as:

Obere Stegwiesen 26
(Address)

D-88400 Biberach, Germany
(Zip, City, Country)

Box 64, Rinkebyvägen 17 182 11
(Address)

Danderyd, Sweden
(City, Country)

174 Avenue du Marechal de Lattre de Tassigny
(Address)

94120 Fontenay-sous-Bols, France
(Zip, City, Country)

Name/Location where services will be performed by subcontractor(s):

n/a
(Name)

n/a
(Address, City, State, Zip)

n/a
(Name)

n/a
(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

All TerraFlex data are stored in a secured database that is managed by Trimble. All access, storage, testing, maintenance, and backups occur on the AWS ISO-certified backbone in Virginia. Its physical location is in Virginia, in the AWS hosting center under our Trimble Hosted Services-controlled Amazon account. HS schedules and handles the database backups via the AWS maintenance tools that are covered under that ISO 9001 certification for RDS .

12900 Worldgate Drive
(Address)

Herndon, VA 20170
(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

n/a
(Name)

n/a
(Address, City, State, Zip)

n/a
(Name)

n/a
(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: 
Contractor

Print Name: RONALD J. BISIO

Title: VP, GEOSPATIAL

Date: 12/14/15