

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

OPTIONAL USE CONTRACT FOR: Automatic External Defibrillation (AED) & Accessories

CONTRACT No.: CSP024736

CONTRACT ID: 24736

EFFECTIVE DATES: 04/01/2026 to 2/28/2027

SUPPLIER: ZOLL Medical Corporation

The State of Ohio Department of Administrative Services (DAS) has agreed to participate in a consortium contract. Oklahoma is the lead entity for the Automatic External Defibrillation (AED) & Accessories and their Procurement Master Agreement ("Underlying Agreement") number is SW0300. This contract is administered by Oklahoma, on behalf of ZOLL Medical Corporation. The state of Ohio has accepted prices as a result of Bid Number EV00000354, which opened on 11/17/23. Oklahoma completed the evaluation of the proposal response(s). The respective Proposal, including the incorporated contract terms and conditions, standard contract terms and conditions, special contract terms & conditions, any bid addenda, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS, and the State of Ohio, the attached Contract Standard Terms and Conditions become a part of this Optional Use Contract ("Contract").

The Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Standard Terms and Conditions.

CONTRACT RENEWAL. This Contract may be renewed after the ending date of the Contract solely at the discretion of the Contracting Agency for a period of one month. Any further renewals will be by mutual agreement between the Contractor and the Contracting Agency for any number of times and for any period of time. The cumulative time of all mutual renewals may not exceed the number of months allowed in the Underlying Agreement, but in no case beyond the termination date of the Underlying Agreement.

This Contract is available to all state agencies, as applicable.

Agencies are eligible to make purchases of the listed supplies and/or services in any amount and at any time as determined by the Agency. The State makes no representation or guarantee that Agencies will purchase any volume of supplies and/or services.

This Contract and any Amendments thereto are available from the OhioBuys public portal at the following address:

https://ohiobuys.ohio.gov/page.aspx/en/ctr/contract_browse_public

IN WITNESS WHEREOF, the parties have executed this Contract as of the dates below;

For ZOLL MEDICAL CORPORATION

Signed: _____

Keith Reynolds , Vice President/GM, Public Safety

For the OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES:

Signed: _____

Kathleen C. Madden, Director

1 - STATE OF OHIO PARTICIPATING ADDENDUM

STATE OF OHIO

PARTICIPATING ADDENDUM

FOR Automatic External Defibrillation (AED) & Accessories

AS ISSUED BY Oklahoma CAN BE FOUND BY CLICKING THE LINK BELOW

<https://naspo.valuepoint.org/portfolio/automatic-external-defibrillator-aed-accessories-2024-2029/zoll-medical-corporation/>2 - UNDERLYING AGREEMENT

Underlying Agreement #: SW0300

Consortium: NASPO

Contractor: ZOLL Medical Corporation

Participating Entity: State of Ohio

The following products or services are included in this contract portfolio:

All products and accessories listed on the Contractor page of the Consortium website

3 - PARTICIPATING ADDENDUM TERMS AND CONDITIONS

1. **TERM.** This Participating Addendum is effective as of the date of the last signature below, and will terminate upon termination of the Underlying Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
2. **PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
3. **GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
4. **SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Underlying Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
 - a. **Products.** All products available through the Underlying Agreement may be offered and sold by Contractor to Purchasing Entities.
 - b. **Services.** All services available through the Underlying Agreement may be offered and sold by Contractor to Purchasing Entities.
 - c. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Underlying Agreement and in this Participating Addendum

Any amendment to the Underlying Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected to be incorporated into this Contract by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto. **Any conflict between this Participating Addendum and the Underlying Agreement will be resolved in favor of the Participating Addendum.** The terms of this Participating Addendum, including those modifying or adding to the terms of the Underlying Agreement, apply only to the Parties and shall have no effect on Contractor's

participating addenda with other participating entities or Contractor's Underlying Agreement with the Lead State.

5. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Underlying Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

3.1- SCOPE

This Participating Addendum covers the Automatic External Defibrillation (AED) & Accessories Underlying Agreement led by Oklahoma for use by state agencies and other entities located in the Participating State [or State Entity] authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

3.2 - PARTICIPATION

This Contract may be used by all state agencies, institutions of higher education, political subdivisions and other entities authorized to use statewide contracts in the State of Ohio. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3.3 - PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE UNDERLYING AGREEMENT

The following modifications or additions apply only to actions and relationships within the Participating Entity. The following changes are modifying or supplementing the Underlying Agreement terms and conditions.

3.3.1 - ORDER OF PRECEDENCE

1. Ohio's Participating Addendum; Ohio's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Lead State's Underlying Agreement.
2. Lead State's Underlying Agreement (includes negotiated Terms and Conditions and applicable exhibits to the Underlying Agreement)
3. Contractor's response to the Lead State's solicitations;
4. The Lead State's Solicitation including all Addendums.

3.3.2 - CONTRACT STANDARD TERMS AND CONDITIONS

Exhibit I, the Contract Standard Terms and Conditions, hereby becomes a part of the Contract.

EXHIBIT I
Contract Standard Terms and Conditions

I. GLOSSARY

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

- A. Acceptance:** Approval and retention by the Ordering Agency of any products, supplies, services or other Deliverables, delivered to fulfill Contract requirements.
- B. Contracting Agency:** The agency with which the Contractor enters into the Contract and that has the authority to enforce the Terms and Conditions of this Contract. The Contracting Agency may also be the Ordering Agency.
- C. Default:** The omission or failure to perform any obligation under this Contract.
- D. Deliverable:** Any Contractor-provided products, supplies, services, work or product described in the specifications of the Contract.
- E. Ordering Agency:** The entity that purchases and accepts the products, supplies, services or other Deliverables under this Contract and that is responsible for payment. The Ordering Agency may also be the Contracting Agency.
- F. State:** The State of Ohio, which may include the Contracting and/or Ordering Agency as applicable.
- G. State Data:** All data and information provided by, created by, created for, or related to the activities of the State and any information from, to, or related to all persons that conduct business or personal activities with the State, including, but not limited to Sensitive Data. Sensitive Data means any type of data that presents a high or moderate degree of risk if released, disclosed, modified or deleted or disclosed without authorization. Sensitive Data includes, but is not limited to:
 - 1. Certain types of personally identifiable information (PII) that is also sensitive, such as medical information, social security numbers, and financial account numbers;
 - 2. Federal Tax Information (FTI) under IRS Publication 1075;
 - 3. Protected Health Information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA);
 - 4. Criminal Justice Information (CJI) under the Federal Bureau of Investigation's Criminal Justice Information Services (CJIS) Security Policy and the Law Enforcement Automated Data System (LEADS) Policy; and
 - 5. Other types of information not associated with an individual such as security and infrastructure records, trade secrets, and business bank account information.
- H. Time and Materials Contract:** If applicable, a contract in which Contractor is paid the following: (1) an hourly rate for labor actually performed; and (2) if applicable and with prior approval by the Ordering Agency, for the cost of the materials or supplies actually used by the Contractor. Such rates and costs shall be established through Contractor's submission of a price sheet, written quote, estimate, or invoice, as approved by the State. Hourly rates may include wages, overhead, general and administrative expenses, and reasonable profit. Materials or supplies may include the Contractor's direct and indirect costs attributable to the work performed.

II. REGULATORY CONTRACT REQUIREMENTS

- A. ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
- B. APPROPRIATION OF FUNDS.** The State's funds are contingent upon the availability of lawful appropriations. If the General Assembly or any third-party who is providing funding fails at any time to continue funding for the payments due by the State under this Contract, the State will be released from its obligations on the date funding expires. Any obligations of the State are subject to Section 126.07 of the Ohio Revised Code.
- C. CAMPAIGN CONTRIBUTIONS.** Unless this Contract was solicited by competitive bid pursuant to Section 125.07 of the Ohio Revised Code, Contractor hereby certifies that all applicable parties are in full compliance with Section 3517.13 of the Ohio Revised Code.

- D. **COMPLIANCE WITH LAW.** The Contractor must comply throughout the duration of the Contract with all applicable federal, state, local laws and Executive Orders while performing under this Contract.
- E. **CONFLICT OF INTEREST/ETHICS.** Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws or otherwise presents a conflict of interest.
- F. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery pursuant to Section 9.24 of the Ohio Revised Code. If the warranty is false on the date the parties signed this Contract, the Contract is void *ab initio*, and the Contractor shall immediately repay any funds paid under this Contract.
- G. **DEBARMENT.** Contractor represents and warrants that neither it, nor any of its subcontractors, are debarred from consideration for contract awards by any governmental agency. If this representation and warranty is found to be false, this Contract is void *ab initio*, and the Contractor shall immediately repay any funds paid under this Contract.
- H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all Contractor employees, while working on State property or performing work on behalf of the State, will not purchase, transfer, use, be under the influence of, or possess illegal drugs, non-medical cannabis (recreational marijuana), or alcohol, or abuse prescription drugs or medical marijuana in any way.
- I. **PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** No State Cabinet Agency, Board or Commission will enter into any contract to purchase services provided outside of the United States or that allows State Data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. 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 to the State in the Contract.

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

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

- J. **GOVERNING LAW.** 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.
- K. **INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including, but not limited to, any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and

will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees that any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), Contractor shall have any individual performing services under the Contract complete and submit to the Ordering Agency the Independent Contractor/Worker Acknowledgement form, available at <https://www.opers.org/forms-archive/PEDACKN-Non-Member-Acknowledgment.pdf>.

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

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

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

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

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

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States or transact business with any entity or individual subject to financial sanctions imposed by the United States. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, will acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those entities and individuals subject to sanctions can be found at <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>. These sanctions generally preclude most transactions involving Cuba, Iran, and Sudan, and most imports from Burma or North Korea.

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

P. LEGAL REPRESENTATION AND RIGHTS. The Ohio Attorney General is the chief law officer for the State of Ohio, its agencies, boards and commissions, and only the Ohio Attorney General has the authority to appoint outside legal counsel to represent the State. Contractor agrees that any provisions in this Contract or any documents incorporated by reference that provide or allow for outside legal representation to defend or settle claims on behalf of the State or provide for a third party to have sole control of a defense or settlement of a claim do not meet the requirements of state law and are considered stricken. Contractor also agrees that, unless specifically agreed to in writing by the State, any provisions that require or provide for a waiver of any legal rights, remedies, or litigation defenses (i.e., waiver of a jury trial) do not meet the requirements of state law and are considered stricken. As a result of this section, notwithstanding anything to the contrary herein, 12.1(iii) of the Underlying Agreement shall be considered null and void under these terms and conditions and have no effect on the parties or purchases made under these terms and conditions or the Contract.

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

stricken.

III. CONTRACT CONSTRUCTION

- A. **TERM OF CONTRACT.** The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the earliest of: (1) the ending date stated in the Contract; (2) the Contract is fully performed by both parties; (3) the Contract is canceled or terminated; (4) the Underlying Agreement is terminated, or (5) the Contract expires at the end of a biennium unless continued by the State. Notwithstanding the foregoing, the expiration or early termination of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or ordered before the expiration or termination, or limit the State's rights in such, including any warranty services, licensed material, paid subscriptions, the support or maintenance thereof, or other services.

This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of the State. The State will issue a notice to the Contractor if the State decides to renew this Contract. The Contractor shall not obligate resources in anticipation of a renewal until notice is provided.

B. **CONTRACT AMENDMENTS / WAIVER.**

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

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

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

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

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

- F. **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

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

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

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

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

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

1. Advertise that the Contractor is doing business with the State;
 2. Use this Contract as a marketing or sales tool; or
 3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.
- L. **SEVERABILITY.** If any provision of the Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.
- M. **SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying the Contractor's subcontractors. The Contractor may not enter into subcontracts related to the Contract after award without written approval from the State. If any change occurs during the term of the Contract, that requires a change to identified subcontractors, the Contractor shall amend its list of subcontractors and request written approval from the State. The State reserves the right to reject any subcontractor submitted by the Contractor. All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all sub-contracting and third-party manufacturer work performed or product delivered under the Contract. All agreements with subcontractors must incorporate this Contract by reference and include the following provisions: (1) the subcontractor agrees to be bound by all applicable terms and conditions of this Contract; and (2) the terms of this Contract prevail over any conflicting terms of the agreement with the subcontractor. The Contractor will be the sole point of contact with regard to all contractual matters.
- N. **SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, maintenance, publicity, warranties and limitations on damages shall survive the termination of this Contract. In addition, to the extent necessary to carry out the purpose of this Contract, all other terms, conditions, representations or warranties contained in this Contract will survive the expiration or termination of this Contract.
- O. **COUNTERPARTS.** This Contract may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IV. ORDER AND PAYMENT PROVISIONS

- A. **CERTIFICATION OF FUNDS/PURCHASE ORDER REQUIREMENTS.** None of the duties or obligations in this Contract are binding on the State, and the Contractor will not begin performance on this Contract, until all of the following conditions are met:
1. All statutory provisions under the Ohio Revised Code have been met.
 2. All necessary funds are made available by the appropriate Ordering Agency.
 3. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.
 4. Issuance of an official State of Ohio Purchase Order (P.O.) from the appropriate Ordering Agency is certification that the above requirements have been met.
- B. **CONTRACT ORDERS.** Ordering Agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by Ordering Agencies by telephone, electronically, in person, payment card (if applicable) or purchase order from authorized employees of the Ordering Agency. The Contracting Agency will not be responsible for orders placed by unauthorized employees of the Ordering Agency. The Contractor must ensure that any entity placing an order under this Contract has the authority to do so. If Contractor accepts an order from an entity that does not have the authority to make a purchase under this Contract, Contractor will be in breach of this Contract and the order will not be valid under this Contract.
- If Contractor's quote or either party's ordering document contains or incorporates by reference any terms or conditions other than a description of the goods or scope of services and the prices for those goods and/or services, those terms or conditions are excluded from this Contract and are of no effect.
- C. **INVOICE REQUIREMENTS.** The Contractor or dealer, authorized to submit invoices, must submit an invoice to the office designated in the purchase order. The Contractor will only be compensated for the Deliverables accepted by the State. To be a proper invoice, the invoice must include the following:

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

2. State of Ohio Contract Number (if applicable);
3. Agency Name;
4. Agency Billing Address;
5. Delivery location of supplies or services;
6. Contractor Name;
7. Contractor Address;
8. Contractor's Unique Invoice Number;
9. Date that services were provided or that supplies were delivered;
10. Itemization of supplies or services provided, including cost; and
11. Clear statement of total payment expected.

- D. **PAYMENT DUE DATE AND PROCESS.** Unless otherwise stated in this Contract and in accordance with Section 126.30 of the Ohio Revised Code, payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The State's preferred method of payment is by electronic funds transfer. However, the Ordering Agency may also make payment by State of Ohio payment card or by warrant issued by the Office of Budget and Management. At the time of Contract award, Contractor must be able to accept all forms of payment from the State and Ordering Agency.
- E. **REIMBURSABLE EXPENSES.** The State will not pay reimbursable expenses unless specifically identified in the Contract. The Contractor will assume all expenses that it incurs in the performance of this Contract that are not identified as reimbursable.
- F. **TRAVEL.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with Section 126.31 of the Ohio Revised Code and Rule 126-1-02 of the Ohio Administrative Code.

V. LIABILITY PROVISIONS

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

1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without any material defect in accordance with the Underlying Agreement.
2. All warranties are in accordance with the Contractor's standard business practices.
3. The Deliverables will perform substantially in accordance with its user manuals, technical materials, and related writings.
4. The Deliverables comply with all applicable governmental, environmental and safety standards.
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 Deliverable delivered under this Contract for which title passes to the State.
9. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.
10. The Contractor warrants that the Contractor has not and will not enter into any contracts without written approval of the State to perform substantially identical services for the State such that the Project duplicates the work done or to be done under the other contracts.
11. For one year from the delivery date of any products or software, the products or software will be free of material defects and free of viruses, including the media on which it is delivered, if applicable.

The Contractor must notify the State in writing immediately upon the discovery of any breach of the warranties given above or in the Underlying Agreement, or if any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Underlying Agreement. If the Contractor fails to correct the failure, the Contractor will refund the amount paid for the Deliverable.

- B. INDEMNITY.** The Contractor must indemnify and, upon consent of the Ohio Attorney General, defend the State for all third-party liability and expense arising out of the performance of this Contract, provided that such liability or expense is due to the negligence or willful misconduct of the Contractor, its employees, agents, or subcontractors. The Contractor will not be responsible for any damages or liability to the extent caused by the negligence or willful misconduct of the State, its employees, other contractors, or agents.

Contractor must indemnify and, upon consent of the Ohio Attorney General, defend the State for all liability and expense resulting from the unauthorized disclosure or loss of State Data directly caused by the Contractor and/or the use of the products provided under this Contract. Damages resulting from such unauthorized disclosure or loss of State Data shall be considered direct damages under this Contract and include, but are not limited to, the following: (i) expenses for legally-required notification of impacted individuals; (ii) responding to inquiries from such notifications; (iii) government fines and penalties assessed against the State; (iv) costs to the State for investigations, audits or forensic services as applicable related to the disclosure or loss; (v) mitigation measures, including 12 months of credit monitoring and identity theft protection for individuals impacted by a disclosure; and (vi) costs to the State to reconstruct data that was lost or to repair any damaged State information technology infrastructure incurred by the State as a result of such unauthorized disclosure or loss of State Data. Regardless of any limitation on liability of any kind in this Contract, the Contractor will be responsible for acquiring one year's identity theft protection services on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Contractor's indemnification obligations under this paragraph apply whether the expenses or costs incurred by the State are performed by State employees or hired contractors. Contractor must also work with the State to directly notify impacted individuals or persons as required by Ohio Revised Code Chapter 1349.

The Contractor must also indemnify, release, protect, and hold the State harmless from any claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions within an acceptable timeframe:

1. Modify the Deliverable so that the Deliverable is no longer infringing;
2. Replace the Deliverable with an equivalent or better item;
3. Acquire the right for the State to use the infringing Deliverable as intended; or
4. Remove the infringing Deliverable and refund a pro-rated amount of the fee the State paid for such Deliverable and any other affected Deliverable.

Notwithstanding the provisions of Section II.P. herein, 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 Ohio Attorney General.

As a result of this section, notwithstanding anything to the contrary, Section 12.2 of the Underlying Agreement shall be considered null and void under these terms and conditions and have no effect on the parties or purchases made under these terms and conditions or the Contract.

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

Coverage shall be at least as broad as:

1. Commercial General Liability: written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit with respect to claims arising from premises/operations hazards. The State of Ohio, its officers, officials and employees shall be covered

as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor in performance of this Contract. Claims-made forms will be accepted where occurrence form may not be available.

2. Automobile Liability: covering Symbol 1 (any auto), or if Contractor has no owned autos, Symbol 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of Ohio, or the state in which the work will be performed, with Statutory Limits, and Employer's Liability Insurance with a limit of no less than \$1,000,000 per employee for bodily injury or disease and \$1,000,000 policy limit for disease. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold the State harmless from loss or liability for such.

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

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

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

Deductibles and Self-Insured Retentions. Deductibles and self-insured retentions must be declared to the State. Contractor is responsible for payment of any deductions or self-insured retentions under its policies.

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

1. The Retroactive Date must be shown and must be before the date of the Contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the Contract work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage. Contractor must furnish the State of Ohio with certificates of insurance or copies of the applicable policy language effecting coverage required by this clause. All certificates are to be received and approved by the State of Ohio before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. In the event of a regulatory proceeding or a claim to which the State of Ohio is a party, the State of Ohio reserves the right to require complete, copies of all required insurance policies, including endorsements required by this Contract.

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

Special Risks or Circumstances. State of Ohio reserves the right to reasonably modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other

special circumstances, upon mutual agreement of the parties via written amendment to the Contract.

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

1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
2. Notwithstanding any other limitation provisions, the Contractor agrees that the Contractor shall be liable for all direct loss or damages due to the negligence or other tortious conduct of the Contractor under this Contract.
3. Any limitation provisions contained in the documents and materials incorporated by reference into this Contract are considered stricken and of no force and effect.

E. PRODUCT RECALL. In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or in the case of consumable product, found to be unfit for human consumption by the packer, processor, manufacturer or by any state or federal regulatory agency, the Contractor shall notify the Contracting Agency and all Ordering Agencies promptly after notice has been given. The Contractor shall, in its sole discretion, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. The 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, the Contractor may be required to reimburse storage and handling fees to be calculated from time of delivery and acceptance to actual removal. The Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product, in Contractor's sole discretion, will be considered a default.

VI. PERFORMANCE AND COMPLIANCE

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

During the period covered by this Contract and until the expiration of three (3) years after final payment under this Contract, the Contractor agrees to provide the State, or any authorized representatives providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract.

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

The Contractor must provide access to the requested records at the location specified by the State no later than 15 business days after the request by the State, the State's designee or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations, or overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to reimbursement for any such overpayments as well as the cost of the audit.

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

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

C. RETURNED GOODS. When the use of this Contract involves the purchase of goods, the Return Goods Policy in the Underlying Agreement applies.

- D. **FORCE MAJEURE (EXCUSABLE DELAY).** Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. For purposes of this Section, the term "force majeure event" includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, shortages of material that are unforeseen and not in the reasonable control of the Contractor, and other similar events or causes, provided the non-performing party can provide evidence that the event was (i) beyond its reasonable control and (ii) occurred without its fault or negligence.

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

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

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

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

- F. **QUALITY ASSURANCE.** At the option and expense of the Contracting or Ordering Agency, samples may be taken from deliveries made and submitted for laboratory tests. Ordering Agencies may request from the Contractor copies of all applicable Quality Assurance Documents for any orders placed by the Ordering Agency.

G. **CONTRACT REMEDIES.**

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages for any direct loss to the State for bodily injury, death, damage to property of the State, or breach of contract caused by the Contractor's negligence, intentional or willful misconduct, fraudulent act, recklessness, other tortious conduct of a person or a person's employees or agents of the Contractor, or the Contractor's default. In the event the Contractor fails to deliver Deliverables ordered hereunder within a reasonable time after a mutually agreed upon cure period, not to exceed 30 days, the State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the cover costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.
2. **Liquidated Damages.** Intentionally omitted.

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

before the date of such suspension or termination or limit the State's rights in such.

At the State's request, the Contractor must immediately prepare a final report that contains information related to transactions performed under this agreement and deliver such report to the State if the State is not required under state law to retain the information requested in a report. The report must detail the work completed and/or the orders received and not processed prior to the time of notice.

1. Contract or Order Suspension.

- a. Suspension for Cause.** If the Contractor fails to perform any one of the Contractor's obligations under this Contract or an order, the Contractor will be in default and the State may suspend rather than terminate this Contract or an order. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.
- b. Suspension for Convenience.** In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section H.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.

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

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

2. Contract or Order Termination.

- a. Termination for Convenience.** The Contracting Agency may terminate this Contract, or an Ordering Agency may terminate an order placed under this Contract, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the Ordering Agency or the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract or order had been fully performed, and the State will not be entitled to any refund of fees already paid by the State before the date of termination. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.
- b. Termination for Cause.** If the Contractor fails to perform any of its obligations under this Contract or an order under this Contract, the Contractor will be in default, and the Contracting Agency may terminate this Contract or an Ordering Agency may terminate an order in accordance with this Section. For purposes of this subsection (b), the term "Agency" means both the Contracting Agency and the Ordering Agency interchangeably. If this Contract or an order under this Contract is terminated for cause, the Agency will be entitled to a pro rata refund of any prepaid fees for the applicable orders subject to the termination. Termination for cause includes but is not limited to:
 - i. Termination for Persistent Default.** An Agency may terminate for defaults that are cured but are persistent. "Persistent" means three or more defaults. After providing notification to the Contractor of its third default, an Agency may terminate without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.
 - ii. Termination for Endangered Performance.** An Agency may terminate if it determines that the performance is endangered through no fault of its own.
 - iii. Termination for Financial Instability.** An Agency may terminate if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the Agency finds other evidence of the Contractor's financial instability.
 - iv. Termination for Delinquency, Violation of Law.** An Agency may terminate if it determines that the Contractor is delinquent in its payment of federal, state or local obligations, including but not limited to taxes, workers' compensation insurance premiums, unemployment compensation

contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. An Agency also may terminate if it determines that the Contractor has violated any law during the performance of this Contract.

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

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

I. **NON-DELIVERY.** If the Contractor is not able to or does not provide the Deliverables to the Ordering Agency by the date and time set forth in the Contract or agreed upon by the parties, the State may seek to obtain any remedy as described herein or any other remedy at law, subject to a cure period and the Force Majeure provisions set forth in Section VI(D).

J. **OHIOBUYS.** This Contract may become part of OhioBuys, an electronic procurement system which provides electronic contract and catalog hosting and management services. Ordering Agencies access this system to place orders for the procurement of goods and services using State of Ohio contracts. When the Contract becomes part of OhioBuys, the Contractor agrees to establish, maintain and support its contract and catalog in OhioBuys.

VII. DATA AND INFORMATION CONTROL

A. **CONFIDENTIALITY.** The parties may disclose or learn of information, documents, data, records, or other material that the disclosing party considers confidential ("Confidential Information") in the performance of this Contract. The receiving party must treat the Confidential Information as such if it is so marked, otherwise defined as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of either party, the public, other parties, or individuals or organizations about whom the disclosing party keeps information. Title to the Confidential Information and all related materials and documentation remains with the disclosing party. The receiving party may only use the Confidential Information solely to perform its obligations under this Contract and may not use or disclose any Confidential Information received as a result of this Contract without the written permission of the disclosing party. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interest of the public, other parties, or individuals or organizations about whom the State keeps information is confidential. In addition, the receiving party may not use or disclose any documents or records excluded by Ohio law from public records disclosure requirements.

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

1. Was already in the receiving party's possession without the obligation of confidence;
2. Is independently developed by the receiving party with documentary evidence to support the independent development;
3. Is or becomes publicly available without breach of this Contract, except as provided in the next full paragraph;
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 in accordance with a valid order of a court or governmental agency, provided that the receiving party:
 - a. Notifies the disclosing party of such order immediately upon receipt of the order; and
 - b. Makes a reasonable effort to assist the disclosing party in obtaining a protective order, if requested, from the issuing court or agency limiting disclosure and use of the Confidential Information to the portion of the Confidential Information needed to satisfy the original order of production and solely for the purposes intended to be serviced by the order.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the receiving party shall not

disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, item 3 above does not apply, and the receiving party must treat such sensitive personal information as Confidential Information whether it is available elsewhere or not. The receiving party must restrict circulation of Confidential Information within its organization and then only to people in the receiving party's organization that have a need to know the Confidential Information to perform under this Contract.

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

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

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

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

- B. PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION.** The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that this Contract, as well as any information, Deliverables, records, reports, and financial records related to this Contract are presumptively deemed public records. The Contractor understands that these records will be made freely available to the public unless the State determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure. The Contractor must comply with any direction from the State or an Ordering Agency to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information.
- C. SECURITY AND SAFETY RULES.** When using or possessing State Data or accessing State networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State rules, policies, and regulations regarding State-provided IT resources, data security and integrity. 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.

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

- D. USAGE REPORTS.** At no cost to the State and in addition to other reports required by the Contract, the Contractor shall be required to provide monthly, quarterly, bi-annual or annual usage reports as requested by all Contracting or Ordering Agencies. The report may include customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information. Electronic media is the preferred method for these reports. Failure to provide the requested reports may be deemed as an event of default.