

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: IT Telecommunications

CONTRACT No.: 534628

CONTRACT ID: 19879

EFFECTIVE DATES: 9/1/2025 – 12/31/2028

SUPPLIER: Motorola Solutions, Inc.

STS SUB-TYPE: S&LG (State and Local)

This 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 Terms and Conditions.

This Contract is available to ALL STATE AGENCIES, STATE INSTITUTIONS OF HIGHER EDUCATION AND PROPERLY REGISTERED COOPERATIVE PURCHASING MEMBERS, as applicable.

MANDATORY USE CONTRACTS: All Contracts with Contract Type "Competitive Selection" or "Competitive Selection - Two Phase" take precedence over this Contract. This Contract is only for governmental entities without a mandatory use contract.

EXCLUDED ITEMS: (State Agencies Only) in accordance with the Ohio Revised Code Section 125.035 State Agencies are required to purchase through Ohio Penal Industries (OPI); Community Rehabilitation Programs (CRP); Department of Mental Health and Addiction Services and Pharmacy Services (MHAS); Opportunities for Ohioans with Disabilities (OOD); Department of Administrative Services State Printing (Printing); Department of Administrative Services Office of Information Technology (OIT), Ohio Facility Construction Commission (OFCC). If any items on this Contract can be provided by a requisite program, State Agencies must obtain a waiver from OPI, CRP, DMHAS Pharmacy Services, OOD, State Printing, OIT and/or OFCC to procure from this Contract.

CONTRACT UTILIZATION: The State of Ohio including but not limited to its agencies, boards, commissions, departments, state universities, state vocational schools, state community colleges of Ohio, and any entity authorized by law to use this Contract is not obligated to procure any products or services from this Contract. This Contract shall not be construed to prevent the State from purchasing products or services using other procurement methods as authorized by law.

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

<https://ohiobuys.ohio.gov/page.aspx/en/usr/login?ReturnUrl=%2fpage.aspx%2fen%2fbuy%2fhomepage>

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

For MOTOROLA SOLUTIONS, INC.

Signed: _____
Jeff Stowasser, Territory Sales Vice President T5N

For the OHIO DEPARTMENT OF ADMINISTRATIVE SERVICES:

Signed: _____
Kathleen C. Madden, Director

1 - STS NEW OFFER INSTRUCTIONS

Download the [instructions and forms](#) needed to initiate an offer to establish an STS contract.

2 - STANDARD TERMS AND CONDITIONS

State of Ohio [Standard Terms and Conditions](#) (revised 3/1/24) will apply to this Contract.

3 - STS PROCUREMENT TERMS AND CONDITIONS**3.1 ENTIRE AGREEMENT**

This Contract, which includes the Contractor's catalog and all documents referred to and incorporated into this Contract, is the entire agreement between the parties with respect to its subject matter, and it supersedes any previous statements or agreements, whether oral or written.

3.2 CONTRACT COMPONENTS AND ORDER OF PRIORITY

The components of this Contract are listed in the following order of priority:

- a. Contract Specific Terms and Conditions in Article 4;
- b. STS Procurement Terms and Conditions in Article 3; then
- c. Standard Terms and Conditions in Article 2.

3.3 CERTIFICATION OF ACCURACY

The Contractor certifies that the Contractor's prices under this Contract are one of the following:

- a. The prices at which the Contractor currently offers each product and service to the US Government under a federal schedule;
- b. The best prices at which the Contractor has offered each product and service at like quality and quantity to its similarly situated, 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.
 - i. Motorola Solutions' Most Favored Customer Pricing obligations exclude from comparison trial markets and Greenfield Systems. "Greenfield System" means a customer's initial deployment of a Motorola Solutions [network].
 - ii. Motorola Solutions' Most Favored Customer Pricing obligations exclude prices offered to Motorola Solutions' third-party channel partners.

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.

3.4 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.

3.5 PRICELIST

The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is in the catalog. 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 in the catalog. If the catalog contains or incorporates by reference any terms or conditions other than 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. Contractor's catalog is incorporated into the Contract as if fully rewritten herein and the most recent catalog can be found in OhioBuys.

For contracts leveraging a punchout catalog, Contractor is required to provide a catalog in the Supplier-Managed Catalog Template format for all items. This Supplier-Managed Catalog will be attached to the contract record and is incorporated into the Contract. In the event of a discrepancy the Supplier-Managed Catalog will prevail. Contractor must not modify the available items or pricing presented in their punchout catalog until an amendment is requested, fully executed, and effective.

3.6 PRICE ADJUSTMENTS (GSA BASED)

If the Contractor has relied on its Federal Contract 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. The Contractor must notify the State of any reduction in its Federal Contract pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract. Price increase requests for a Contract based on a federal schedule must be accompanied by documentation signifying approval of the price increase by the federal government.

3.7 PRICE ADJUSTMENTS (S&LG BASED)

If the Contractor has relied on its similarly situated, most favored customer pricing, the contract prices(s) will remain firm unless the Contractor submits a request to adjust their price(s). Price increases shall be effective 30 calendar days after acceptance by DAS. No price adjustment will be permitted prior to the effective date of the increase received by the Contractor from its suppliers, or on purchase orders that are already being processed, or on purchase orders that have been filled and are awaiting shipment. If the Contractor receives orders requiring quarterly delivery, the increase will apply to all deliveries made after the effective date of the price increase.

The price increase must be supported by a general price increase in the cost, due to increases in the cost of raw materials, labor, freight, Workers' Compensation and/or Unemployment Insurance, etc. Detailed documentation, to include a comparison list of the contract items and proposed price increases, must be submitted to support the requested increase. Supportive documentation should include, but is not limited to, copies of the old and the current price lists or similar documents which indicate the original base cost of the product to the Contractor and the corresponding increase, and/or copies of correspondence sent by the Contractor's supplier on the supplier's letterhead, which contain the above price information and explains the source of the increase in such areas as raw materials, freight, fuel or labor, etc. Any price increases shall not exceed prices offered to similarly-situated, most favored customers.

The State will be entitled to a price decrease any time the Contractor or any of its distributors under this Contract sells a product or a service to any of its similarly situated 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 distributors of this Contract sells a product or provides a service at like quality and quantity to any similarly situated 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.

The Contractor also must notify the State within 30 days of any general reduction in the price of any product or service covered by this Contract, even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction due to a general decline in the market or some other factor. If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately require the Contractor to remove the affected products and services from this Contract.

3.8 DEALERS AND DISTRIBUTORS

The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. 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. 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 Department of Administrative Services, Office of Procurement Services. In doing so, the Contractor warrants that:

- a. The Contractor has provided the dealer with a copy of this Contract, and an authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
- b. The dealer's agreement as noted in subparagraph (a) above 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.

3.9 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, and readily copied through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, computer source code, 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 disclosed in the catalog associated with this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

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

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

Except for Commercial Software, if the Commercial Material consists of trade secrets, then the State will treat the material as confidential. In this regard, the State will assume all obligations with respect to the Commercial Material that the Contractor assumes under the Confidentiality section of this Contract with respect to the State's Confidential Information. Otherwise, the State will have the same rights and duties permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor, whether or not the material is copyrighted when delivered to the State.

For Commercial Software, the State will have the perpetual rights in items (a) through (g) of this section with respect to the software. The State will not use any Commercial Software except as provided in items (a) through (g) of this section or as expressly stated otherwise in this Contract. The Commercial Software may be:

- a. Used or copied for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred.
- b. Used or copied for use in or with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative.
- c. Reproduced for safekeeping (archives) or backup purposes.
- d. Disclosed to and reproduced for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions set forth in this Contract.
- e. Used or copied for use in or transferred to a replacement computer.
- f. However, if the Commercial Software delivered under this Contract is published and copyrighted, it is licensed to the State without disclosure prohibitions.
- g. However, if any Commercial Software is delivered under this Contract with the copyright notice in 17 U.S.C. 401, it will be presumed to be published, copyrighted, and licensed to the State without disclosure restrictions, unless a statement substantially as follows accompanies such copyright notice: "Unpublished rights reserved under the copyright laws of the United States." The State will treat such Commercial Software as Confidential Information to the extent that such is actually the case.

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

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract.

3.10 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 confidential 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.

3.11 CONTRACTOR QUARTERLY SALES REPORT

Contractor must report the quarterly dollar value (in U.S. 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 Cooperative Purchasing Members for purchases under this Contract during the reporting period.

Contractor must submit the quarterly sales report to the State via the State's Ordering System, and when Contractor will be submitting a payment, Contractor must also complete and submit the Quarterly Sales Report and Revenue Share Remittance Form (available at <https://das.ohio.gov/revenueshareform>) with Contractor's Revenue Share payment. If no sales occur, Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

Contractor also must submit a closeout sales report within 120 days after the expiration of this Contract. For purposes of this subsection 1.9.2, the Contract expires on the physical completion of the last, outstanding task or completion of an Order of the Contract. The closeout sales report must cover all sales not shown in the final quarterly sales report and reconcile all errors and credits. If Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly sales report, then Contractor should show zero sales in the closeout sales report.

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

3.12 CONTRACTOR REVENUE SHARE

The Contractor must pay to the State a share of the sales transacted under this Contract as a fee to the State to cover the estimated costs the State will incur in administering this Contract and the Services offered under it ("Revenue Share").

The Contractor must remit the Revenue Share in U.S. dollars within 30 days after the end of the quarterly reporting period. The Revenue Share that the Contractor must pay under this Contract equals $\frac{3}{4}$ of 1% of the total quarterly sales reported. The Revenue Share must be included in the prices reflected in any order and reflected in the total amount charged to the State, 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 sales report at the time the quarterly or closeout sales report is submitted to the Department of Administrative Services, Office of State Purchasing. To ensure the payment is credited properly, the Contractor must identify the payment as a "State of Ohio Revenue Share" and include this Contract number, total report amount, and reporting period covered.

Contractor will pay the Revenue Share by check remittance, both normal and overnight, credit card payment via the State's epayment portal, or ACH payment, if approved by the State, using the instructions below.

Check remittance: Follow the remittance instructions on the required Quarterly Sales Report and Revenue Share Remittance Form at the following link, <https://das.ohio.gov/revenueshareform>.

Credit Card Payments: To pay by credit card, use the following link, <https://epay.das.ohio.gov/Payment>, select "Revenue Share" as the payment type and follow the on-screen prompts.

ACH Payments: If this payment method is approved by the State, the State will provide payment instructions to Contractor.

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 setoff any unpaid Revenue Share from any amount owed to the Contractor under this Contract and 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 as set forth herein and seek damages for the breach.

3.13 SOFTWARE WARRANTY

On acceptance and for 12 months after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

- a. The software will operate on the device or equipment for which the software is intended in the manner described in the relevant software documentation;
- b. The software will be free of any material defects;
- c. The Contractor will deliver and maintain relevant and complete software documentation, commentary;
- d. and
- e. The software and all maintenance will be provided in a professional, timely, and efficient manner.

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

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

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

For purposes of the warranties and the delivery requirements in this Contract, software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation will provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration documentation for a system administrator to allow proper control, configuration, and management of the software.

3.14 SOFTWARE WARRANTY AND MAINTENANCE

If this Contract involves software as a Deliverable, then during the warranty period as well as any optional maintenance periods that the State exercises, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable period of time. However, the State must notify the Contractor, either orally or in writing, of a problem with the software and provide sufficient information for the Contractor to identify the problem.

Priority Level	Description	Response Time
Priority Level 1 - Critical	An incident is deemed CRITICAL if one or multiple critical functions are unavailable, or severely degraded such that the customers' core business functions and capabilities are no longer delivered or capable. The resulting critical impact to the customers' business is such that focus and resources must be applied to restoration or mitigation. Examples include full system outage, systemic inability to process mission-critical commands (e.g. incident creation), extreme systemic slowness, or majority of clients unable to connect to the system, etc.	Telephone conference within 1 Hour of initial voice notification
Priority Level 2 - High	An incident is deemed HIGH if a business function is unavailable and normal customer business activity is impacted or degraded, and a workaround may be available to mitigate the effects of the service impact; however overall efficiency or effectiveness is degraded. This may apply to both critical and non-critical functions. Examples include loss of a critical redundancy, subsystem or critical interface (e.g. CommSys Query, Paramount ProQA, Fire Station Alerting, etc.), systemic ARL failure, systemic recurring disruptive issues that frequently impact users.	Telephone conference within 3 Hours of initial notification during normal business hours
Priority Level 3: Medium	An incident is deemed MEDIUM if business functions are available, however, there is a deviation from the expected or agreed upon level of service or other service condition not aligned with the other defined impact levels. Examples include issues impacting a single client, intermittent issues, non-critical subsystems or interfaces (e.g. interfaces installed on RDW), RDW or reporting problems, etc.	Telephone conference within 8 Hours of initial notification during normal business hours
Priority Level 4: Low	Telephone conference within 2 Business Days of initial notification	Telephone conference within 2 business days of initial notification

For Commercial Software other than PC or PC-based server software costing less than \$10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software in a timely fashion. . The Contractor will limit or obtain a commitment from the third-party licensor, if applicable, to limit increases in the annual fee for maintenance to no more than five percent annually. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following two things: (a) give the State a pro rata refund of the license fee based on a five-year useful life

For Commercial Software designed for PC or PC-based server platforms and costing less than \$10,000.00 per copy or license, the Contractor must 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.

3.15 SOFTWARE UPGRADES

This provision 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.

After an initial acquisition of a license in Commercial Software, excluding the exceptions above, 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. 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;
- b. The upgrade or migration fee in the Contractor's catalog; or
- c. The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

3.16 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, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. 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.

3.17 EQUIPMENT MAINTENANCE STANDARDS

Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. . Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight business hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

3.18 EQUIPMENT MAINTENANCE CONTINUITY

If the Contractor is unable to provide Equipment maintenance as contracted by the parties and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the contracted ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

- a. A listing of suppliers capable of supplying necessary spare parts;
- b. Adequate information to permit the State to have spare parts manufactured elsewhere; and
- c. A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (c) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

3.19 EXCLUSIONS TO EQUIPMENT AND SOFTWARE WARRANTIES.

These warranties do not apply to: (i) defects or damage resulting from: use of the Equipment or Software in other than its normal, customary, and authorized manner; accident, liquids, neglect, or acts of God; testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Contractor; State's failure to comply with all applicable industry and OSHA standards; (ii) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (iii) Equipment that has had the serial number removed or made illegible; (iv) batteries (because they carry their own separate limited warranty) or consumables; (v) freight costs to ship Equipment to the repair depot; (vi) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (vii) normal or customary wear and tear.

3.20 WARRANTY CLAIMS.

To assert a warranty claim, State must notify Contractor in writing of the claim before the expiration of the Warranty Period. Upon receipt of this notice, Contractor will investigate the warranty claim. If this investigation confirms a valid Equipment or Software warranty claim, Contractor will (at its option and at no additional charge to State) repair the defective Equipment or Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Software. These actions will be the full extent of Contractor's liability for the warranty claim. Repaired or replaced product is warranted for the balance of the original applicable warranty period. All replaced products or parts will become the property of Contractor.

3.21 PRINCIPAL PERIOD OF MAINTENANCE (GENERAL)

Software and Equipment maintenance must be available twelve working hours per weekday, between 8:00 a.m. and 5:00 p.m. Central time. Travel time and expenses related to remedial and preventative maintenance will not be considered billable but will be included in the price of the maintenance.

3.22 MAINTENANCE ACCESS (GENERAL)

The Contractor must keep the Deliverable(s) in good operating condition during the warranty period and any annual maintenance period during which the State contracts for continued maintenance. The State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

3.23 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.

3.24. COOPERATIVE PURCHASING CONTRACT

This Contract may be utilized by Cooperative Purchasing Members. "Cooperative Purchasing Members" are entities that qualify for participation in the State's cooperative purchasing program under Section 125.04 of the Ohio Revised Code ("R.C.") and that have completed the steps necessary to participate in that program. They may include Ohio political subdivisions, such as counties, townships, municipal corporations, school districts, conservancy districts, township park districts, park districts created under R.C. Chapter 1545, regional transit authorities, regional airport authorities, regional water and sewer districts, and port authorities. They also may include any Ohio county board of elections, state institutions of higher education, private fire companies, private, nonprofit emergency medical service organizations, and chartered nonpublic schools.

If a purchase is made from this Contract by an entity that is not properly registered with the State's Cooperative Purchasing Program, it may be a violation of law, may be contrary to the entity's competitive bidding requirements, and will be a breach of this Contract by the Contractor. If a Cooperative Purchasing Member relies upon this Contract to issue a purchase order or other ordering document, the Cooperative Purchasing Member "steps into the shoes" of the State under this Contract. The Cooperative Purchasing Member's order and this Contract are between the Contractor and the Cooperative Purchasing Member. The Contractor must look solely to the Cooperative Purchasing Member for performance, including payment. The Contractor agrees to hold the state of Ohio harmless with regard to Cooperative Purchasing Member's orders and Cooperative Purchasing Member's performance. DAS may cancel this Contract and may seek remedies if the Contractor fails to honor its obligations under an order from a Cooperative Purchasing Member.

4 - CONTRACT SPECIFIC TERMS AND CONDITIONS

4.1 IRS 1075 REQUIREMENTS

In order to protect the State from the risk of loss, breach, or misuse of Federal Tax Information ("FTI") held by government agencies, the Internal Revenue Service issued Publication 1075 which includes specific language to include in any State contract in which FTI may be disclosed.

4.2 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:** 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 or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires. If appropriations are approved, the State may continue this Contract past the current biennium by issuing written notice of continuation to the Contractor. 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. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Section 125.111 of the Ohio Revised Code and all related Executive Orders.

Before a contract can be awarded or renewed, an Affirmative Action Plan must be submitted to and approved by the State of Ohio.

- J. **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.

- K. **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.
- L. **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, required 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.

- M. **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.
- N. **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.
- O. **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.

- P. **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.
- Q. **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.
- R. **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, unless otherwise allowed under Ohio law.

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; or (4) 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 and the Contractor may decline such renewal if it so desires. 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. Such approval by the State shall not be unreasonably withheld. 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 subcontracting 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. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate Ordering Agency, which is certification that the above requirements have been met.
- B. **CONTRACT ORDERS.** Ordering Agencies will order supplies or services under this Contract from the Contractor directly. 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. Neither the Ordering Agency nor the Contracting Agency will be responsible for orders placed by unauthorized employees. 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 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 unless otherwise agreed to by the parties.

- 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;
11. For leases, the invoice must also include the payment number (e.g., 1 of 36);
12. For Time and Materials Contracts, the invoice must reflect labor hours actually worked and, if applicable, supplies used; and
13. Clear statement of total payment expected.

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

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

F. **TRAVEL.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. 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.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with the Contractor's standard business practices.
4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
5. The Deliverables comply with all governmental, environmental and safety standards.
6. The Contractor has the right to enter into this Contract.
7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
8. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to the State.

10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.
11. 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.
12. 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 if any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

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

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

Contractor must indemnify the State for all liability and expense resulting from the unauthorized disclosure or loss of State Data. Damages resulting from the 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; (vi) costs to the State to reconstruct data that was lost or to repair any damaged State information technology infrastructure; and (vii) other such expenses incurred by the State as a result of the 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 the fee the State paid for such Deliverable and any other affected Deliverable.

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 of any such settlement.

- 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. Contractor shall also procure and maintain insurance for claims arising out of their services including, , loss, damage, theft or other misuse of data, infringement of intellectual property excluding patents and trade secrets, invasion of privacy and breach of data. 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:

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, the general aggregate limit shall be twice the required occurrence limit (\$2,000,000 general aggregate).. The State of Ohio, its officers, officials and employees are to be included as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
2. Automobile Liability: covering Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with a limit no less than \$1,000,000 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 accident for bodily injury or disease and policy aggregate.

The insurance obligations under this Contract shall be the minimum insurance coverage requirements and/or limits shown in this Contract. 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), all 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.

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

Deductibles and Self-Insured Retentions. Deductibles and self-insured retentions are the sole responsibility of the Contractor

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

1. The Retroactive Date 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 three year 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 three years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage. Contractor must furnish the State of Ohio with certificates of insurance and endorsements 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

Subcontractors. Contractor must require and verify that all subcontractors maintain insurance with sufficient limits for the nature of the products or services they are providing, and Contractor shall ensure that State of Ohio is included as 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 modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances which must be agreed to by both parties.

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 within two business days after notice has been given. The Contractor shall, at the option of the Ordering Agency, 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 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.

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 five (5) 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 recover damages as well as the cost of the audit.

B. F.O.B. DESTINATION/PRE-PAID/ALLOWED. The Contractor must provide Deliverables under this Contract

F.O.B. Destination/Pre-Paid/Allowed. The place of destination will be specified by the Ordering Agency on 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 following applies:

1. Returned goods, when due to Contractor error (i.e., over-shipment, defective merchandise, unapproved substitution, etc.), shall be returned to the Contractor at the Contractor's expense. The Contractor shall make arrangements to remove the returned goods from the Ordering Agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the Ordering Agency. At the option of the Ordering Agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the Ordering Agency will dispose of accordingly.
2. For orders of custom manufactured items, the Contractor must provide a production sample of the item to the Ordering Agency for acceptance. The production sample must be identical to the item to be provided. The Ordering Agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the Ordering Agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the Ordering Agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.

3. Returned goods of regular catalog stock merchandise, when due to agency error (i.e., over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the Ordering Agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

D. RESERVED.

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

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

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information 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.

- F. CONTRACT PERFORMANCE MANAGEMENT.** The Contracting and Ordering Agencies are responsible for administering and monitoring the Contractor's compliance and performance on this Contract. Therefore, the Contractor must respond to complaints about performance of the obligations in this Contract to such entities in a timely manner. If the Contractor fails to perform, any one of its obligations under this Contract, it will be in default. Contractor shall have 30 days after receipt of written notice of default to either (i) cure the default or (ii) if the default is not curable within 30 days, to provide a written cure plan. Contractor will begin implementing the cure plan immediately after receipt of written notice by the State that it approves the plan.

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

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

H. CONTRACT REMEDIES.

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables

from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.

2. Reserved.

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

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

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

1. Contract or Order Suspension.

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

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

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

2. Contract or Order Termination.

- a. Termination for Convenience.** The Contracting Agency may terminate this Contract, 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.

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

described herein or any other remedy at law.

- K. **OHIOBUYS**. 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 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. Notwithstanding the foregoing, Contractor and its subcontractors shall not be obligated to create or maintain any documents not created or maintained in the ordinary course of business, nor shall Contractor or its subcontractors be obligated to disclose any information that it treats as confidential or proprietary in the ordinary course of its business unless otherwise required under applicable Ohio law.
- 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.

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

- (1) All work will be performed under the supervision of the contractor.
- (2) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

(11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.

(12) For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

(14) Audit and accountability policies and procedures must be developed, documented, disseminated, and updated as necessary to facilitate implementing audit and accountability security controls of contractor systems receiving, processing, storing or transmitting FTI.

- a. To support the audit of activities, all agencies must ensure that audit information is archived for seven years.
- b. The information system must protect audit information and audit tools from unauthorized access, modification, and deletion.

(15) IRS Publication 1075 compliance is mandatory. The aforementioned compliance items are a small selection of key elements contained within the requirements defined in IRS publication 1075. Contractor shall comply with all requirements of IRS Publication 1075 in its performance under the contract. The parties may agree via amendment to the contract to impose additional and more stringent requirements as deemed necessary to protect FTI.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(4) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of

the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(5) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

III. INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

4.2 COMMUNICATION SYSTEM AND SERVICES AGREEMENT (CSSA) ADDITIONAL TERMS

Section 1 ATTACHMENT

1.1. EXHIBIT. The Exhibit listed below is the exhibit related to the System sale and implementation. The exhibit is incorporated into and made a part of this CSSA.

Exhibit A "Motorola Software License Agreement"

1.2. ORDER OF PRECEDENCE. In interpreting this CSSA and resolving any ambiguities: the main body of this CSSA takes precedence over the exhibit (unless otherwise specified in Exhibit A).

Section 2 DEFINITIONS

Capitalized terms used in this CSSA have the following meanings:

"Administrative User Credentials" means an account that has total access over the operating system, files, end user accounts and passwords at either the System level or box level. State's personnel with access to the Administrative User Credentials may be referred to as the Administrative User.

"Effective Date" means the effective date of the Contract.

"Equipment" means the hardware components that State purchases from Contractor under this CSSA. Equipment that is part of the System is described in the Equipment List.

"Motorola Software" means software that Contractor or its affiliated companies owns.

“Open Source Software” (also called “freeware” or “shareware”) means software with either freely obtainable source code, license for modification, or permission for free distribution.

“Proprietary Rights” means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Contractor under this CSSA and any corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Contractor or another party.

“Software License Agreement” means the Contractor’s Software License Agreement (Exhibit A).

“Specifications” means the functionality and performance requirements that are described in the Technical and Implementation Documents.

“Subsystem” means a major part of the System that performs specific functions or operations. Subsystems are described in the Technical and Implementation Documents.

“System” means the Equipment, including incidental hardware and materials, Software, and design, installation and implementation services that are combined together into an integrated system; the System(s) is (are) described in the Technical and Implementation Documents.

“System Data” means data created by, in connection with or in relation to Equipment under this CSSA.

Section 3 SCOPE OF CSSA AND TERM

3.1. **MOTOROLA SOFTWARE.** Any Motorola Software, including subsequent releases, is licensed to State solely in accordance with the Software License Agreement. State hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.2. **NON-MOTOROLA SOFTWARE.** Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies and the copyright owner will have all of Licensor’s rights and protections under the Software License Agreement. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software. Non-Motorola Software may include Open Source Software.

3.3. **SUBSTITUTIONS.** At no additional cost to State, Contractor may substitute any Equipment, Software to be provided by Contractor, if the substitute meets or exceeds the Specifications and is of equivalent or better quality to the State. Any substitution will be reflected in an amendment to the Contract.

Section 4 REPRESENTATIONS AND WARRANTIES

4.1. **ORIGINAL END USER IS COVERED.** These express limited warranties are extended by Contractor to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

4.2. **DISCLAIMER OF OTHER WARRANTIES.** THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS CSSA AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

Section 5 GENERAL

5.1. FUTURE REGULATORY REQUIREMENTS. Laws and regulations regarding use of the Equipment may change. Changes to the Equipment required to achieve regulatory compliance may be available for an additional fee.

5.2. ADMINISTRATOR LEVEL ACCOUNT ACCESS. If applicable to the type of System purchased by State Contractor will provide State with Administrative User Credentials. State agrees to only grant access to the Administrative User Credentials to those personnel with the training and experience to correctly use them. State is responsible for protecting Administrative User Credentials from disclosure and maintaining Credential validity by, among other things, updating passwords when required. State may be asked to provide valid Administrative User Credentials when in contact with Contractor System support personnel. State understands that changes made as the Administrative User can significantly impact the performance of the System.

4.3 ADDITIONAL INSURANCE REQUIREMENTS

4.3.1 Professional Liability

Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits of \$5,000,000 per claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this Contract.

4.3.2 Cyber Liability

Technology Errors and Omissions and Cyber Liability Insurance with limits of \$5,000,000 per claim, \$5,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor in this Contract and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this Contract. Coverage shall include, but not be limited to, infringement of copyright (excluding patents and trade secrets), trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The coverage shall provide for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with sub-limits sufficient to respond to these obligations. This coverage requirement may be satisfied with any combination of policies, whether packaged or standalone, and include any applicable excess or umbrella coverage.

5 – DEALERS

Refer to DEALERS AND DISTRIBUTORS in the STS Procurement Terms and Conditions for the definition of Dealer.

Dealer Name	Dealer ID	EOD Status

6 – DISTRIBUTORS

Refer to DEALERS AND DISTRIBUTORS in the STS Procurement Terms and Conditions for the definition of Distributer.

Distributor Name	Dealer ID

Exhibit A
MOTOROLA SOFTWARE LICENSE AGREEMENT

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1.2 "Documentation" means product and software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which such information is provided).

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1.4 "Motorola" means Contractor.

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5.3. Warranty claims are described in the CSSA.

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8.7. RESERVED.

8.8. ORDER OF PRECEDENCE. In the event of inconsistencies between this Exhibit and the CSSA, the parties agree that this Exhibit prevails, only with respect to the specific subject matter of this Exhibit, and not the CSSA or any other exhibit as it applies to any other subject matter.

8.9. SECURITY. Motorola must maintain an information security program aligned to an industry standard cybersecurity framework. Motorola must use industry standard and reasonable software development life cycle practices in the design and writing of its own Software and acquisition of third party Software to limit Security Vulnerabilities. Contractor will scan all source code for Security Vulnerabilities and must promptly remediate vulnerabilities and/or provide the State with patches to address vulnerabilities at no cost. While no software can be guaranteed to be free from Security Vulnerabilities, if a Security Vulnerability is discovered, Motorola will take the steps set forth in this Agreement.