

STANDARD TERMS AND CONDITIONS

1. COMPLIANCE WITH LAWS:

- a. Contractor, in the execution of duties and obligations under this Agreement, agrees to comply with all applicable federal, state, and local laws, rules, regulations, executive orders, and ordinances.
- b. The parties expressly agree that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to the terms of R.C. 3517.13; R.C. 127.16; or R.C. 102.

2. DAS OR CONTROLLING BOARD APPROVAL: If DAS or Controlling Board approval is required, this Agreement shall not be valid and enforceable until appropriate approvals are received.

3. CERTIFICATE OF AVAILABLE FUNDS: The parties expressly understand and agree that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the R.C., including, but not limited to, R.C. 126.07, have been complied with, and until such time as all necessary funds are encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio; or in the event that grant funds are used, until such time that OOD gives Contractor written notice that such funds have been made available to OOD.

4. APPROPRIATION OF FUNDS: The State's funds are contingent upon the availability of lawful appropriations. If the General Assembly or any third party (e.g., Social Security Administration (SSA), or other federal sources) who is providing funding fails at any time to continue funding for the payments or any other obligations due by the State under this Agreement, the State will be released from its obligations on the date funding expires. If appropriations are approved, the State may continue this Agreement past the current biennium by issuing written notice of continuation to the Contractor. Any obligations of the State are subject to R.C. 126.07.

5. COMPENSATION FOR SERVICES:

- a. Where applicable, the total amount due was computed according to an approved budget which may be attached. Contractor may request changes to the approved budget that does not change the total award amount, by submitting a written request to OOD. If OOD approves a requested change to the budget, OOD shall notify Contractor in writing at which time Contractor shall comply with the authorized and approved change. Any changes to the total award amount must be made pursuant to Section 15, Amendments, of this Agreement.
- b. Contractor shall submit a proper invoice for compensation within thirty (30) calendar days following completion of the service(s) described in Exhibit [A]. The invoice, where applicable, shall include documentation of service(s) performed (e.g., identified service provided, hours, etc.) during the invoiced period. In all circumstances, compensation shall only be paid for actual services and/or expenses incurred, as authorized and described in Exhibit [A] and/or

budget; the sum of which shall not exceed the total agreement amount. Contractor may be required to submit receipts. Original receipts shall be retained by the Contractor for audit purposes and provided to OOD upon request. If requested by OOD, Contractor shall submit a final fiscal report no later than ninety (90) calendar days after the end of the agreement period, along with the return of any actual costs which cannot be properly documented.

- c. Contractor agrees to execute all necessary forms and documents to be paid by electronic fund transfer as a supplier in accordance with all procedures of the Ohio Department of Administrative Services (hereinafter "DAS"). Contractor may sign up at <http://www.supplier.obm.ohio.gov>. Contractor agrees to follow invoicing requirements for OOD Pursuant to Rule [3304-1-13](#) of the Ohio Administrative Code (Ohio Adm.Code).
 - d. This Agreement will become part of OhioBuys, an electronic procurement system which provides contract and catalog hosting and management services. Ordering Agencies utilize this system to track and monitor the procurement, solicitation, and contracting of goods and services. When this Agreement becomes part of OhioBuys, the Contractor agrees to establish, maintain, and support its Supplier account and notify OOD when such updates have been made.
6. USE OF MBE AND EDGE SUPPLIER: R.C 125.081 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.
7. NATURE OF CONTRACT AND RELATIONSHIP OF PARTIES:
- a. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State of Ohio or DAS. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.
 - b. Contractor acknowledges and agrees any individual providing personal services under this Agreement is not a public employee for purposes of R.C 145. Unless Contractor is a "business entity" as that term is defined in R.C. 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business"), Contractor shall have any individual performing services under this Agreement complete and submit the Ohio Public Employees Retirement System (OPERS) Non-Member Acknowledgement form to OOD prior to execution of this Agreement.
 - i. Contractor's failure to complete and submit said attachment at the time Contractor executes this Agreement shall serve as Contractor's certification that Contractor is a "business entity".

- c. Contractor shall maintain and upon request provide copies of all current professional licensure, certification, and/or accreditation, including any renewal or re-issuance thereof, for any employee or subcontractor, providing services under this Agreement.
- d. Except as expressly provided herein, the parties shall not have the right to bind or obligate the other party in any manner without the prior written consent of the other party.
- e. It is specifically understood that the nature of the services to be rendered under this Agreement are of such a nature that OOD is the sole judge of the adequacy of such service(s).

8. SUBCONTRACTING:

- a. Contractor agrees to ensure that subcontractor follows all provisions in this Agreement and will be responsible for ensuring that subcontractor receives a copy of the Agreement, if applicable.
- b. Contractor may only subcontract related to the Agreement after written approval from OOD. In those circumstances that Contractor uses a subcontractor to perform a portion of the work under the Agreement, Contractor shall submit a list to OOD identifying Contractor's subcontractors. If any change occurs during the term of the Agreement, that requires a change to identified subcontractors, Contractor shall amend the list of subcontractors and request written approval from OOD. OOD reserves the right to reject any subcontractor submitted by Contractor.
- c. All subcontracts will be at the sole expense of Contractor and Contractor will be solely responsible for payment of its subcontractors. Contractor assumes responsibility for all subcontracting and third-party manufacturer work performed, failure of work performed, or products delivered under the Agreement. In addition, all subcontractors agree to be bound by all of the Terms and Conditions and specifications of the Agreement. Contractor will be the sole point of contact with regard to all contractual matters.

- 9. PREVAILING WAGE: Where applicable, Contractor shall comply with the prevailing wage requirements described under R.C. 4115.
- 10. EQUAL EMPLOYMENT OPPORTUNITY: Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including R.C. 125.111 and all related Executive Orders.
- 11. DRUG FREE WORKPLACE: Contractor agrees to comply with all applicable Federal, State, and Local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or subcontractors purchase, transfer, use, or possess a restricted substance in any way when they are engaged in the work being performed hereunder.
- 12. SWEATSHOP FREE REQUIREMENTS: Contractor certifies that all facilities used for the production of any supplies or performance of services offered are in compliance with applicable domestic labor, employment, health and safety, environmental and building laws and are sweatshop free.

This certification applies to any and all suppliers and/or subcontractor used by Contractor in furnishing the supplies or services. If DAS receives a complaint alleging non-compliance with sweatshop free requirements, DAS may enlist the services of an independent monitor to investigate allegations of such non-compliance on the part of Contractor, any subcontractor or suppliers used by Contractor in performance of the Agreement. If allegations are proven accurate, Contractor will be advised by DAS of the next course of action to resolve the complaint and Contractor will be responsible for any costs associated with the investigation. Items that will be considered in an investigation include, but are not limited to standards for wages, occupational safety and work hours.

13. RENEWAL REQUIREMENTS:

- a. At the sole discretion of OOD, this Agreement may be renewed annually under the same terms and conditions applicable to this Agreement for any period, up to a maximum of twenty-four (24) additional months. If OOD chooses to exercise this option, OOD shall advise Contractor, in writing, prior to the expiration of the current Agreement.
- b. In accordance with R.C. 126.07, any renewal hereunder shall not be valid or enforceable unless and until the Director of Office of Budget Management (OBM) first certifies that there is a balance in the appropriation not already obligated to pay existing obligations.

14. TERMINATION OF SERVICES:

- a. Prior to the expiration of this Agreement, OOD may suspend or terminate the Agreement, without cause, by providing written notice to Contractor not less than thirty (30) days prior to the termination date. OOD may suspend or terminate the Agreement immediately, with cause, by giving written notice to Contractor.
- b. On the suspension or termination date provided in the notice, Contractor shall cease work on activities under this Agreement, all subcontracts relating to the suspended or terminated activities, and take all necessary or appropriate steps to limit disbursements and minimize costs.
- c. If requested by OOD, Contractor shall furnish a report no later than the suspension or termination date provided in the notice, describing the status of all work under the Agreement, including, without limitation, results, conclusions resulting therefrom, and any other matters OOD requires and shall deliver to OOD all work products and documents, which have been specifically prepared for OOD by Contractor in the course of providing services under the Agreement. All such material shall become and remain the property of OOD, to be used in such manner and for such purposes as OOD may choose.
- d. Contractor shall be paid for services rendered up to the date of suspension or termination provided in the notice, less any payments previously made, provided Contractor has supported such payments with detailed factual data containing services performed and hours worked. In the event of termination, any payments made by OOD for which Contractor has not rendered services shall be refunded within thirty (30) days of termination or suspension of

the Agreement. Contractor agrees to waive any right to, and shall make no claim for, additional compensation against OOD by reason of such suspension or termination.

- e. Other than as outlined herein, termination pursuant to this Article will relieve either party of further obligation under this Agreement. In no event will OOD be obligated to pay for any services not actually performed by Contractor.

15. AMENDMENTS: A change in the scope of work shall be governed by a change order in the form of a contract amendment without invalidating the Agreement. Contractor shall not proceed with any change in the work without OOD's prior written authorization. Upon execution of an amendment, Contractor shall perform all changes in the work under the applicable provisions of the Agreement and any amendments, and Contractor shall proceed promptly with the change unless otherwise provided in the amendment. The amendment will govern any changes to the work, changes to the fees owed to Contractor, and any changes to the time for completion of the project. By signing an amendment, Contractor irrevocably certifies that the elements of the amendment are completely satisfied, and waives all rights, if any, to seek further adjustment of the fees owed or the time for completion of the work, or both, at a later date with respect to the associated change in the work.

16. BREACH: OOD, in its sole discretion, may provide written notice to the Contractor of a breach and permit Contractor to cure the breach. Such a cure period shall be no longer than twenty-one (21) calendar days. During the cure period, OOD may buy substitute services from a third-party and recover from Contractor any costs associated with acquiring those substitute services. Notwithstanding OOD permitting a period of time to cure the breach or Contractor's cure of the breach, OOD does not waive any of its rights and remedies provided OOD in this Agreement, including but not limited to recovery of funds paid for services Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

17. FORCE MAJEURE:

- a. Neither party will be liable for any delay in its performance that arises from a force majeure event beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. 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, and severe weather. Additional circumstances and events include epidemics, pandemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.
- b. If OOD or Contractor cannot perform any part of its obligations under this Agreement because of a force majeure event, that party is excused from those obligations to the extent that performance is prevented by the force majeure event and that party took all 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 at any time, Contractor is unable to perform those above referenced obligations, it must also do the following:

- i. Promptly notify OOD, in writing, of any material delay in performance due to a specified force majeure event;
- ii. Provide detailed information of the force majeure event;
- iii. 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.

18. RECORD KEEPING AND AUDITS:

- a. During the performance of this Agreement and for a period of five (5) years after its completion, Contractor agrees to maintain a proper system of accounting and auditable records, in a manner consistent with generally accepted accounting principles, to account for the expenditure of all funds provided by this agreement, including any and all direct and indirect costs expended, and to make these records available for review upon request by OOD representatives. Contractor agrees to retain all records and reports for a period of not less than five (5) years following audits by the appropriate state and federal auditing agencies or until questions arising from the audit have been resolved, whichever is later. OOD reserves the right to inspect and audit any and all records, relative to this Agreement.
- b. Contractor agrees to be responsible for the costs of any audit in which it is determined that Contractor violated any provision of federal, state or local law.
- c. Contractor acknowledges, in accordance with R.C. 149.43, that this Agreement, as well as any information, deliverables, records, reports and financials related to this Agreement are presumptively deemed public records. 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. Contractor must comply with any direction for the State of Ohio 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.

19. CONFIDENTIALITY:

- a. Contractor shall not discuss or disclose any confidential consumer information or material obtained pursuant to its obligations under this Agreement without the prior written consent of the individual, applicant, or former participant. Contractor shall comply with OOD policy 70-GL-O2 Accessing and Securing Confidential Information, the confidentiality provisions defined and outlined in R.C. 3304.21, Ohio Adm.Code 3304-2-63, 34 C.F.R. 361.38, Attorney General Opinion 76-049, and as otherwise required pursuant to state and federal law.
 - i. In the event of termination of this Agreement, the provisions concerning confidentiality shall remain binding on the Contractor.
- b. If an appeal, complaint, or grievance is filed by an individual or entity the Contractor agrees to make staff and records available to OOD for its review, investigation, response and defense.

20. LIABILITY:

- a. In no event shall either party be liable to the other party for indirect, consequential, incidental, special, punitive damages, or lost profits.
- b. If OOD determines that actual and direct damages are uncertain or difficult to ascertain, OOD in its sole discretion may recover a payment of liquidated damages in the amount of fifty (50) percent of the value of the Agreement.
- c. Contractor agrees to indemnify and to hold OOD and the State of Ohio harmless and immune from any and all claims for injury or damages arising from this Agreement which are attributable to Contractor's own actions or omissions or those of its trustees, officers, agents, employees, subcontractor(s), suppliers, third parties utilized by Contractor, or joint ventures, while acting under this Agreement. Contractor shall bear all costs associated with defending OOD and the State of Ohio against any claims made because of Contractor's acts or omissions. The indemnification provisions in this paragraph shall not be applicable to Agreements between OOD and other State of Ohio government agencies, instrumentalities or political subdivisions of the State.
- d. Contractor, at its own cost, agrees to procure and continue in force at all times that this Agreement is in effect, in its name, general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of Contractor's obligations set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars (\$500,000) on account of bodily injury to or death of one (1) person, and One Million Dollars (\$1,000,000) on account of bodily injuries or death of more than one (1) person as a result of any one incident or disaster, and Two Hundred Fifty Thousand Dollars (\$250,000) for property damage in any one (1) incident. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Ohio with an A.M. Best rating of at least "A" or be otherwise approved in writing by OOD. A certificate reflecting the continuing coverage of all such policies procured by Contractor in compliance herewith shall be delivered to OOD upon request or at least thirty (30) days prior to the time such insurance is required to be carried by Contractor, and thereafter at least thirty (30) days prior to the expiration or amendment of any policies. Such insurance shall name OOD and the State of Ohio as additional insureds. Such policies shall bear an endorsement stating that the insurer agrees to notify OOD not less than thirty (30) days in advance of any proposed modification or cancellation of any such policy.

21. CONFLICTS OF INTEREST AND ETHICS COMPLIANCE:

- a. No personnel of Contractor, subcontractor or any person acting on behalf of Contractor or a subcontractor shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of their functions related to this Agreement.
- b. Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of this Agreement, or who involuntarily acquires any such incompatible or

conflicting personal interest, shall immediately disclose the individual's interest to OOD Chief Legal Counsel or designee in writing. Thereafter, the individual shall not participate in any action affecting the work under this Agreement, unless OOD shall determine in its sole discretion that the individual's participation in any such action would not be contrary to the public interest.

- c. Contractor certifies that Contractor: (1) reviewed and understands the Ohio ethics and conflict of interest laws, and (2) will only take action consistent with those laws and any applicable order. Contractor understands that failure to comply with Ohio ethics and conflict of interest laws (R.C. Chapter 102 and R.C. 2921.42 & 43) may be grounds for termination of this Agreement for cause and may result in the loss of other contracts with the State of Ohio. Additional information concerning Ohio ethics laws may be found by accessing the following website at: www.ethics.ohio.gov.

22. PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES:

- a. No State Cabinet Agency, Board or Commission will enter into any agreement to purchase services provided outside of the United States or that allows OOD 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 Agreement, OOD reserves the right to recover any funds paid for services Contractor performs outside of the United States for which it did not receive a waiver. OOD does not waive any other rights or remedies provided to OOD in the Agreement.
- b. Further, no State Agency, Board or 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 Agreement, OOD 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.
- c. If required by applicable law, Contractor must complete the Standard Affirmation and Disclosure Form affirming Contractor understands and will meet the requirements of the above prohibition, see Attachment One. During the performance of this Agreement, if Contractor changes the location(s) disclosed on the Standard Affirmation and Disclosure Form, Contractor must complete and submit a revised form reflecting such changes.
- d. If Contractor, or any of its subcontractors, perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. OOD is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to OOD all funds paid for those services. OOD may also recover from Contractor all costs associated with any corrective action OOD may undertake, including but not limited to an audit or a risk analysis, as a result of Contractor performing services outside the United States. OOD may, at any time after the breach, terminate the Agreement, upon written notice to

Contractor. OOD may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

23. RIGHTS IN DATA AND COPYRIGHTS/PUBLIC USE:

- a. OOD shall have unrestricted authority to reproduce, distribute, and use (in whole or in part) any reports, data, or materials prepared specifically for OOD, by Contractor, a subcontractor or any person acting on behalf of Contractor. No such documents or other materials produced (in whole or in part) with funds provided to Contractor by OOD shall be subject to copyright by Contractor in the United States or any other country.
- b. Contractor is not permitted to use OOD's logo, brand names, marketing copy, taglines, slogans, images, graphics, videos, and other visual elements used in marketing material, or other trademarks without appropriate prior written authorization from OOD.
 - i. Contractor shall follow the established Visual Identity Guidelines, provided by OOD, and use an approved OOD logo, font, and brand colors in all official project related correspondence, including but not limited to: social media posts, brochures, business cards, media releases and articles for print and digital publication, if applicable.
- c. OOD shall own all equipment, software, content, and material created during this Agreement. The deliverables outlined in Exhibit [A] shall remain the property of OOD and OOD shall retain all distribution rights to all content, material, and equipment. Contractor may not use, reuse, distribute, nor publish such materials without the express, prior written consent of OOD.

24. SOCIAL MEDIA:

- a. For the purposes of this Agreement, "social media" covers tools and technologies that allow an individual to share communications, postings of information, or participate in social networking, including but not limited to blogs, social networking platforms, professional and academic platforms, video and photo sharing platforms, social bookmarking sites, online forums and discussion boards, review and recommendation sites, chat rooms and automated data feeds.
- b. Contractor agrees to not directly or indirectly publish, post, or release any confidential, proprietary or private content, including images and videos, regarding OOD, its employees, contractors, or individuals served by OOD without the express, prior written consent by employees, contractors, or individuals served by OOD.
- c. Regarding content that is not considered confidential, proprietary, or private, Contractor agrees that communications on social media that reference, refer to, tag, acknowledge, or otherwise mention OOD, must use the following disclaimer: "The opinions expressed are my own and are not attributable in any way to OOD."

- d. Contractor shall not make any media representations, press releases, social media communications, or public statements related to the work in Exhibit [A] without the review and approval of OOD.
- 25. TAXES: Pursuant to R.C 5739.02 the State is exempt from sales tax. Contractor accepts full responsibility for payment of all taxes, including and without limitation, unemployment compensation, insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Contractor in the performance of the work authorized by this Agreement.
- 26. CONTROLLING LAW: This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and venue for any action or proceeding concerning the Agreement and/or performance thereunder will be exclusively with a court of proper jurisdiction in Franklin County, Ohio.
- 27. TRADE: Pursuant to R.C. 9.76(B), Contractor warrants that it is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the agreement period.
- 28. CAMPAIGN CONTRIBUTIONS: Contractor hereby certifies compliance with R.C. 3517.13 as applicable. Any violation of R.C. 3517.13 by Contractor renders this Agreement void from the start of the Contract.
- 29. ENTIRE AGREEMENT/WAIVER:
 - a. This Agreement, along with any attachments, contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties.
 - b. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
 - c. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default.
- 30. SEVERABILITY: The provisions of this Agreement are severable and independent. If any provision of this Agreement is deemed unenforceable by change of law or a court of competent jurisdiction in whole or in part, the remaining provisions and any partially enforceable provisions, to the extent enforceable, shall, nevertheless, be binding and enforceable.
- 31. RELATED AGREEMENTS:
 - a. The work contemplated in this Agreement is to be performed by Contractor, who may procure without OOD's approval and at Contractor's sole expense, articles, supplies, components, or

special mechanical services that do not involve the type of work or services described in Exhibit [A] but which are required for the Agreement's satisfactory completion.

- b. Contractor warrants that it has not entered into, nor shall enter into, other agreements, without prior written approval of OOD, to perform substantially identical work for the State of Ohio such that the product contemplated hereunder duplicates the work called for by the other agreements.
32. ANTITRUST ASSIGNMENT: Contractor assigns to OOD all State and Federal antitrust claims and causes of action that relate to all goods and services provided for in this Agreement.
33. FINDINGS FOR RECOVERY: Contractor warrants that it is not subject to an unresolved finding for recovery under R.C. 9.24. If this warranty is found to be false, this Agreement is void from the start of the Agreement and Contractor shall immediately repay to OOD any funds paid under this Agreement.
34. SUSPENSION & DEBARMENT: Contractor represents and warrants that it is not suspended or debarred from consideration for contract awards by DAS, pursuant to either R.C. 153.02 or R.C. 125.25 or the United States Department of Education, pursuant to 34 C.F.R. Part 85. If this representation and warranty is found to be false, this Agreement shall be void from the start of the Agreement and Contractor shall immediately repay to OOD any funds paid under this Agreement.
35. TRAVEL EXPENSES: Contractor expressly understands that under no circumstances will Contractor be compensated or reimbursed for any travel outside the State of Ohio in the performance of Contractor's obligations, duties, and responsibilities under this Agreement. Any amounts approved by OOD for reimbursement of travel expenses shall be clearly and expressly outlined within the terms of this Agreement and shall not exceed any reimbursement rates authorized by Ohio law or rule of OBM, DAS and/or, where applicable, the United States General Services Administration (GSA).
36. CONFLICT OF TERMS: Contractor agrees that if there is a conflict, whether in whole or in part, between any of the terms in this Agreement, including the terms found in Exhibit [A] and any and all other attachments or parts of this Agreement, then OOD shall have sole authority and discretion, which shall not be inconsistent with any established law, to identify which term, or portion of such term, would control and Contractor agrees to follow such determination by OOD.
37. ARTIFICIAL INTELLIGENCE: Contractors are prohibited from using OOD materials or Data in Generative Artificial Intelligence solutions unless such use is explicitly approved by the OOD's Executive Director or designee.
38. SUCCESSORS/ASSIGNMENT/DELEGATION: Except as otherwise provided hereto, neither this Agreement nor any rights, duties, obligations or responsibilities hereunder may be assigned, delegated or transferred, in whole or in part, by Contractor, without the prior written consent of OOD. Any assignment or delegation not consented to may be deemed void by OOD.
39. STATE OF OHIO DATA SECURITY AND PRIVACY TERMS: Contractor acknowledges and agrees to the

DAS Data [Security and Privacy Terms outlined on https://das.ohio.gov/technology-and-strategy/information-security-privacy/information-security-governance/information-security-governance](https://das.ohio.gov/technology-and-strategy/information-security-privacy/information-security-governance/information-security-governance).

40. CLICK-THROUGH PROVISIONS:

- a. A click-through contract is a type of agreement that requires a prospective licensee to click an "I accept" button (or equivalent) on a web page before software can be purchased or licensed or used.

A "click-through" contract also includes:

- i. A shrink wrap agreement that accompanies packaged software, and
 - ii. Any form agreement to purchase or license or use software that the vendor will not amend to eliminate a conflict with this policy or Ohio law.
- b. OOD will not be bound by any provision in a click-through agreement which conflicts with Ohio law, including but not limited to R.C. 9.27, regardless of whether acceptance of the agreement is required to run, or continue to run, any software purchased by OOD.
- c. For Third-party software dealers:
If the Contractor is not the manufacturer of the products or services under this Agreement, the Contractor affirms that they are an authorized dealer of the manufacturer's products or services. Contractor also affirms that they will have enough of the offered products for the duration of the Agreement to meet the State's needs under the Agreement during the initial term and any extensions. Contractor assures the availability through the dealer of repair services and spare parts for products covered by this Agreement for five (5) years from the date of purchase and further assures that software maintenance will be available under the terms of this Agreement either from the dealer or the manufacturer for six (6) years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than \$10,000.00 per copy).
- d. For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:
 - i. Use and copy the Commercial Software 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;
 - ii. Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
 - iii. Reproduce the Commercial Software for archival, image management, and backup purposes;
 - iv. Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;

- v. Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
 - vi. Use or copy the Commercial Software for use with a replacement computer.
 - e. 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 Exhibit [A]. If the Contractor provides greater license rights in an item included in Exhibit [A] 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 one (i) through six (vi) above; it may only define the extent of use.
41. **SECURITY & SAFETY RULES:** When using or possessing State of Ohio data or accessing State of Ohio networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State of Ohio rules, policies, and regulations regarding State of Ohio-provided IT resources, data security, integrity. When utilizing any property owned or controlled by the State of Ohio, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises. If utilizing or accessing SSA data, network and systems, Contractor must comply with all SSA rules, regulations, and policies, applicable.
42. **NOTICES:** Except as specifically provided by OOD, all notices, consents, and communications shall be given in writing, either by paper or electronic, shall be deemed to be given upon receipt thereof, and shall be sent to an address on record with OOD. Contractor is obligated to update OOD's record of Contractor's current contact address.
43. **HEADINGS:** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
44. **EXECUTION:**
- a. This Agreement is not binding upon the parties unless executed in full.
 - b. Contractor explicitly understands that services under this Agreement shall not begin, nor will Contractor be compensated for any of the services hereunder, until Contractor receives from OOD a fully executed copy of this Agreement and, where applicable, a valid purchase order number.