

PARTICIPATING ADDENDUM
NASPO VALUEPOINT COOPERATIVE PURCHASING PROGRAM
COMPUTER EQUIPMENT: (Desktops, Laptops, Tablets, Servers, Storage and
Ruggedized Devices including Related Peripherals & Services)
Administered by the State of Minnesota (hereinafter "Lead State")

MASTER AGREEMENT
Dell Marketing L.P.
Master Agreement No: MNWNC-108
Dell Master Agreement No. 91AGY
(hereinafter "Contractor")

And

The State of Ohio
Dell Contract Code WN98AGW
(hereinafter "Participating State")

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1. **Scope:** This Addendum covers the COMPUTER EQUIPMENT (Desktops, Laptops, Tablets, Servers, Storage and Ruggedized Devices including Related Peripherals & Services) contract led by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official. The Products and Services available under this Participating Addendum include all Products and Services in scope for the Master Agreement.

This Addendum, executed by the Parties, will be effective as of the last date signed below and will be coterminous with the Master Agreement and any extensions of the Master Agreement, unless terminated pursuant to EXHIBIT A – MASTER AGREEMENT TERMS AND CONDITIONS SECTION B. WSCA-NASPO TERMS AND CONDITIONS, Section 6 Cancellation.

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use State contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. Unless otherwise specified, all state agencies, political subdivisions, including public education entities, and other entities (including cooperatives) in the State of Ohio are eligible to procure under this Participating Addendum.

3. **Contractor Modifications or Additional Terms and Conditions to the Master Agreement:**

- A. Use of Purchasing-card is at time of order placement only, and not permitted for payment of invoices issued by Contractor.
- B. Any assignment by Participating State of its purchase order to a third-party financing company (other than Dell Financial Services, LLC) must be approved in advance in writing by Contractor, and in no case shall any such approval excuse Participating State from its obligations hereunder.
- C. **Returns and Exchanges.** Additional fees, including up to a 15% restocking fee, may apply unless the return/exchange involves a product under warranty.
- D. **Dispute Resolution.** Participating State and Contractor will attempt to resolve any Dispute through face-to-face negotiation with persons fully authorized to resolve the Dispute or

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through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as Confidential Information. Notwithstanding the foregoing, either party will have the right to seek from a state or federal court a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within thirty (30) days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity.

- E. Contractor may not subcontract or delegate the performance of its obligations under this Agreement in whole or in part, or any rights, duties, obligations or liabilities under this Agreement, by operation of law or otherwise, without the prior written consent of Participating State (*other than subcontractors retained by Contractor from time to time in the ordinary course of business to perform CFI, warranty, break/fix, administrative and back office services who will not have access to Buyer's confidential data other than billing and contact information*) and provided that Contractor shall remain responsible for the performance of its obligations under this Agreement.

4. Participating State Modifications or Additions to Master Agreement:

(These modifications or additions apply only to actions and relationships within the Participating State.)

5. Lease Agreements:

Leasing is allowed under this Master Agreement pursuant to the attached Dell Financial Services L. L. C. ("DFS") Master Lease Agreement ("Attachment 1") or a separately negotiated DFS Master Lease Agreement between DFS and Participating State or eligible customer under this Participating Addendum. If this Participating Addendum does not contain lease terms and conditions, Participating State or eligible customer under this Participating Addendum who is

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authorized to enter into lease agreements under applicable law may do so under a separate lease agreement for hardware, software and services obtained under this Master Agreement with DFS.

6. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Participating Addendum Contact

Name	Diane Wigington
Address	One Dell Way, Mail Stop RR 1-33, Round Rock, Texas 78682
Telephone	512-728-4805
Fax	512-283-9092
E-mail	Diane_Wigington@Dell.com

Contractor

Master Agreement Contact

Name	Diane Wigington
Address	One Dell Way, Mail Stop RR 1-33, Round Rock, Texas 78682
Telephone	512-728-4805
Fax	512-283-9092
E-mail	diane_wigington@dell.com

Participating State

Name	Andrew Miller
Address	Dept. Of Admin. Services, Rhodes Tower, 30 E. Broad St. 39 th Floor, Columbus OH 43215
Telephone	614-446-0206
Fax	
E-mail	Andrew.Miller@das.ohio.gov

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7. Partner Utilization: All Contractor authorized Resellers and Agents in the State of Ohio, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the WSCA-NASPO Master Price Agreement. Contractor shall make all determinations about which entities in the State of Ohio that the Contractor authorized Reseller and Agents may support. The Contractor authorized Resellers and Agents participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

a. Contractor authorized Resellers

1. Contractor authorized Resellers shall provide quotes, accept purchase orders, and accept payment from entities ordering under this Participating Addendum.

b. Contractor authorized Agents

1. Contractor authorized Agents are authorized to provide quotes, sales assistance, configuration guidance and ordering support for hardware, software and services available this Participating Addendum.

2. Contractor authorized Agents ARE NOT authorized to accept orders, purchase orders or payment from entities ordering under this Participating Addendum.

All purchase orders issued by ordering entities with the jurisdiction of this Participating Addendum must include the Participating Addendum number: WN98AGW and the Master Agreement number MNWNC-108 on the order.

8. Orders: Any Order placed by an entity ordering under this Participating Addendum for a hardware, software and/or services the Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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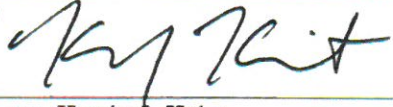
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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State:	Contractor: Dell Marketing LP
By: 	By: 
Name: Robert Blair	Name: Kevin J. Krist
Title: Director	Title: Contracts Consultant/Manager
Date: 9-30-15	Date: Sept. 28, 2015

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint	
Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

**[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org to support documentation of participation
 and posting in appropriate data bases]**

STATE OF OHIO

STANDARD TERMS & CONDITIONS

I. GLOSSARY

- 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 agreement 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 or work product described in the specifications of the Contract.
- E. **Ordering Agency:** The entity, including State agencies and State of Ohio Cooperative Purchasing members authorized under Section 125.04 of the Ohio Revised Code, 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
- G. **Time and Materials Contract:** A Contract in which Contractor is paid (1) an hourly rate for labor performed and (2) if applicable, 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 by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires. 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. **COMPLIANCE WITH LAW.** The Contractor must comply throughout the duration of the Contract with all applicable federal, state, local laws and applicable Executive Orders while performing under this Contract.
- D. **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.
- E. **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*.

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- F. **DEBARMENT**. Contractor represents and warrants that it is not 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.
- G. **DRUG FREE WORKPLACE**. The Contractor shall 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, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- H. **ELECTIONS LAW**. 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.
- 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.

J. **RESERVED**

- K. **INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT**. It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in 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 found at the following link: <https://www.opers.org/forms-archive/PEDACKN.pdf#zoom=80>.

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

- I. **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.
- M. **REGISTRATION WITH THE SECRETARY OF STATE**. Contractor certifies that it is either:
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 registration requirements of the Ohio Secretary of State.

Questions regarding registration should be directed to <http://www.sos.state.oh.us>.

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- N. **TAXES.** The State is exempt from all taxes and does not agree to pay any taxes.
- O. **TRAVEL.** Any travel that the Contractor requires to perform its obligations under this Contract that has not been pre-approved for reimbursement by the State 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 Rule 126-1-02 of the Ohio Administrative Code.
- 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.

III. CONTRACT CONSTRUCTION

- A. **EFFECTIVE DATE OF THE CONTRACT.** This Contract is in effect from the date of issuance of an approved State of Ohio purchase order or the effective date stated in this Contract, whichever is later. This Contract will remain in effect, through March 31, 2017 unless this Contract is suspended or terminated pursuant to this Contract.

This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, upon mutual agreement of the parties. The Contractor shall not obligate resources in anticipation of a renewal until such agreement is reached and a purchase order is provided.

B. **CONTRACT AMENDMENTS.**

1. **AMENDMENTS.** No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. Notwithstanding the foregoing, the State may reduce non-material changes to writing and provide notice to the Contractor.
 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.

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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. **RESERVED**

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; and
2. Use this Contract as a marketing or sales tool.

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 for direct support related to the Contract after award without written approval from the State. If any change occurs during the term of the Contract, that requires a change to identified subcontractors, the Contractor shall amend its list of subcontractors and request written approval from the State. The State reserves the right to reject any subcontractor submitted by the Contractor.

All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all subcontracting and third party manufacturer work performed under the Contract. In addition, all subcontractors agree to be bound by all of the Terms and Conditions and specifications of the Contract. The Contractor will be the sole point of contact with regard to all contractual matters.

The requirements of this section do not apply to pre-existing subcontractor relationships Contractor uses for support of this Contract or to new subcontractor relationships that Contractor may enter into for the provision of indirect support (i.e. effort not directly billed to State under this Contract) for support relating to this Contract.

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

IV. 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 State agencies.
3. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate State agency.
4. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.

B. **INVOICE REQUIREMENTS**. The Contractor or dealer, authorized to submit invoices, must submit an original invoice to the office designated in the purchase order as the "bill to" address. The Contractor will only be compensated for the actual work performed and if applicable, supplies delivered and accepted by the State. To be a proper invoice, the invoice must include the following:

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1. The purchase order number authorizing the delivery of supplies or services.
2. Contractor Name
3. Contractor Address
4. Contractor's federal tax identification number
5. A description of the deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of Deliverables,
6. Contractor's invoice remittance address as designated in this Contract; and
7. For leases, the invoice must also include the payment number (e.g., 1 of 36).

C. PAYMENT DUE DATE AND PROCESS. 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 fund transfer. However, the Contracting Agency may also make payment by State of Ohio payment card or by warrant issued by the Auditor of State. At the time of contract award, Contractor must be able to accept all forms of payment from the State and Contracting Agency.

D. RESERVED

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

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

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

Department of Administrative Services

L-3686

Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may 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 and seek damages for the breach.

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V. LIABILITY PROVISIONS

A. GENERAL REPRESENTATIONS AND WARRANTIES.

Contractor shall provide the manufacturers written warranty tied to the product at the time of purchase and must include the following: (a) the Product performs according to the specifications (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is designed and manufactured in a commercially reasonable manner, and (d) the Product is free of defects.

For third party products sold by the Contract Vendor, the Contract Vendor will assign the manufacturer or publisher's warranty and maintenance. The Contract Vendor will provide warranty and maintenance call numbers and assist the customer in engaging the manufacturer on warranty and maintenance issues.

Upon breach of this warranty, the Contract Vendor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contract Vendor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contract Vendor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or so ordered by the court.

In addition, 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. RESERVED.
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 and which title passes to the State.
10. The Contractor has the right and ability to grant the license granted in any Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these additional 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.

- B. INDEMNITY. The Contractor must indemnify the State for any and all third party claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities for bodily injury to any person (including injury resulting in death) or damage to personal property, that may arise out of, or are related to, the Contractor's performance under this Contract, providing such is due to the negligence or other tortious conduct of the Contractor, the Contractor's employees, agents, or subcontractors.

The Contractor must also indemnify the State against 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

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an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions:

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 Office of the Ohio Attorney General.

- C. **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, upon notice from the State, shall apply the appropriate action under its warranty obligations to bring the product(s) in question into conformance with required specifications.

VI. PERFORMANCE AND COMPLIANCE

- A. **AUDITS.** The Contractor must keep all books, records, documents, and other evidence pertaining to this Contract and orders placed under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees..
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.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the State for an overpayments inconsistent with the terms of the Contract or orders or underpayment of fees found as a result of the examination of the Contractor's records.

- B. **F.O.B. DESTINATION/ACCEPTANCE.** The Contractor must provide Deliverables under this Contract F.O.B. Destination. 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. **RESERVED.**

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

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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. At any time 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.

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

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

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

F. **CONTRACT REMEDIES.**

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. In the event of default, the State may exercise any remedy provided by law.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages as provided in the WSCA NASPO Master Agreement..
3. **Deduction of Damages from Contract Price.** The State may deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor compensation still due on the Contract.

- G. **SUSPENSION/TERMINATION.** Any notice of termination or suspension 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.

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. All work, whether completed or not, must be delivered to the State along with the final report, and Contractor shall be compensated for any such work delivered with the final report in accordance with the price schedule established by this Agreement. The final report and any delivered work are subject to approval by the State.

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1. Contract Suspension.

- a. If the Contractor fails to perform any one of the Contractor's obligations under this Contract, the Contractor will be in default and the State may suspend rather than terminate this Contract. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.
- b. In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in this section for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.
- c. The notice of suspension whether, with or without cause, will be effective immediately, on the Contractor's receipt of the notice.

2. Contract Termination.

- a. **Termination for Convenience.** The State may terminate this Contract for its convenience after issuing thirty (30) days written notice to the Contractor. The Contractor will be entitled to the pro-rated contract price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract had been fully performed. 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 and said failure is not cured within a reasonable time of notice of potential default, the Contractor will be in default and the State may terminate this Contract in accordance with this section.
- c. **RESERVED**
- d. **RESERVED**
- e. **Termination for Financial Instability.** The State may terminate this Contract if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the State finds other evidence of the Contractor's financial instability.
- f. **Termination for Delinquency, Violation of Law.** The State may terminate this Contract if the State 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. The State also may terminate this Contract, if the State determines that the Contractor has violated any law during the performance of this Contract.
- g. **Termination for Subcontractor Default.** The State may terminate this Contract for the default caused by the Contractor's subcontractors. Any claims of its subcontractors due to suspension or termination will be the responsibility of the Contractor, who will indemnify the State for any liability to the subcontractors.
- h. **Termination for Failure to Retain Certification, License, and Permits.** If Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications, and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract the State may immediately terminate the Contract.

H. **TIME OF DELIVERY.** The Contractor must deliver Deliverables as required by the Contract or coordinate an acceptable date and time for delivery with the Ordering Agency. If the Contractor is

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not able to or does not provide the Deliverables to the Ordering Agency by the date and time set forth in the Order Confirmation, the Contractor may be deemed in breach, and upon failure to cure, the State may deem such breach a default and seek to obtain any remedy as described herein or any other remedy at law.

VII. DATA AND INFORMATION CONTROL

- A. **CONFIDENTIALITY**. The parties may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The party receiving such information may not disclose any information obtained as a result of this Contract, without the written permission of the disclosing party. The receiving party must assume that all disclosed proprietary information, documents, data, source codes, software, models, know-how, trade secrets, or other similarly sensitive material is confidential. In addition, neither party may not disclose any documents or records excluded by Ohio law from public records disclosure requirements

The obligation to maintain the confidentiality of the information will not apply where the information:

1. Was already in the receiving party's possession before disclosure, and the information was received without the obligation of confidence.
2. Is independently developed by the receiving party.
3. Is or becomes publicly available without breach of this Contract except as provided in the next full paragraph.
4. Is rightfully received from a third party without an obligation of confidence.
5. Is disclosed 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:
 - a. the disclosing party is notified of such order immediately upon receipt of the order; and
 - b. a reasonable effort is made by the receiving party to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publically available through other sources, such information shall not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, notwithstanding item 3 above, the parties have an obligation to maintain the confidentiality of such sensitive personal information.

The parties must return all originals of any confidential information received and destroy any copies made on termination or expiration of this Contract.

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

- B. **PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION**. The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that 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 exempted from disclosure. The Contractor must comply with any direction from the State or an ordering agency to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information.
- C. **SECURITY & SAFETY RULES**. When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and

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regulations regarding 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.