

WORKFRONT INC.
Master Cloud Services Agreement MCSA0091

THIS MASTER CLOUD SERVICES AGREEMENT (“Agreement”) is by and between Workfront Inc. (“Contractor”), having an office at 3301 North Thanksgiving Way #100, Lehi, UT 84043, and the State of Ohio (“State”), through its Department of Administrative Services (“DAS”), having its principal place of business at 30 East Broad Street, 40th Floor, Columbus, OH 43215. The State and the Contractor also are sometimes referred to jointly as the “Parties” or individually as a “Party”. The effective date of this Agreement is the date it is signed on behalf of the State (“Effective Date”).

1. General Information

1.1. Organization

This Agreement covers subscriptions to cloud services through one or more attachments (“Service Attachments”) that describe the cloud offerings (“Services”) that the Contractor makes available to its customers by subscription and that it is authorized to sell to the State. The Service Attachments describe the Services the Contractor offers under this Agreement, along with any special terms or conditions applicable only to those Services, descriptions of those Services, features, and all fees associated with such Services, as well as any other provisions to which the Parties have agreed with respect to those Services. Such Service Attachments, when executed by the Parties, are incorporated into this Agreement and become a part hereof.

1.2. Subscribers

A “Subscriber” means State entities such as agencies, boards, and commissions (sometimes referred to as “State Entities”) that place requests (“Orders”) through the State’s Ordering System described in another section under this Agreement for any of the Services identified by one or more Service Attachments incorporated into this Agreement. And it includes other entities of the State, such as the legislative and judicial branches of State government and the independent offices of elected State officials that place Orders under this Agreement. It also means the Cooperative Purchasing Members, defined in the next section, that place Orders under this Agreement.

1.3. Cooperative Purchasing Members

“Cooperative Purchasing Members” or “Co-op Members” are entities that qualify for participation in the State’s cooperative purchasing program under Section 125.04 of the Ohio Revised Code (“ORC”) 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 Chapter 1545 of the ORC, 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.

1.4. Term

The current General Assembly cannot commit a future General Assembly to any expenditure. Therefore, this Agreement along with all Service Attachments will automatically expire at the end of the State's current biennium, which is June 30, 2021.

1.5. Agreement – Renewal

The State may renew this Agreement in the next biennium by issuing written notice to the Contractor of the decision to do so. Renewals will be initiated by the State in writing at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to the end of any subsequent biennium.

1.6. Service Attachment(s) – Renewal

As part of the renewal of this Agreement, the State may renew any or all Service Attachments for the next biennium by issuing written notice to the Contractor of the decision to do so. Renewals will be initiated by the State at least 30 days before the expiration of the then current term. This expiration and renewal procedure will also apply to any subsequent biennium.

The Parties agree that pricing of Services under any Service Attachment may be renegotiated to reflect more favorable rates to the State. Upon termination of this Agreement, all rights of the Subscribers to order new Services cease and the Contractor may not fulfill any new requests for any Subscriber under this Agreement. Further, all existing Service Attachments and all existing Orders under those Service Attachments also will terminate, except to the extent that the Contractor has any prepaid Services to perform.

The Subscribers have the option any time during the Agreement's term to upgrade to a new technology or Service offering with the Contractor without incurring any charges for terminating the existing technology or Service offering before the agreed upon term of the Subscriber's Order ("Early Termination Charge"), if any such charge is provided for in the applicable Service Attachment.

1.7. Relationship of the Parties and Subscribers

The Contractor is an independent contractor and is not an agent, servant, or employee of the State. The Contractor 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, as an independent contractor, The Contractor is not a public employee and is not entitled to contributions from the State to any public employee retirement system or any other benefit of public employment.

Further, any individual providing personal Services under this Agreement is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. And unless the Contractor is a "business entity" as that term is defined in ORC 145.037 ("an entity with five or more employees that is a corporation, association, firm, limited liability company,

partnership, sole proprietorship, or other entity engaged in business”) the Contractor must have any individual performing work under this Agreement complete and submit to the ordering agency the Independent Contractor/Worker Acknowledgement form found at the following link:

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

The Contractor’s failure to complete and submit the Independent/Worker Acknowledgement form before providing any Service or otherwise doing any work hereunder will serve as the Contractor’s certification that the Contractor is a “Business entity” as the term is defined in ORC Section 145.037.

1.8. Dealers and Distributors

The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for 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 sent to the address listed in The Notices section of this Agreement.

In doing the above, the Contractor warrants that:

- i. The Contractor has provided the dealer with a copy of this Agreement, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Agreement.
- ii. Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
- iii. The Contractor will remain liable under this Agreement for the Services of its dealers and will remedy any breach of any of its dealers under this Agreement.
- iv. Payments under this Agreement 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.
- v. To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the Agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

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

1.9. Audits and Reports

During the term of this Agreement and for three years after its termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Services performed under this Agreement, to any billing or invoices under the Agreement, or to pricing representations that the Contractor made to acquire this Agreement. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Order hereunder.

The Contractor must make such records and materials available to the State within 15 days after receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation, overcharge to the State, or violation of the terms of this Agreement, the State will be entitled to recover its damages, including the cost of the audit.

The State also may require various reports from the Contractor related to the Services. Such reports include those identified in the Cost Recovery section of this Agreement and those identified in any Service Attachment. Further, the State will be entitled to any other reports that the Contractor makes generally available to its other customers without additional charge. The State's rights under this section will apply to all Services provided to all Subscribers under this Agreement, but a Subscriber's rights to reports will apply solely to Services it orders or receives under this Agreement.

1.10. Subscribers' Reliance on Agreement

Subscribers may rely on this Agreement. But whenever a Subscriber is a Cooperative Purchasing Member and relies on this Agreement to issue an Order, the Subscriber will step into the shoes of the State under this Agreement for purposes of its Order, and, as to the Subscriber's Order, this Agreement will be between the Contractor and that Subscriber. The Contractor must look exclusively to that Subscriber for performance, including but not limited to payment, and must hold the State harmless regarding such Orders and the Subscriber's performance. But the State, through DAS, will have the right to terminate this Agreement and seek such remedies on termination as this Agreement provides should the Contractor fail to honor its obligations under an Order from any Subscriber, whether a Cooperative Purchasing Member or not.

1.11. Third-Party Suppliers

The Contractor must incorporate the costs of any third-party supplies and services in the Contractor's fees identified on the applicable Service Attachment under this Agreement.

The Contractor's use of other suppliers does not mean that the State will pay for them. The Contractor will be solely responsible for payment of its suppliers and any claims of those suppliers for any failure of the Contractor to meet its obligations under this Agreement in the required manner. The Contractor will hold the State harmless and indemnify the State against any such claims.

The Contractor assumes responsibility for all Services provided under this Agreement whether it or one of its suppliers provides them in whole or in part. Further, the Contractor will be the sole point of contact for all contractual matters, including payment of all charges resulting from the Agreement and all Service requests.

1.12. Non-Exclusivity

This Agreement is non-exclusive and is not a requirements contract. Nothing herein prevents either Party from entering into similar agreements with other entities.

1.13. THIS SECTION INTENTIONALLY LEFT BLANK.

1.14. Conflict Resolution

If one Party believes the other Party has violated or is not complying with the terms of this Agreement or if any other dispute arises under this Agreement, the Party raising the matter may provide to the other Party written notice referencing this section and specifying the nature of the dispute (the "Dispute Notification"). The Parties then will seek to resolve the dispute in accordance with the procedures in this Section.

All disputes will be submitted first to the authorized State Representative (or designee) and the Contractor's Account Manager (or equivalent) for resolution. For 15 days from receipt of the Dispute Notification ("Dispute Date"), the authorized State Representative and Contractor's Account Manager will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If after the 15 days identified above, the authorized State Representative and the Contractor's Account Manager are unable to resolve the dispute, the Parties will then submit the dispute to the State's IT Contract Manager (or designee) and to the Contractor's Sales Director (or equivalent) for resolution. For the next 15 days, the State's IT Contract Manager and Contractor's Sales Director will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith.

If following the 15 days in the previous section, the State's IT Contract Manager and the Contractor's Sales Director are unable to resolve the dispute, the Parties will then submit the dispute to the State's Chief Information Officer ("CIO") or a designee and to the Contractor's Vice President of Sales (or equivalent executive) for resolution. For the next 15 days, the State's CIO and Contractor's Vice President will meet in person or by telephone as often as is reasonably necessary to discuss and attempt to resolve the dispute in good faith. If the State's CIO and Contractor's Vice President are unable to resolve the dispute within that time, the Parties will nevertheless continue to retain their rights to initiate formal proceedings hereunder.

The specific format for such discussions will be left to the discretion of the representatives of the State and Contractor responsible for attempting to resolve the dispute, but each Party will involve the business, technical, and legal resources reasonably necessary to attempt in good faith to resolve the dispute at the earliest possible time and without undue delay.

If the Parties are unable to resolve the dispute and the dispute involves a claim that the Contractor is noncompliant with its obligations hereunder or has overcharged for a Service, the State or affected Subscribers may withhold payment for any Services that are the subject of the dispute until the Contractor cures the noncompliance, the Parties arrive at an agreement to resolve the dispute, or a Party obtains a resolution in a court of competent jurisdiction.

Nothing in this section is intended to limit the rights provided under termination section of this Agreement or be a prerequisite to exercising those rights.

Once the dispute has been resolved, any payments withheld will be handled in the following manner:

If the resolution was in favor of the State or one or more Subscribers, the Contractor will issue a credit on the next invoice for the affected Subscribers. If the credit exceeds the Service charges on the next invoice or an invoice will not be issued within 60 days of the resolution, the Contractor will issue payment in the form of a check in the amount exceeding the Service charges or for the full amount if an invoice will not be issued within 60 days. Any such checks must be issued within that 60-day period.

If in favor of the Contractor, the affected Subscribers will submit appropriate payment within 30 days of receiving notification of the resolution at the office designated to receive the invoice.

In either of the above cases, the amount or amounts withheld by the State or Subscriber(s) will be taken into account in calculating any amount(s) due.

2. General Requirements for Cloud Services

2.1. Standards

All Service subscriptions must provide a Service that maintains a redundant infrastructure that will ensure access for all the State's enrolled users in case of a failure at any one of the Contractor locations, with effective contingency planning (including back-up and disaster recovery capabilities) and 24x7 trouble shooting service for inquiries, outages, issue resolutions, etc. All such Services must be dependable and provide response rates that are as good as or better than industry standards. They also must meet the Service Level Agreements ("SLAs") provided in the applicable Service Attachment and be supported with sufficient connectivity and computing resources to handle reasonably anticipated peak demand, and the Contractor must ensure that sufficient bandwidth and computing resources are dedicated to the Services to meet peak demand times without material degradation in performance.

The Services must also operate at the moderate level baseline as defined in the National Institute of Standards and Technology ("NIST") 800-53 Rev. 4 moderate baseline requirements, be consistent with Federal Information Security Management Act ("FISMA") requirements and offer a customizable and extendable capability based on open-standards APIs that enable integration with third party applications. Additionally, they must provide the State's systems administrators with 24x7 visibility into the services through a real-time, web-based "dashboard" capability that enables them to monitor, in

real or near real time, the Services' performance against the established SLAs and promised operational parameters.

The Contractor has and will continue to use its best efforts through quality assurance procedures to ensure that there are no viruses or malware or undocumented features in its infrastructure and Services and that they do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any use of or access to them by the Subscribers. The Contractor hereby waives under any and all circumstances any right it may have or may hereafter have to exercise electronic self-help.

User access to the Services must be capable of being integrated with a Subscriber's Active Directory or other Lightweight Directory Access Protocol (LDAP) service to support single sign-on capability for users and to ensure that every user is tied to an Active Directory or other LDAP account and to prevent user access when a user is disabled or deleted in the applicable Subscriber's Active Directory or other LDAP service.

The Contractor must obtain an annual audit report that complies with the AICPA's SOC 1 standards, and one that complies with the AICPA's SOC 2 standards. The reports must cover all operations pertaining to the Services covered by this Agreement. The reports will be at the sole expense of the Contractor, and a copy of each must be provided to the State within 30 days of its completion each year.

At no cost to the State, the Contractor must immediately remedy any issues, material weaknesses, or other items identified in each audit as they pertain to the Services.

2.2. Object Reassignment

Any Service subscriptions that are provided by the number of items that may be used by or in conjunction with it, such as nodes, users, or connections ("Objects"), may be reassigned to other, similar Objects within the Subscriber's organization at any time and without any additional fee or charge. For example, a named user subscription may be assigned to another user. But any such reassignment must be in conjunction with termination of use by or with the previous Object, if such termination is required to keep the total number of licensed Objects within the scope of the applicable subscription. Should a Subscriber require a special code, a unique key, or similar item to reassign the subscription as contemplated by this section, the Contractor will provide such a code, key, or similar item to the Subscriber at any time and without a fee or charge. A later section in this Agreement governs assignment of a Subscriber's subscription to any Service to a successor in interest.

2.3. Generated Files

"Generated Files" are files storing information, instructions, or data that a Subscriber creates or modifies using the Contractor's Services and in which the data or other information was provided or created by a Subscriber. Such Generated Files are also included in the definition of "Subscriber's Data" in a later section of this Agreement. Examples of such files could include, among others, text files generated with a word processor, data tables created with a database engine, and image files created with a graphics application. Applications consisting of instruction sets created with a

programming language that the Contractor provided to a Subscriber also would be considered Generated Files. As between the Subscriber and the Contractor, the Subscriber will own all Generated Files that the Subscriber prepares by using the Services, excluding such portions of the Generated Files that consist of embedded portions of the Software. The Contractor or its licensors will retain ownership of any portions of the Software embedded into Generated Files. But the Contractor grants to the Subscriber a nonexclusive, royalty-free right to reproduce and distribute to third parties any portions of the intellectual property embedded in any Generated Files that the Subscriber creates while using the Services in the way the Services are designed to be used. In the Subscriber's distribution of the Generated Files, the Subscriber may not use the Contractor's name, logo, or trademarks, except to the extent that such are incorporated in such Generated Files by the design of a Service when used as intended.

2.4. Contractor Warranties

The Contractor warrants the following:

- i. It has validly entered into this Agreement and has the legal power to do so.
- ii. The Services will perform materially in accordance with the applicable user guide and the requirements of this Agreement.
- iii. Subject to any limitations specified in the applicable Service Attachment, the functionality of the Services will not be materially decreased during a subscription term.
- iv. It will not transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs ("Malicious Code") to a Subscriber.

For any breach of a warranty above, the State's and individual Subscribers' remedies will be as provided in the section of this Agreement dealing with termination.

Failure of the Contractor to meet any SLAs in an applicable Service Attachment will not be considered a breach of this warranty section unless the State reasonably determines that the failure is persistent or extended in duration.

2.5. State and Subscribers Responsibilities

The State and each Subscriber will be responsible for their respective compliance with this Agreement. Additionally, each Subscriber will:

- i. Be responsible for the accuracy, quality, and legality of its data and of the means by which the data was acquired.
- ii. Use commercially reasonable efforts to prevent unauthorized access to or use of the Services to which it subscribes and notify the Contractor promptly of any unauthorized access or use of which it becomes aware.
- iii. Use the Services only in accordance with the applicable user guide, to the extent it is not inconsistent with this Agreement, applicable laws, or government regulations.

A Subscriber may not:

- i. Intentionally make the Services available to anyone other than its employees and contractors acting on its behalf.
- ii. Sell, resell, rent or lease the Services,
- iii. Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights.
- iv. Intentionally use the Services to store or transmit Malicious Code,
- v. Intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein.
- vi. Attempt to gain unauthorized access to the Services or their related systems or networks.

3. Insurance, Indemnification, Limitation of Liability

3.1. Insurance

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees. Contractor shall procure and maintain for the duration of the contract insurance for claims arising out of their services and including, but not limited to loss, damage, theft or other misuse of data, infringement of intellectual property, invasion of privacy and breach of data.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): written on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Defense costs shall be outside the policy limit.
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. If Contractor is a sole proprietor, partnership or has no statutory requirement for workers' compensation, Contractor must provide a letter stating that it is exempt and agreeing to hold Entity harmless from loss or liability for such.
4. Technology Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall cover all applicable Contractor personnel or subcontractors who perform professional services related to this agreement.
5. Cyber liability (first and third party) with limits not less than \$5,000,000 per claim, \$10,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Pre-Qualified Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property,

including but not limited to infringement of copyright, 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 limits sufficient to respond to these obligations.

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

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

Except for Workers' Compensation and Professional Liability insurance, the State of Ohio, its officers, officials and employees are to be covered as additional insureds 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. Coverage can be provided in the form of an endorsement to the Contractor's insurance.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the State of Ohio, its officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with it.

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 shall 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 shall provide State of Ohio with 30 days written notice of cancellation or material change to any insurance policy required above, except for non-payment cancellation. Material change shall be defined as any change to the insurance limits, terms or conditions that would limit or alter the State's available recovery under any of the policies required above. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Waiver of Subrogation

Contractor hereby grants to State of Ohio a waiver of any right to subrogation which any insurer of said Contractor may acquire against the State of Ohio by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies

regardless of whether or not the State of Ohio has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Deductibles and self-insured retentions must be declared to and approved by the State. The State may require the Contractor to provide proof of ability to pay losses and related investigations, claims administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the deductible or self-insured retention may be satisfied by either the named insured or the State.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work. The Discovery Period must be active during the Extended Reporting Period.

Verification of Coverage

Contractor shall furnish the State of Ohio with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements 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. The State of Ohio reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Contractor shall ensure that the coverage set forth herein shall include the work of subcontractors under this Agreement.

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.

3.2. Indemnification for Infringement

The Contractor will release, protect, indemnify, defend, and hold the State and the Subscribers harmless from and against any claims of infringement by any third parties based on any Service provided under this Agreement. Any defense of the State or a State Subscriber requires and is subject to the approval and consent of the Ohio Attorney General. Any such defense will be at the Contractor's sole cost and expense. Further, the Contractor will indemnify the State and Subscribers for any liability resulting from any such claims, demands, or suits, as well as hold the State and the Subscribers harmless for the Contractor's liability, losses, and damages resulting from such. This

obligation of defense and indemnification will not apply where the State or a Subscriber has modified or misused the Service and the claim or the suit is based on the modification or misuse. The State or affected Subscribers will give the Contractor notice of any such claim as soon as reasonably practicable and allow the Contractor to control the defense of any such claim, upon consultation with and the approval of the Office of the State's Attorney General.

If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement or similar claim that is pending may succeed, the Contractor will do one of the following four things as soon as reasonably possible to avoid or minimize any interruption of the Subscribers business:

- i. Modify the offending Service so that it is no longer infringing but provides substantially the same functionality as before the modification.
- ii. Replace the offending Service with an equivalent or better, non-infringing offering.
- iii. Acquire the right for the Subscribers to use the infringing Service as it was intended to be used under this Agreement.
- iv. Terminate the infringing Service and refund the amount the Subscribers paid for the Service and the amount of any other Service that requires the availability of the infringing Service for it to be useful to the Subscribers.

3.3. Limitation of Liability - State

The State's and Subscribers' combined total liability for damages, whether in contract, law, or equity, will not exceed two times the amount of compensation payable to Contractor for the previous 12 months of Service related to the Service Attachment under which the damages occurred or the amount of direct damages incurred by the Contractor, whichever is less.

3.4. Limitation of Liability - Contractor

The Contractor will be responsible for any liability, claims, losses and damages arising out of the performance of this Agreement provided such liability, claim, loss or damage is due to the fault or negligence of the Contractor, its employees, agent, subcontractors or affiliates. Except for personal injury (including death), property damage, and intellectual property rights infringement, Contractor's total liability for damages is limited to twice the amount paid for the Services in the previous 12 months. Notwithstanding the foregoing, Contractor acknowledges and understands that under Ohio law, the State and Subscribers cannot be required to indemnify Contractor or any other party for damages in excess of the limitation of liability stated in this Agreement, and Contractor agrees that, if required by applicable law, Contractor shall be liable for all direct damages due to the fault or negligence of Contractor.

EXCEPT FOR A DATA BREACH OR AS EXPRESSLY PROVIDED IN THIS CONTRACT, NEITHER PARTY, ITS AFFILIATES OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

4. Confidentiality and Handling of Data

4.1. Confidentiality

The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Agreement.

If any Service delivered under this Agreement contains data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Agreement. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

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

- i. was already in the possession of the Receiving Party without an obligation of confidence;
- ii. is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
- iii. except as provided in the next paragraph, is or becomes publicly available without a breach of this Agreement;
- iv. is rightfully received by the Receiving Party from a third party without an obligation of confidence;
- v. is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
- vi. is released under a valid order of a court or governmental agency, provided that the Receiving Party:
 - a. Notifies the Disclosing Party of the order immediately upon receipt of it, unless it is legally prohibited from doing so; and
 - b. Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things, is nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Agreement.

Therefore, item (iii) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

The Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Agreement.

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

This Agreement is not Confidential Information. All its terms and conditions, including pricing and any attachments, represent public information.

4.2. Public Records Requests.

Should the Contractor receive any public records request with respect to any Subscriber's Data, the Contractor will immediately notify any affected Subscriber and fully cooperate with the affected the Subscriber directs.

4.3. Handling of Subscriber's Data

"Subscriber's Data" is any information, data, files, or software that a Subscriber uses or stores on or in conjunction with the Services, including but not limited to Generated Files. The Contractor must use due diligence to ensure computer and telecommunications systems and Services involved in storing, using, or transmitting Subscriber's Data are secure and to protect that data from unauthorized disclosure, modification, or destruction. To accomplish this, the Contractor must comply with all applicable National Institute of Standards and Technology ("NIST") standards for Moderate Impact systems and:

- i. Apply appropriate risk management techniques to ensure security for all sensitive data, including but not limited to any data identified as Confidential Information elsewhere in this Agreement.
- ii. Ensure that its internal security policies, plans, and procedures address the basic security elements of confidentiality, integrity, and availability.
- iii. Maintain plans and policies that include methods to protect against security and integrity threats and vulnerabilities, as well as detect and respond to those threats and vulnerabilities.
- iv. Maintain appropriate identification and authentication processes for information systems and services associated with Subscriber's Data.
- v. Maintain appropriate access control and authorization policies, plans, and procedures to protect system assets and other information resources associated with Subscriber's Data.

- vi. Implement and manage security audit logging on information systems, including computers and network devices.

The Contractor must maintain a robust boundary security capacity that incorporates generally recognized system hardening techniques. This includes determining which ports and services are required to support access to systems that hold Subscriber's Data, limiting access to only these points and disabling all others. To do this, the Contractor must use assets and techniques such as properly configured firewalls, a demilitarized zone for handling public traffic, host-to-host management, Internet protocol specification for source and destination, strong authentication, encryption, packet filtering, activity logging, and implementation of system security fixes and patches as they become available. And the Contractor must use two-factor authentication to limit access to systems that contain Subscriber's Data.

Unless a Subscriber instructs the Contractor otherwise in writing, the Contractor must assume all Subscriber's Data is both confidential and critical for Subscriber operations, and the Contractor's security policies, plans, and procedure for the handling, storage, backup, access, and, if appropriate, destruction of that data must be commensurate to this level of sensitivity. As part of the Contractor's protection and control of access to and use of data, the Contractor must employ appropriate intrusion and attack prevention and detection capabilities. Those capabilities must track unauthorized access and attempts to access Subscriber's Data, as well as attacks on the Contractor's infrastructure associated with Subscriber's Data. Further, the Contractor must monitor and appropriately address information from its system tools used to prevent and detect unauthorized access to and attacks on the infrastructure associated with Subscriber's Data.

The Contractor must use appropriate measures to secure a Subscriber's Data before transferring control of any systems or media containing that Subscriber's Data. The method of securing the data must be appropriate to the situation and may include erasure, destruction, or encryption of the data before transfer of control. The transfer of any such system or media must be reasonably necessary for the performance of the Contractor's obligations under this Agreement.

The Contractor must have a business continuity plan in place. The Contractor must test and update the IT disaster recovery portion of its business continuity plan at least annually. The plan must address procedures for response to emergencies and other business interruptions. Part of the plan must address backing up and storing data at a location sufficiently remote from the facilities at which the Contractor maintains Subscriber's Data in case of loss of that data at the primary site. The plan also must address the rapid restoration, relocation, or replacement of resources associated with Subscriber's Data in the case of a disaster or other business interruption. The Contractor's business continuity plan must address short- and long-term restoration, relocation, or replacement of resources that will ensure the smooth continuation of operations related to Subscriber's Data. Such resources may include, among others, communications, supplies, transportation, space, power and environmental controls, documentation, people, data, software, and hardware. The Contractor also must provide for reviewing, testing, and adjusting the plan on an annual basis. Contractor must provide annual disaster recovery testing results upon written request from Subscriber.

The Contractor may not allow Subscriber's Data to be loaded onto portable computing devices or portable storage components or media unless necessary to perform its obligations under this Agreement properly. Even then, the Contractor may permit such only if adequate security measures are in place to ensure the integrity and security of the data. Those measures must include a policy on physical security for such devices to minimize the risks of theft and unauthorized access that includes a prohibition against viewing sensitive or confidential data in public or common areas. At a minimum, portable computing devices must have anti-virus software, personal firewalls, and system password protection. In addition, Subscriber's Data must be encrypted when stored on any portable computing or storage device or media or when transmitted from them across any data network. The Contractor also must maintain an accurate inventory of all such devices and the individuals to whom they are assigned.

Any encryption requirement identified in this provision must meet the NIST standards identified above.

The Contractor must have reporting requirements for lost or stolen portable computing devices authorized for use with Subscriber's Data and must report any loss or theft of such to the State in writing as quickly as reasonably possible. The Contractor also must maintain an incident response capability for all security breaches involving Subscriber's Data whether involving mobile devices or media or not. The Contractor must detail this capability in a written policy that defines procedures for how the Contractor will detect, evaluate, and respond to adverse events that may indicate a breach or attempt to attack or access Subscriber's Data or the infrastructure associated with Subscriber's Data.

In case of an actual security breach that may have compromised Subscriber's Data, including but not limited to loss or theft of devices or media, the Contractor must notify the Subscriber in writing of the breach within 24 hours of the Contractor becoming aware of the breach, and fully cooperate with the Subscriber to mitigate the consequences of such a breach. This includes any use or disclosure of the Subscriber's Data that is inconsistent with the terms of this Agreement and of which the Contractor becomes aware, including but not limited to, any discovery of a use or disclosure that is not consistent with this Agreement by an employee, agent, or subcontractor of the Contractor.

The Contractor must give affected Subscribers full access to the details of the breach and assist each Subscriber in making any notifications to potentially affected people and organizations that the affected Subscribers deem are necessary or appropriate. The Contractor must document all such incidents, including its response to them, and make that documentation available to the affected Subscribers on request. In addition to any other liability under this Agreement related to the Contractor's improper disclosure of Subscriber's Data, and regardless of any limitation on liability of any kind in this Agreement, the Contractor will be responsible for acquiring one year's identity theft protection service on behalf of any individual or entity whose personally identifiable information is compromised while it is in the Contractor's possession. Such identity theft protection must be reasonably acceptable to the State.

All Subscriber Data will remain the property of the Subscriber. The Contractor must ensure that the Subscriber retains access and download capability for purposes of retrieving its data for research, investigation, transfer, or migration to other systems. Upon termination, cancellation, expiration or other conclusion of this Agreement, the

Contractor shall make available for download or retrieval for up to 30 days all Subscriber data to the Subscriber unless the Subscriber requests that such data be destroyed. This provision shall also apply to all Subscriber Data that is in the possession of subcontractors or agents of the Contractor. The Contractor shall initiate such return or destruction not less than three business days after the conclusion of this Agreement and the Contractor shall certify in writing to the Subscriber that such return or destruction has been completed at any time upon Subscriber's request. Contractor will not otherwise dispose of Subscriber data without the Subscriber's prior consent. The Contractor will provide Subscriber a copy of current data disposal policies upon request.

The Contractor must ensure that any authorized State personnel have full access to data stored on any State's instance. No data may be hidden in such a way that an authorized System Administrator cannot gain full access.

All Subscriber Data at rest in systems supporting the Contractor's Services must reside within the contiguous United States with a minimum of two data center facilities at two different and distant geographic locations and be handled in accordance with the requirements of this section at all Contractor locations.

When the Contractor performs any Services under this Agreement 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 or whose results from such background check are unacceptable to the applicable Subscriber.

4.4. Subscriber Responsibilities

Each Subscriber will be responsible for its compliance with this Agreement, be responsible for the accuracy, quality, and legality of its Subscriber's Data and for the means by which it acquired that Subscriber's Data, use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify the Contractor promptly of any unauthorized access or use of which it becomes aware. Further, the Subscriber will use the Services only in accordance with the applicable user guide(s), to the extent not inconsistent with the Subscriber's rights under this Agreement, applicable laws, and government regulations.

Further, a Subscriber may not intentionally make the Services available to anyone other than its employees and its contract personnel, unless the applicable Service or Services are designed to be publicly facing or intended for interaction with clients of the Subscriber (e.g., hosted web sites), sell, resell, rent, or lease the Services, use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights. The Subscribers also may not intentionally use the Services to store or transmit malicious

code, intentionally interfere with or disrupt the integrity or performance of the Services or third-party data contained therein or attempt to gain unauthorized access to the Services or their related systems or networks.

5. Orders, Requesting Service, Delivery, Acceptance, Termination, and Modification

5.1. Acceptance

The acceptance procedure for setup or installation of a new Service not previously purchased by the Subscriber will be a review by the Subscriber to ensure the Service complies with the performance requirements in the applicable Service Attachment.

In addition to the requirements of the applicable Service Attachment, if ordering documents such as a statement of work are authorized in that Service Attachment, the review will include any additional requirements in the applicable Order Form. The Subscriber will have up to 90 days after the establishment of the Service to do this. The Subscriber will not issue a formal letter of acceptance, unless otherwise specified in the applicable Service Attachment, and passage of 90 days will imply acceptance, though the Subscriber will issue written notice of noncompliance if setup, installation, or the Service does not meet the requirements in this Agreement.

If the Subscriber issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter to the extent that the problems represent non-conformance to the Service's documentation, or other requirements set forth in the Agreement. If the Subscriber has issued a noncompliance letter, the Service, installation, or set up will not be accepted until that Subscriber issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the Subscriber will issue the acceptance letter within 15 days after all defects have been fixed. If the Contractor fails to correct the defect(s), the applicable Order(s) will terminate without cost or obligation to the Subscriber, and the Subscriber will be entitled to a full refund of any payments made for the Service, setup, and installation.

The applicable Service Attachment may provide additional or alternative acceptance procedures, but no Order may change the acceptance process.

5.2. Service, Termination, or Modification

All Orders for Service, as well as any modification to an Order, must be made through the State's Ordering System, except for Orders involving only Cooperative Purchasing Members.

Cooperative Purchasing Members do not use the State's Ordering System and will submit their Orders directly to the Contractor.

The Contractor must act as the sole point of contact for all Services under this Agreement and any related Service Attachments for all Subscribers. The Contractor may not require a Subscriber to contact any of the Contractor's third-party suppliers or otherwise transact business directly with such suppliers for any Services ordered under this Agreement, and in all respects, the Contractor must maintain a seamless, single-

point-of-contact business relationship with each Subscriber for the Services ordered under this Agreement.

6. Termination – Agreement, Service Attachments, Orders

6.1. Termination by the State

The Contractor must comply with all terms and conditions of this Agreement. If the Contractor materially fails to perform any one of its obligations under this Agreement and does not cure this failure within thirty (30) days, it will be in default, and the State may proceed in any or all the following ways:

- I. The State may terminate this Agreement, the applicable Service Attachment(s), or the affected Order(s) under this Agreement.
- II. The State may withhold payment for any affected Service until the Contractor cures the noncompliance or the Parties agree on the corrective action the Contractor must take to cure the noncompliance.
- III. The State may file a complaint for damages with a court of competent jurisdiction in Ohio.

The State also may terminate this Agreement or any Service Attachments for its convenience with 30 days written notice to the Contractor. In any such event, each Subscriber must pay for all accrued and unpaid charges for Services in the then-current fiscal year and any fee specified in the affected Service Attachment(s) for early termination (“Early Termination Charge”), if applicable. Under no circumstances does termination for convenience result in a refund of any pre-paid fees.

If the termination of the Agreement or any Service Attachment(s) is for cause, then neither the State nor any Subscribers will be liable for any Early Termination Charge, and the Contractor will fully cooperate in any disentanglement efforts any affected Subscribers reasonably request at no cost to the requesting Subscribers, even if disentanglement is a separately priced Service in the applicable Service Attachment(s). Upon termination of this Agreement for cause, Contractor will refund any pre-paid fees for the Services prorated from the first date giving rise to the termination, and all Subscribers and the State will also be entitled to any other damages and remedies available as a result of the termination for cause.

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 and other obligations due as part of this Agreement, the State's obligations under this Agreement will terminate as of the date the funding expires without further obligation of the State, including but not limited to any Early Termination Charge outlined in any affected Service Attachment(s).

6.2. Termination of Orders by Subscriber or Contractor

Under this Agreement, specific Orders also may be terminated by either a Subscriber or the Contractor, as follows:

6.2.1. By a Subscriber

A Subscriber may terminate Service under any Order it has placed, and it may do so at any time for any or no reason. The Subscriber will be liable for all fees set forth in an executed Order or Service Attachment unpaid as of the termination date, as well as any Early Termination Charge outlined in the appropriate Service Attachments.

If the Subscriber's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly or other governmental body, and the General Assembly or other governmental body fails at any time to continue funding for the payments and other obligations due under an Order, the Subscriber's obligations with respect to that Order will terminate as of the date the funding expires, and the Subscriber will have no further obligation with respect to such Order, including but not limited to any Early Termination Charge outlined in any affected Service Attachments.

If a termination of any Service under one or more Orders is for cause or non-appropriation of funds, as described in this Section 6, the Subscriber will not be liable for any Early Termination Charge, if such are otherwise applicable to the Service or Services so terminated. If the termination is for cause, the Contractor will fully cooperate in any disentanglement efforts the Subscriber reasonably requests at no cost to the Subscriber.

6.2.2. By the Contractor

If a Subscriber materially defaults in the performance of any of its duties or obligations under this Agreement, the Contractor, by giving at least 30 days prior written notice, may cancel any affected Services provided to that Subscriber under this Agreement.

If the Subscriber cures the default before the cancellation of Service date, the Order will remain in full force and effect.

If the Subscriber fails to cure, then the Subscriber will remain liable for charges accrued but unpaid as of the cancellation date and any Early Termination Charge as outlined in the appropriate Service Attachment(s), if applicable.

7. Financial – Fees, Claims and Disputes, Billing, and Payment

7.1. Fees

All applicable charges are fully documented in the appropriate Service Attachment(s). The Subscriber will not be responsible for any charges not documented in the applicable Service Attachment(s) or be responsible for any charges waived by the Contractor in this Agreement or the applicable Service Attachment(s).

Subscribers are not subject to increases in fees during the term of the relevant Service Attachment. For any Order placed with a term that extends beyond the then-current term of this Agreement, that Order's applicable fees may not increase until that Order term has expired.

Subscribers are not responsible for any charges from the Contractor's third-party suppliers for any Services ordered under this Agreement, unless an applicable Service Attachment expressly provides otherwise. In this regard, the Contractor is the seller or reseller of all Services covered by this Agreement, and any payments due to the Contractor's third-party suppliers for Services under this Agreement are included in the Contractor's fees specified in the applicable Service Attachment, unless that Service Attachment expressly provides otherwise.

7.2. Billing

Invoices will be issued at the Order level, but the Subscriber may require a recap at the agency, division, or district level based on the organizational structure of the Subscriber.

Invoices must be submitted to the office designated in the State's Ordering System as the "bill to address". The invoice must be submitted within 60 days of the Service. If the Subscriber does not receive the invoice within the 60 days of the date of Service, the Subscriber will be entitled to deny payment of the invoice.

A proper invoice must include the following information:

- i. Name and address of the Contractor as designated in this Agreement.
- ii. Federal Tax Identification Number of the Contractor as designated in this Agreement.
- iii. Invoice remittance address as designated in the Agreement.
- iv. A sufficient description of the Services to allow the Subscriber to identify the Services and perform an audit of the Services.

7.3. Payment

Payments for Services under this Agreement will be due on the 30th calendar day after the actual receipt of a proper invoice in the office designated to receive the invoice. The Contractor agrees to receive payment from approved vouchers by electronic fund transfer ("EFT") for Subscribers that rely on them to make payment. The Contractor will cooperate with Subscribers in providing the necessary information to implement EFT. The date the EFT is issued in payment will be considered the date payment is made, or if a Subscriber does not use an EFT process, the date its check or warrant is issued in payment will be considered the date payment is made.

7.4. State Reporting Requirements

The Contractor must provide the State with a recap of all Services provided to the Subscribers at any time upon request. Additional, specific reporting data requirements may be outlined in the Service Attachment(s).

7.5. Service Level Guarantee and Credits

The Contractor will issue a credit allowance to any Subscriber affected by a Service outage, as defined in the Service Level Agreement contained in the applicable Service Attachment. The credit will appear on the affected Subscriber's next invoice, or if the Subscriber does not make any subsequent purchases from Contractor, the Contractor

will issue a check to the Subscriber as payment within 30 days of expiration of the relationship with that Subscriber.

7.6. Cost Recovery

The Contractor must pay a fee to the State to cover the estimated costs the State will incur administering this Agreement and the Services offered under it (“Cost Recovery Fee”).

The Cost Recovery Fee will be 2% of the total dollar amount of Services the Contractor invoices under this Agreement to all Subscribers, including all State-level entities and all Cooperative Purchasing Members. The Cost Recovery Fee is included in the prices reflected on the Service Attachment and the Contractor may not add a surcharge to Orders under this contract to cover the amount of the Cost Recovery Fee. The State will generate notification to the Contractor via email on the last day of the calendar quarter advising the Contractor to complete a revenue reporting form provided by the State within 30 days after the close of the quarter. The State may compare the form provided by the Contractor to information in the State’s accounting system, the State’s Ordering System, and other records for purposes of verifying the accuracy of the form. The State will generate an invoice to the Contractor for the quarterly Cost Recovery Fee based on reported revenue from the Contractor or the State’s records, whichever is greater.

Examples of the calculation of a Cost Recovery Fee:

1. An example of a contractor with sales only to State Entities and thus no revenue from Co-op Members:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 0	\$ 1,584	Name of Contact
Q2	\$ 10,392	\$ 0	\$ 208	Name of Contact
Q3	\$ 209,105	\$ 0	\$ 4,182	Name of Contact
Q4	\$ 74,970	\$ 0	\$ 1,499	Name of Contact

2. An example of a contractor with sales to both State Entities and Co-op Members and thus revenue from both:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$ 79,193	\$ 20,963	\$ 2,003	Name of Contact
Q2	\$ 10,392	\$ 4,197	\$ 292	Name of Contact
Q3	\$ 209,105	\$ 63,210	\$ 5,446	Name of Contact
Q4	\$ 74,970	\$ 1,471	\$ 1,529	Name of Contact

3. An example of a contractor with sales to neither State Entities nor Co-op Members and thus no revenue to report:

FY15				
Quarter	Revenue from State Entities	Revenue from Co-op Members	Revenue Share Due	Reported by
Q1	\$0	\$0	\$0	Name of Contact
Q2	\$0	\$0	\$0	Name of Contact
Q3	\$0	\$0	\$0	Name of Contact
Q4	\$0	\$0	\$0	Name of Contact

The Contractor must use the State's Web-based system for reporting revenue generated under this Agreement.

The Contractor must remit the 2% Cost Recovery Fee to the State quarterly by check to the State of Ohio, Department of Administrative Services. The check must be made payable to the Treasurer, State of Ohio, and must be sent to the State at the following address:

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

To ensure that the payment is credited properly, the Contractor must identify the payment as a State of Ohio Cost Recovery Fee and reference this Agreement. The first payment will be calculated against all Services rendered to the existing Subscribers transferred to the Agreement in the month of effective date. Subsequent payments will be calculated against all Subscribers as stated above.

The Contractor's contact person for Cost Recovery Section will be:

Name: Ashley Ketcher
Address: Workfront, Inc.
3301 N. Thanksgiving Way
Lehi, UT 84043
Phone: 801-477-9658
Email: AR@workfront.com

8. Support

8.1. Service Support Generally

During the term of any Order, the Contractor will provide the Subscriber with telephonic assistance and advice for using all Services covered by the Order. The Contractor also will provide troubleshooting and problem resolution by developing and providing fixes or patches for errors in any software it provides and contract with any third-party providing software that supports the Services for the same. As part of the support the Contractor provides in exchange for the applicable fee, the Contractor also will keep all software current by installing all relevant service packs and patches as well as all updates and new releases and versions of the software as soon as reasonably possible. The Contractor also will keep its own software offering compatible with any updated third-party software that is part of the Services or supports the Services. The way the Contractor provides support will be governed by the Contractor's policies and programs described in the applicable documentation or other materials that the Contractor uses to notify its customers generally of such policies. But regardless of the Contractor's policies and programs, unless otherwise agreed in the applicable Service Attachment, in all cases such support must comply with the requirements of this Agreement and the applicable Service Attachment(s). And the Contractor must provide the support in a competent, professional, and timely manner.

8.2. Equipment Support Generally

Contractor will not provide any equipment under this Agreement.

8.3. Adjustments

A Subscriber may acquire subscriptions that are based on the number of users, nodes, computers, processors, or other counts of items covered by an Order ("Objects").

During an Order's duration ("Order Term"), a Subscriber may increase the volume of its Order (e.g., add additional users) without increasing the Order Term. The cost of any addition Objects or similar increase in usage must be prorated to reflect the time remaining in the Order Term rather than be based on the full Order Term.

8.4. Support Parameters

A Subscriber may initiate support requests for problems it encounters with the Software by telephone, email, Internet, or fax, and the Contractor must maintain lines of communication that support all four forms of communication. The Contractor must make support available 24 hours a day, seven days per week (the "Support Window"), and it must do so by staffing its support function with an adequate number of qualified personnel to handle its traditional volume of calls. Further, the Contractor must maintain at least one support center in North America with adequate English-speaking support personnel. The applicable Service Attachment(s) may provide for different support periods. If the State elects not to use offshore support, they will experience a decreased level of service only during the hours of 11:00 pm MST to 8:00 am MST (9:00 pm EST to 6:00 am EST) from the levels of customer support found in Contractor's support policy. A Subscriber's technical staff may contact any support center that the Contractor maintains, and they may choose to do so based on convenience, proximity, service hours, languages spoken, or otherwise.

8.5. Incident Classification

The Contractor must classify and respond to support calls by the underlying problem's effect on a Subscriber. In this regard, the Contractor may classify the underlying problem as critical, urgent, or routine. The guidelines for determining the severity of a problem and the appropriate classification of and response to it are described below.

The Contractor must designate a problem as "critical" if the Service is functionally inoperable, the problem prevents the Service or a major component or function from being used in production mode or there is significant potential for data integrity problems. This classification assumes there is no existing patch for the problem. The Contractor must classify a problem as "urgent" if the underlying problem significantly degrades the performance of the Service or a major function or component of it or materially restricts a Subscriber's use of the Service in a production mode. A problem also will be considered urgent if a commonly used feature often generates application errors, causes the Service to freeze, locks up the computer on which the Service is running, or otherwise routinely does not work as intended. Classification of a problem as urgent rather than critical assumes that an affected Subscriber still can conduct business with the Service and response times are consistent with the needs of the Subscriber for that type of Service. As with the critical classification, the urgent classification assumes

there is no existing patch or acceptable workaround procedure for the problem. Finally, the Contractor may classify a support call as “routine” if the underlying problem is a question on end use or configuration of the Service. It also may be classified as routine when the problem does not materially restrict a Subscriber’s use of the Service in its production environment, such as when a feature or combination of features generates minor or rare errors. Also, if any problem that otherwise should be classified as critical or urgent can be solved either by a known workaround or an existing patch that does not materially interfere with a Subscriber’s use of the Service, the problem may be treated as routine.

The Contractor must apply the above classifications in good faith to each call for support, and the Contractor must give due consideration to any request by a Subscriber to reclassify a problem, taking into account the Subscriber’s unique business and technical environments and any special needs it may have.

8.6. Incident Response

The Contractor must respond to critical problems by ensuring that appropriate managerial personnel are made aware of the problem and that they actively track and expedite a resolution. The Contractor must assign support or development personnel at the appropriate level to the problem, and those personnel must prepare a work plan for the problem’s expeditious resolution. The work plan must assume that the Contractor’s appropriate staff will work without material interruption until the problem is resolved properly. At the request of an affected Subscriber, the Contractor’s personnel must maintain daily contact with the Subscriber’s technical staff to keep the Subscriber abreast of efforts being made to solve the problem. The Contractor also must provide the Subscriber’s technical staff with direct access to the Contractor’s support personnel and product development personnel, if appropriate, who are assigned to the problem.

The Contractor must respond to urgent problems by having its product development and support personnel work in concert to develop a fix or a workaround. If requested, the Contractor’s support personnel must maintain regular contact with the affected Subscribers to keep their technical staff abreast of progress toward a resolution of the problem. The Contractor’s support staff must include the problem in regular status reports to the Contractor’s management team. And the Contractor’s support staff must provide the fix or workaround procedure as soon as it is available.

The Contractor must respond to routine problems by providing the affected Subscribers with a fix or workaround on a priority basis if the problem is one for which an existing patch or workaround already exists. For newly identified problems falling into this classification, the Contractor’s support personnel must generate a problem report, and the appropriate development or support personnel then must prioritize the problem in relation to other outstanding product issues. The assigned priority then will govern the problem solving or developmental work needed to address the problem and the schedule for delivering a solution. For routine calls that involve end usage and configuration issues rather than bugs or other technical problems, the Contractor’s first or second level support personnel must provide the Subscriber’s technical staff with telephonic assistance on a non-priority basis.

8.7. Response Times

The maximum time that the Contractor takes to respond initially to a support request may vary based upon the classification of the request. During the Support Window, the Contractor's response time for a critical support request will be less than one hour. The Contractor's response time for an urgent request must be less than two hours during the Support Window. And the Contractor's response time for a routine support request must be less than four hours during the Support Window. The applicable Service Attachment may provide for shorter response times, and nothing contained herein will limit the application of any credits for failure to meet any service level agreements in the applicable Service Attachment.

8.8. Escalation Process

Any support call that is not resolved must be escalated to the Contractor's management under the following parameters. Unresolved problems that are classified as critical must be escalated to the Contractor's support manager within one hour and to the director level after four hours. If a critical problem is not resolved within one day, it must escalate to the CEO level after two days. The Contractor's support staff will escalate unresolved urgent problems to its support manager within three hours, to the director level after one day, and to the CEO level after two days.

8.9. Subscriber Obligations

To facilitate the Contractor meeting its support obligations, Subscribers must provide the Contractor with the information reasonably necessary to determine the proper classification of the underlying problem. They also must assist the Contractor as reasonably necessary for the Contractor's support personnel to isolate and diagnose the source of the problem. Additionally, to assist the Contractor's tracking of support calls and the resolution of support issues, Subscribers must make a reasonable effort to use any ticket or incident number that the Contractor assigns to a particular incident in each communication with the Contractor.

8.10. Relationship to Support Level Agreements ("SLA")

The Contractor's support obligations are in addition to the SLAs in the Service Attachment(s). Furthermore, the SLAs may provide for credits to the Subscribers even though the Contractor is meeting its support obligations hereunder.

9. Standard Provisions

9.1. Certification of Funds

None of the rights, duties, or obligations in this Agreement will be binding on the State or a Subscriber, and the Contractor will not begin its performance under any Order, until all the following conditions occur for that Order:

- i. All statutory provisions under the ORC, including Section 126.07, have been met.
- ii. All necessary funds are made available by the appropriate State agencies.
- iii. If required, approval of this Agreement or the applicable Order is given by the Controlling Board of Ohio.

- iv. If the Subscriber is relying on federal or third-party funds for its Order, the Subscriber gives the Contractor written notice that such funds have been made available.

Additional or alternate legal requirements may apply to a political subdivision that is a Subscriber for an Order to be binding on it.

9.2. Excusable Delay

Neither Party will be liable for any delay in its performance arising from causes beyond its control and without its negligence or fault. The delayed Party will notify the other promptly of any material delay in performance and will specify in writing the proposed revised performance date or dates as soon as practicable after notice of delay. The proposed date or dates must be reasonable and cannot exceed the actual delay caused by the events beyond the control of the Party. In the case of such an excusable delay, the dates of performance or delivery affected by the delay will be extended for a period equal to the time lost by reason of the excusable delay. The delayed Party must also describe the cause of the delay and what steps it is taking to remove the cause.

The delayed Party may not rely on a claim of excusable delay to avoid liability for a delay if the delayed Party has not taken commercially reasonable steps to mitigate or avoid the delay. Things that are controllable by the Contractor's suppliers will be considered controllable by the Contractor.

9.3. Employment Taxes

Each Party will be solely responsible for reporting, withholding, and paying all employment related taxes, contributions, and withholdings for its own personnel, including, but not limited to, federal, state, and local income taxes, and social security, unemployment and disability deductions, withholdings, and contributions, together with any interest and penalties.

9.4. Sales, Use, Excise, and Property Taxes

The State and most Subscribers are exempt from any sales, use, excise, and property tax. To the extent sales, use, excise, or any similar tax is imposed on the Contractor in connection with any Service, such will be the sole and exclusive responsibility of the Contractor, and the Contractor will pay such taxes (together with any interest and penalties not disputed with the appropriate taxing authority) whether they are imposed at the time the Services are rendered or a later time.

9.5. Equal Employment Opportunity

The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including ORC Section 125.111 and all related Executive Orders.

Before this Agreement can be awarded or renewed, an Affirmative Action Program Verification Form must be submitted to the DAS Equal Opportunity Division to comply with the affirmative action requirements. Affirmative Action Verification Forms and approved Affirmative Action Plans can be found by to the Ohio Business Gateway at:

<http://business.ohio.gov/efiling/>

The State encourages the Contractor to purchase goods and services from Minority Business Enterprises (“MBEs”) and Encouraging Diversity, Growth and Equity (“EDGE”) contractors.

9.6. Drug-Free Workplace

The Contractor must comply with all applicable state and federal laws regarding keeping a drug-free workplace. The Contractor must make a good faith effort to ensure that all its employees, while working on State property or the property of any Subscriber, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.

9.7. Conflicts of Interest

No Contractor personnel may voluntarily acquire any personal interest that conflicts with the Contractor’s responsibilities under this Agreement. Additionally, the Contractor will not knowingly permit any public official or public employee who has any responsibilities related to this Agreement to acquire an interest in anything or any entity under the Contractor’s control, if such an interest would conflict with that official’s or employee’s duties. The Contractor will disclose to the State knowledge of any such person who acquires an incompatible or conflicting personal interest related to this Agreement. The Contractor will take all legal steps to ensure that such a person does not participate in any action affecting the work under this Agreement, unless the State has determined that, in the light of the personal interest disclosed, that person’s participation in any such action would not be contrary to the public interest.

9.8. Assignment

The Contractor may not assign this Agreement or any of its rights or obligations under this Agreement without the written consent of the State. Notice to the State of an assignment for purposes of consent shall be given as soon as possible after Contractor learns of the assignment.

9.9. Governing Law

This Agreement will be governed by the laws of Ohio, and venue for any disputes will lie with the appropriate court in Ohio.

9.10. Finding for Recovery

The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery under ORC §9.24. If the warranty is false on the date the Parties signed this Agreement, the Agreement is void *ab initio*.

9.11. Anti-trust

The Parties recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State and the Subscribers. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor now has or may acquire relating to the Services that are covered by this Agreement.

9.12. Use of Name

Neither Party will use the other Party's name in any marketing material, advertisement, or press release without the other Party's written consent. Further, neither Party may use any contact information collected from the other in the performance of this Agreement for general marketing or sales purposes, such as using email addresses to send mass marketing material, and must use such information solely for purposes of administering this Agreement.

9.13. 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 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 of is obtained. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

The Contractor must complete the attached Contractor/Subcontractor Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Agreement, 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.

9.14. Campaign Contributions

By signing this document, the Contractor certifies that all applicable parties listed in ORC Section 3517.13 are in full compliance with ORC Section 3517.13.

9.15. Export Compliance

The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Both the Contractor and the State represent that it is not named on any U.S. government denied-party list. Neither Party will permit others to access or use the Services in a US-embargoed country or in violation of any U.S. export law or regulation.

9.16. Safety and Security Rules

When accessing State networks and systems, the Contractor must comply with all applicable State policies and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules applicable to people on those premises. Subscribers may have policies and regulations that are specific to them and with which the Contractor must also comply.

9.17. Ohio Ethics Law

The Contractor certifies that it is currently in compliance with and will continue to adhere to the requirements of the Ohio ethics laws. The Contractor also certifies that all applicable parties listed in Ohio Revised Code Section 3517.13 are in full compliance with that section.

9.18. HIPAA Compliance

When the Contractor agrees in writing that it is handling Subscriber Data that includes health or medical data, the Contractor must comply with data handling and privacy requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its associated regulations.

9.19. Federal Tax Information

When the Contractor agrees in writing that it is handling Subscriber Data that includes Federal Tax Information, the Contractor must comply with the safeguards contained in the IRS Publication 1075 attachment.

9.20. Entire Agreement

This Agreement, together with any Service Attachments and all additional documents expressly incorporated herein, sets forth the entire agreement of the Parties with respect to the subject matter hereof and supersedes any prior agreements, promises, representations, understandings, and negotiations between the Parties with respect to the subject matter hereof.

Only an executable Order attached to a Service Attachment as an exhibit and identified as such in the applicable Service Attachment may be executed by a Subscriber to evidence a transaction under this Agreement. Further, neither the Subscriber nor the Contractor may add or require additional terms as part of any authorized Order. Documents attached to a Service Attachment as exhibits to be executed by a Subscriber typically identify authorized Service options the Subscriber has selected, provide information about a Subscriber, identify installation or configuration requirements or similar statements of work to be done by the Contractor, set schedules for performance, and similar matters.

9.21. Severability

If any provision hereunder is held invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement will be revised only to the extent necessary to make that provision legal and enforceable or, if that is not possible, the unaffected

portions of this Agreement will remain in full force and effect so long as the Agreement remains consistent with the Parties' original intent.

9.22. Survival

Any terms or conditions contained in this Agreement that must survive termination or expiration of this Agreement to be fully effective will survive the termination or expiration of the Agreement, unless expressly provided otherwise in this Agreement. Additionally, no termination or expiration of the Agreement will affect the State's right to receive Services for which the State has paid before expiration or termination, but no subscription to a Service will continue beyond the period paid for before termination or expiration of the Agreement.

If any Service Attachment should expire or be terminated, the remaining portions of this Agreement will survive.

9.23. No Waiver

The failure of a Party to demand strict performance of any terms or conditions of this Agreement may not be construed as a waiver of those terms or conditions, and that Party may later demand strict and complete performance by the other Party.

9.24. Order of Precedence

If a conflict between the terms and conditions of this Master Services Agreement and those in a Service Attachment arises, this Master Services Agreement will prevail, unless the Service Attachment specifically provides otherwise. If a user guide or other documentation is incorporated into the Agreement by reference, this Agreement, including any applicable Service Attachment(s), will prevail over any conflicting terms or conditions in any such incorporated documentation.

The Contractor must not include any terms and conditions on ordering or invoicing documents. Any terms and conditions included on ordering or invoicing documents will be considered null and void.

9.25. Headings

The headings herein are for convenience only and are not intended to have any substantive significance in interpreting this Agreement.

9.26. Governmental Authorization, Regulatory Changes

This Agreement is subject to all applicable federal, state, and local laws, rules, orders, and regulations, and each Party must comply with such in performing its obligations hereunder. To the extent any provision of this Agreement conflicts with any such law, rule, order, or regulation, that law, rule, order, or regulation will supersede the conflicting provision of this Agreement.

The Contractor may discontinue, limit, or impose additional requirements to the provision of Service, upon no less than 30 days written notice, if required to meet federal, state or local laws, rules, orders, or regulations. But if any such action materially affects any Subscriber's use of a Service, the Subscriber may on written notice to the Contractor terminate its use of the Service without an Early Termination Charge and receive a pro rata refund of any amounts paid in advance for the Service.

9.27. Notices

Except as otherwise provided in this Agreement, all notices hereunder must be in writing and may only be sent by registered or certified mail, postage prepaid; facsimile transmission, overnight courier, or email, upon confirmation of receipt.

Alternatively, such notices may be hand delivered if confirmation of receipt is attained at delivery.

The State's address for notification is:

Department of Administrative Services
Enterprise IT Contracting
30 E Broad Street, 39th Floor
Columbus, Ohio 43215
Attention: Contract Category Manager

The Contractor's address for notification is:

Workfront Inc.
3301 North Thanksgiving Way #100
Lehi, UT
84043
Attn: Legal Department

With a copy to: brianmccormac@workfront.com

9.28. Travel Expenses

Any travel that the Contractor requires to perform its obligations under this Agreement 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 the State's travel policy in Rule 126-1-02 of the Ohio Administrative Code.

9.29. Amendments

No amendment or modification of this Agreement will be effective unless it is in writing and signed by both Parties.

9.30. Boycotting

Pursuant to Ohio Revised Code 9.76 (B) 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.

9.31. Registration with the Secretary of State.

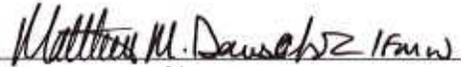
Contractor certifies that it one of the following:

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 registration requirements of the Ohio Secretary of State.

TO SHOW THEIR AGREEMENT, the Parties have executed this Agreement on the date(s) identified below.

WORKFRONT INC.

**STATE OF OHIO,
DEPARTMENT OF
ADMINISTRATIVE SERVICES**



Signature
Nathan Jennings

Signature

Printed Name
VP - Legal

Matthew M. Damschroder
Printed Name
DAS Director

Title
8/5/2020

Title

Date

9/18/2020

Effective Date