

## END-USER LICENSE AGREEMENT

This End-User License Agreement (“EULA”) is a legal agreement between each user that accesses and uses the Platform (defined below) (each an “Authorized User”) and Advanced Server Management Group, Inc. (“Licensor”). Licensor owns the DayWinner Intelligent Print Procurement (IPP) Platform, which includes, without limitation, all associated computer software, databases, content, media, printed materials, and documentation (the “Platform”). Licensor provides to Authorized Users the right to access and use the Platform pursuant to the terms of this EULA. The Platform protected by applicable federal, state, local and foreign laws, rules, regulations and treaties, including, without limitation, United States and foreign copyright laws and international copyright treaties.

BY ACCESSING, DOWNLOADING, INSTALLING, IMPLEMENTING, COPYING, OR USING THE PLATFORM, AUTHORIZED USER AGREES TO BE BOUND BY THE TERMS OF THIS EULA. AS THE SAME MAY BE AMENDED BY LICENSOR IN ITS DISCRETION FROM TIME TO TIME. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT ACCESS, DOWNLOAD, INSTALL, IMPLEMENT, COPY OR USE THE PLATFORM.

1. **Grant of Licenses.** Provided that an Authorized User accepts this EULA and complies with all terms and conditions of this EULA, under this EULA Licensor hereby grants Authorized User a limited, non-exclusive, non-transferable, non-assignable, revocable license for Authorized User’s internal purposes to access and use the Platform pursuant to this EULA. Authorized User hereby grants to Licensor a non-exclusive, worldwide, royalty-free, transferable, assignable, irrevocable license to use any content provided by Authorized User through the use of the Platform (“Authorized User Content”) solely to provide Platform service.

2. **Term and Termination.** This EULA shall become effective as of the acceptance of this EULA by Authorized User and shall remain in effect for a period of one (1) year (“Initial Term”), unless the EULA is earlier terminated as permitted under this EULA. The Initial Term shall renew automatically for additional one (1) year periods (each, a “Renewal Term”) unless earlier terminated as permitted under this EULA. Licensor may terminate this EULA, in whole or in part, for convenience, with or without cause, during the Initial Term or any Renewal Term by providing to Authorized User with notice of termination. In the event of the termination or expiration of this EULA, the licenses granted hereunder shall terminate and Authorized User shall immediately cease accessing and using the Platform. Termination or expiration of this EULA shall be without prejudice to any other right or remedy to which Licensor may be entitled under this EULA or applicable law. Termination or expiration of this EULA shall not relieve Authorized User from its obligations arising hereunder before termination or expiration of this EULA or which survive termination or expiration of this EULA.

3. **Additional Software.** Any software provided to an Authorized User by Licensor which updates or supplements the Platform is part of the Platform, as the case may be, and is governed by this EULA, unless other terms of use are provided with such updates or supplements whereupon such other terms of use shall apply. Any software provided to an Authorized User along with the Platform that is associated with a separate end-user license or other agreement is licensed to the Authorized User under the terms of that separate agreement, except if this EULA specifically sets forth the terms of use for such software, in which event the terms set forth in this EULA shall apply thereto.

#### 4. **Description of Other Rights and Limitations**

a. **Restrictions on Use.** Authorized User shall not:

- (i) market, sell, distribute, sublicense, use, modify, translate, reproduce, create derivative works from, dispose of, rent, lease, or authorize or permit access or use of any portion of the Platform except as expressly permitted in this EULA;
- (ii) access or use, or permit the Platform to be accessed or used, in a computer service bureau, time-sharing, or interactive cable television arrangement or in a network arrangement;
- (iii) reverse engineer, decompile, or disassemble the Platform, except and only to the extent that such activity is expressly permitted by applicable law;
- (iv) export or use the Platform in violation of U.S. law, including Department of Commerce export administration regulations;
- (v) remove any copyright and other proprietary notices contained in the Platform;
- (vi) upload to the Platform any Authorized User Content or other materials which infringe or violate any of the intellectual property, privacy, or proprietary rights of any third party;

(vii) incorporate or permit to be incorporated into any computer or other systems of Licensor any virus, worm, Trojan horse, time bomb or other malicious code intended to harm or negatively affect the operation, integrity, control or security of computer programs, systems, environments or data (“Malicious Code”); or

(viii) access and use the Platform in any manner that is inconsistent with the terms of this EULA.

b. **Additional Obligations.**

(i) Authorized User shall only access and use the Platform via a unique user login (i.e., user identification and password) established by Authorized User. Authorized User shall protect and keep strictly confidential, and shall cause its employees, agents, contactors, representatives, successors and assigns to protect and keep strictly confidential all unique user login information.

(ii) Authorized User shall comply in full with all federal, state, local and foreign laws, rules and regulations in connection with its access to, and use of, the Platform or the use thereof by any employee or agent of Authorized User.

(iii) The Platform may be accessed and used only in a form and manner approved by Licensor in its sole discretion, and only in accordance with the terms and conditions of this EULA.

(iv) To the extent that the Platform includes any trademark, service mark, trade name, or the company name of Licensor or its licensors (collectively, “Marks”), Authorized User will use such Marks strictly in accordance with Licensor’s trademark standards, policies and procedures as specified by Licensor from time to time.

(v) The right to access and use the Platform hereunder is limited to Authorized User and Authorized User’s internal activities.

5. **DISCLAIMER.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EULA, ACCESS TO AND USE OF THE PLATFORM IS PROVIDED “AS IS”, “WITH ALL FAULTS”. LICENSOR DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO OR USE OF THE PLATFORM. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EULA, THE PARTIES AGREE THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS EULA, NO WARRANTY OR CONDITION, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PLATFORM, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON-INFRINGEMENT WITH REGARD TO THE PLATFORM. Please note that some jurisdictions may not allow the above exclusion of implied warranties, so some of the above exclusions may not apply to Authorized User.

6. **LIABILITY CAP AND LIMITATION OF LIABILITY.** AUTHORIZED USER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF THIS EULA BY LICENSOR OR ANY DISSATISFACTION BY AUTHORIZED USER WITH RESPECT TO THE PLATFORM IS TO DISCONTINUE ACCESSING AND USING THE PLATFORM. IN NO EVENT SHALL LICENSOR’S TOTAL LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS EULA (WHETHER UNDER ANY THEORY OF LAW, INCLUDING BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, OR STRICT LIABILITY) EXCEED THE TOTAL FEES ACTUALLY PAID TO LICENSOR BY AUTHORIZED USER FOR USE OF THE PLATFORM UNDER THIS EULA. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS EULA, NEITHER LICENSOR NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL BE, UNDER ANY CIRCUMSTANCES, LIABLE TO AUTHORIZED USER OR ANY OTHER PERSON, FIRM OR ENTITY (WHETHER IN AN ACTION ARISING FROM CONTRACT, TORT OR OTHER LEGAL THEORY) FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES RESULTING FROM THE ACCESS OR USE OF PLATFORM, OR OTHERWISE, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, SUCH DAMAGES ARISING FROM (I) INFORMATION OR DATA OBTAINED FROM OR THROUGH THE PLATFORM, (II) RELIANCE BY ANY PERSON ON INFORMATION OR DATA OBTAINED FROM OR THROUGH THE PLATFORM, (III) VIRUS TRANSMISSION OR DELETION OR LOSS OF FILES OR E-MAIL, (IV) LOSS OF DATA OR INFORMATION OF ANY KIND, (V) LOSS OF PROFIT, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), (VI) LIABILITY FOR PERSONAL INJURY, OR (VII) LIABILITY TO THIRD PARTIES.

7. **Misuse by Authorized User.** Notwithstanding anything to the contrary contained in this EULA, an Authorized User shall not be entitled to any remedy under this EULA or otherwise, and Licensor shall have no liability whatsoever, if any error or problem with the Platform arises from or results from violation of this EULA by Authorized User or any employee, agent, contractor, affiliate, representative, successor or assign of Authorized User, or from accident, abuse, misapplication, abnormal or unauthorized access or use, or the introduction of a virus or other Malicious Code, by Authorized User or any employee, agent, contractor, affiliate, representative, successor or assign of Authorized User.

8. **Intellectual Property Ownership.** The Platform, and any authorized copies that an Authorized User makes thereof, are the intellectual property of and are owned by Licensor and/or its suppliers. The structure, organization and code of the Platform are the exclusive property, valuable trade secrets and confidential information of Licensor and/or its suppliers and title to the Platform shall at all times remain with Licensor and/or its suppliers. Except as expressly stated herein, this EULA does not grant Authorized User any intellectual property rights in the Platform, or any component or element thereof, and all rights not expressly granted to Authorized User under this EULA are reserved to and retained by Licensor and/or its suppliers. Notwithstanding anything contained in this EULA to the contrary, Licensor reserves the right to make, available, distribute or release the Platform under different license terms or to stop distributing, making available or releasing the Platform at any time. Authorized User represents, warrants and covenants to Licensor that Authorized User owns all right, title and interest in and to the Authorized User Content, and the Authorized User Content, the upload thereof to the Platform, and the use thereof by Licensor does not and shall not infringe or violate the intellectual property (i.e., patent, copyright, trademark or trade secret) or other proprietary or privacy rights of any third party.

9. **Support Services.** Licensor or its suppliers may provide Authorized Users with support services related to the Platform ("Support Services"). Any supplemental software code provided to an Authorized User as part of the Support Services shall be considered part of the Platform, as applicable, and subject to the terms and conditions of this EULA. With respect to technical information Authorized User provides to Licensor as part of the Support Services, Licensor may use such information for its business purposes, including to provide the Support Services, or for other product support and development.

11. **Indemnity.** Authorized User shall indemnify, defend and hold harmless Licensor and its affiliates, employees, agents, officers, directors, shareholders, representatives, successors and assigns from and against any loss, liability, cause of action, cost or expense (including reasonable attorneys' fees) arising from, arising in connection with or related to: (i) the material breach of this EULA by Authorized User or any employee or agent of Authorized user; (ii) the acts and omissions of Authorized User and its employees and agents in connection with Authorized User's use of the Platform; (iii) the violation, infringement or misappropriation by Authorized User or any employee or agent of Authorized User, of the intellectual property, privacy, or other proprietary rights of any third party, or any claim that Licensor's use of the Authorized User Content infringes or violates the intellectual property, privacy, or other proprietary rights of any third party.

12. **Export Rules.** Authorized user agrees that access to and use of the Platform will not be provided by Authorized User or any employee or agent of Authorized User to any citizen of a country to which access or use thereof is barred, or to which exports or shipments are barred, by the United States government. Further, the Platform will not be shipped, transferred or exported by Authorized User or any employee or agent of Authorized User into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Platform is identified as export controlled items under the Export Laws, Authorized User represents and warrants that Authorized User is not a citizen, or otherwise located within, an embargoed nation and that Authorized User is not otherwise prohibited under the Export Laws from receiving access to or using the Platform. All rights to access and use the Platform are granted on condition that such rights are forfeited if Authorized User fails to comply with the terms of this EULA.

13. **Applicable Law.** This EULA is governed, construed and enforced in accordance with the laws of the State of Ohio, without giving effect to any principles of conflicts of laws. Jurisdiction and venue for all actions arising under this EULA shall be in the federal and state courts located in Cuyahoga County, Ohio. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this EULA.

14. **Entire Agreement.** This EULA and any documentation related to Support Services is the entire agreement between an Authorized User and Licensor relating to the subject matter of this EULA and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the subject matter of this EULA.

15. **Notices and Questions.** Any notice required or permitted under this EULA shall be in writing and personally delivered, or sent by email, courier, express or overnight delivery service, or by certified mail, postage prepaid, return receipt requested. Notices shall be effective as of the date of receipt.

16. **Confidentiality.** Authorized User acknowledges that Authorized User may receive or become aware of confidential information and trade secrets of Licensor ("Confidential Information"). Authorized User agrees to maintain and protect the confidentiality of all Confidential Information of which it becomes aware (whether or not identified or marked as confidential at the time of its disclosure) and not disclose any Confidential Information to any person, firm, or entity other than its own employees

who have a need to know such Confidential Information for purposes of the license granted to Authorized User hereunder, and Authorized User shall preserve and protect the confidentiality of all Confidential Information of which it becomes aware using the same degree of care that it uses to protect its own trade secrets, but never less than reasonable care. Further, Authorized User shall not use or disclose any Confidential Information for any purpose not permitted by this EULA. Authorized User agrees to formulate and adopt appropriate safeguards in light of its own operating activities to ensure protection of the confidentiality of all Confidential Information of which it becomes aware. The restrictions on disclosure set forth above shall not apply when, and to the extent that, Confidential Information: (a) is part of the public domain through no action or failure to act by Authorized User; (b) is made available to the general public by Licensor or a third party who is lawfully in possession of such information, not as a result of any action or failure to act on the part of Authorized User; (c) was previously known to Authorized User free of any obligation to keep it confidential; (d) is subsequently disclosed to Authorized User free of any obligation to keep it confidential; or (e) is independently developed by Authorized User or a third party other than in breach of this EULA. Violations of this Section 16 are likely to cause irreparable harm and therefore Licensor may seek immediate injunctive relief without the need of posting bond in the event of a violation of this Section 16.

17. **Dispute Resolution.** Any claim or controversy arising out of or relating to this EULA, including any anticipatory breach or disagreement as to interpretation of this EULA, that is not resolved by the parties themselves or through mediation, shall be settled by binding arbitration in the Cleveland, Ohio metropolitan area, administered in accordance with the American Arbitration Association's Commercial Arbitration Rules, including its Optional Rules for Emergency Measures of Protection. The arbitrator(s) shall decide all discovery issues. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties, except to the extent necessary in connection with a court action to enforce an arbitration award. All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of proofs, except that the prevailing party shall be entitled to an award of reasonable attorney's fees.

18. **Force Majeure.** Licensor shall not be responsible for delays or failure of performance resulting from acts beyond the reasonable control of Licensor. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failures, Internet or telecommunications failures, earthquakes, or other disasters.

19. **Compliance with License and Laws.** Authorized User shall comply with all federal, state, local and foreign laws, regulations, rules and ordinances pertaining to the operations and conduct of its business and the license granted to Authorized User under this EULA. In the event that any part of this EULA is determined to violate any applicable federal, state, local or foreign laws, rules or regulations, then the remaining provisions of this license shall remain in full force and effect and shall be enforced to fullest extent permitted by law.

20. **Survival.** Sections 4, 5, 6, 8, 11-23 shall survive the termination or expiration of the EULA for any reason.

21. **Headings.** The titles and headings of the various sections and paragraphs in this EULA are intended solely for reference and are not intended for any other purpose whatsoever or to explain, modify, or place any construction on any of the provisions of this EULA.

22. **Forms.** No provisions in either party's purchase orders, or in any other business forms employed by either party, will supersede the terms and conditions of this EULA.

23. **Waiver/Assignment.** A waiver of any provision of this EULA shall only be effective if in a writing signed by the party against which the waiver is claimed. This EULA may not be assigned by Authorized User without the prior written consent of Licensor. This EULA may be assigned by Licensor, by operation of law or otherwise, without the consent or approval of Authorized User or any other person, firm or entity.

24. **TERMS AND CONDITIONS SPECIFIC TO CUYAHOGA COUNTY (THE "COUNTY") PRINT SERVICES AND SUPPLIES PURCHASED THROUGH THIS PLATFORM.** THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO ALL PURCHASES MADE BY THE COUNTY OF CUYAHOGA, OHIO, A BODY CORPORATE AND POLITICAL AND A POLITICAL SUBDIVISION OF THE STATE OF OHIO, ORGANIZED AND EXISTING UNDER THE CHARTER OF CUYAHOGA COUNTY EFFECTIVE JANUARY 1, 2010, AS SAME MAY HAVE BEEN AMENDED, MODIFIED, AND SUPPLEMENTED, FROM AUTHORIZED USER AND ITS EMPLOYER (THE "VENDOR"). THROUGHOUT THE FOLLOWING TERMS AND CONDITIONS, CUYAHOGA COUNTY SHALL BE REFERRED TO AS "COUNTY" AND VENDOR OR SERVICE PROVIDERS SHALL BE REFERRED TO AS "SELLER".

- a. **Prices.** Amount paid to Seller by Platform will be as set forth in the applicable Purchase Order, emailed by Platform to Seller. Seller warrants that the prices for the goods or services sold under this Purchase Order are not less favorable than those currently extended to any other customer for the same or similar goods or services

in similar quantities.

- b. **Additional Charges.** No additional charges will be allowed for packing, boxing, cartage, travel expenses or any other extra charges unless expressly represented in the awarded Purchase Order.
- c. **Specifications.** Specifications may include specifications and/or descriptions for the goods or services acquired under a specific Purchase Order. Where a brand name or equal specification is used, use of brand name is for the purpose of describing the base standard of quality, performance and characteristics desired only, and is not intended to limit or restrict competition. Substantially equivalent supplies or services to those designated will be considered for award. Seller shall comply with the specifications and, if applicable, the insurance requirements.
- d. **Acceptance.** Awarding of a Purchase Order through the Platform becomes a binding contract, subject to this EULA upon the earlier of: (a) Seller's acknowledgement of the Purchase Order; (b) delivery of goods or services in whole or in part; or (c) commencement of work on the goods subject to the applicable Purchase Order. Except as provided below, acceptance of Purchase Order is limited to these terms and conditions. Any modification of the Purchase Order, to be valid, must be by communications conducted through Platform. Any forms of the Seller containing additional or contrary terms and conditions of sale will not have the effect of deleting, modifying or adding to the terms and conditions of this EULA.
- e. **Inspection and Testing.** Payment for the goods delivered under this EULA and a Purchase Order sent by the Platform, shall not constitute acceptance. County shall have the right to inspect the goods and reject any or all of the goods which the County determines to be defective or nonconforming. Goods rejected and supplied in excess of quantities required under this Purchase Order may be returned to Seller at its expense. County may charge Seller for all expenses, including, but not limited to unpacking, examining and repacking such goods. Materials rejected because of failure to meet specifications and standards are to be removed by Seller from Destination at Seller's expense within thirty (30) days of notification from Ordering Department. In the event the County receives goods whose defect or nonconformity are not apparent upon examination, County reserves the right to require replacement, as well as payment of damages. Seller will not replace goods except on receipt of a replacement purchase order. Nothing contained in this EULA, or any Purchase Order, will relieve the Seller in any way from the obligation of testing, inspection and quality control. Upon acceptance of goods and services provided under this EULA and a Purchase Order, County will complete the Project signifying acceptance and triggering a notification of Project Completion to Seller.
- f. **Payments.** Payment terms are NET 60 days from the date that County accepts and completes the project. Payments will be made to Seller electronically via ACH to the bank account provided during Vendor Registration. County does not agree to pay late fees, penalties or interest charges.
- g. **Work Order and Commodity Order Number.** The Work Order or Commodity Order Number shall be shown on all boxes, packages, shipping documents, invoices, and correspondence.
- h. **WARRANTIES.** Seller expressly warrants and covenants that: (a) it owns all goods and services supplied; (b) all goods and services supplied will conform to County's order, will be merchantable, fit and sufficient for the particular purpose intended and free from defects, liens and patent infringements; and (c) all goods purchased under this EULA Purchase Order will conform in all respects with the specifications, drawings, samples, or quality control or other procedures or descriptions furnished or approved by County prior to sale. In the event that any goods or service fail to comply with this Section, the Seller shall repair, replace, or in the event that a Seller cannot repair or replace, they shall refund to the County the amount paid for the non-conforming item within 30 days of the County providing notice to the Seller. These remedies shall be in addition to any remedies as set forth in the UCC. In the event that County sells or leases the goods supplied to a third party, all warranties made in this Purchase Order and all other warranties made by the Seller with respect to the goods may be assigned by County to the third party.
- i. **DEFECTIVE GOODS.** If the goods furnished by the Seller prove to be defective in any respect, and bodily injury, property damage or economic loss results, Seller agrees to indemnify, hold harmless and defend County from all claims, including third party claims, expenses, attorneys' fees settlement costs and judgments arising out of or due to the bodily injury, property damage or economic loss, including consequential damages, as are caused or as are the result of or alleged to be the result of goods furnished by Seller, except where the bodily injury, property damage or economic loss is due to the sole negligence of County.
- j. **COMPLIANCE.** Seller agrees that the goods or services produced or rendered pursuant to this EULA and any Purchase Order will be produced and rendered in accordance with all applicable Federal, State, and local laws, orders and regulations.

- k. **GOVERNING LAW AND JURISDICTION.** This EULA and any Purchase Order issued by the Platform for the benefit of Cuyahoga County shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of this Purchase Order, and each party consents to the exclusive jurisdiction of such courts. Seller hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason. All Purchase Orders in which the County is a party, including this any Purchase Orders issued pursuant to this EULA, are subject to the Cuyahoga County Code including, but not limited to, Title 4: Ethics and Title 5: Contracts and Purchasing, and the parties agree to comply with the County Code and all other applicable laws, ordinances, resolutions, regulations, rules and policies of the County as an integral part of this Purchase Order. The County Code is available on the County Council's web site at <http://council.cuyahogacounty.us/>
- l. **INSURANCE.** Seller agrees to comply with the applicable standard insurance requirements as posted on the Cuyahoga County website.
- m. **INDEMNIFICATION.** Seller hereby indemnifies, defends and holds harmless the County and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) any acts or omissions of Seller, including all of its officers, owners, principals, subcontractors, employees, and agents; (b) breach or default by Seller under any terms or provisions of this Purchase Order; (c) any defect in the goods or services purchased under this Purchase Order. This indemnification will be in addition to the warranty obligations of Seller.
- n. **NO INDEMNITY BY COUNTY.** Seller acknowledges that, as a political subdivision of the State of Ohio, the County does not indemnify any person or entity. Seller agrees that no provision of this Purchase Order or any other Purchase Order or agreement between Seller and the County may be interpreted to obligate the County to indemnify or defend Seller or any other party.
- o. **ENTIRE AGREEMENT.** This Purchase Order and any documents incorporated herein, constitute the entire and exclusive agreement between the parties with respect to its subject matter.
- p. **TAXES.** The County is exempt from all taxes except Ohio Road Tax. In the event the Seller charges the County taxes for which it is exempt, and County pays such taxes, the Seller shall automatically refund such amounts.
- q. **CHANGES.** County will have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment will be made and the Purchase Order will be modified in writing accordingly. Seller agrees to accept any such changes subject to this Paragraph.
- r. **PATENTS.** Seller agrees upon receipt of notification to promptly assume full responsibility for defense of any suit or proceeding which may be brought against County or its agents, customer, or other vendors for alleged patent infringement, as well as for any alleged, unfair competition resulting from similarity in design, trademark or appearance of goods or services furnished under this Purchase Order, and Seller further agrees to indemnify County, its agents and customers against any and all expenses, losses, royalties profits and damages including any settlement arising under this paragraph County may be represented by and actively participate through its own counsel in any suit or proceeding if it so desires, and the costs of representation will be paid by Seller.
- s. **CERTIFICATIONS.** Seller certifies, represents and warrants that:
- a) it is not subject to an "unresolved" finding for recovery under Ohio Revised Code Section 9.24. If this representation and warranty is deemed to be false, this Purchase Order is void ab initio, and Seller must immediately repay to the County any funds paid under this Purchase Order;
  - b) has been properly authorized to provide goods and services under this Purchase Order;
  - c) has good and marketable title to any goods delivered under this Purchase Order and in which title passes to the County;
  - d) has the right and ability to grant the license provided in any goods in which title does not pass to the County; all warranties provided for the goods and services are in accordance with the Seller's standard warranties;
  - e) that the goods and services shall substantially conform to the Specifications during the warranty period;
  - f) that the goods and services do not infringe on the intellectual property rights of any third party;

g) is and will remain in compliance with the County Code and all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by Seller.

- t. **FORCE MAJEURE.** Neither Party shall be in default if its failure to perform any obligation hereunder is caused solely by supervening conditions beyond that Party's reasonable control, including, without limitation, acts of God, civil commotion, strikes, labor disputes, or governmental demands or requirements.
- u. **TERMINATION FOR CONVENIENCE.** The County may terminate any Purchase Order issued under this EULA for its convenience and without cause. Any notice of termination will be effective thirty (30) days after the Seller receives it. If the termination is for the convenience of the County, Seller will be entitled to compensation for any goods that Seller has delivered before termination. Any fees paid in advance shall be returned to the County at a prorated amount. No early termination fees shall apply to the County.
- v. **TERMINATION FOR CAUSE.** County will have unrestricted right to terminate any Purchase Order, without any obligation to Seller, upon the happening of any one or more of the following events: (a) Seller's insolvency or commission of an act effecting or against Seller; (b) filing of voluntary or involuntary petition of bankruptcy by or against Seller; (c) appointment of a receiver for seller by any court of competent jurisdiction; (d) Seller's failure to make deliveries within the time specified by this Purchase Order or a previous Purchase Order; (e) Seller's failure to perform any other provisions of this Purchase Order and (f) cancellation of any government contract for which this Purchase Order is issued. The acceptance of goods or performances after the occurrence of any of the above enumerated events will not affect the right of the County to terminate under this Paragraph. Any fees paid in advance shall be returned to the County at a prorated amount. No early termination fees shall apply to the County.
- w. **NO APPARENT AUTHORITY/PROPER APPROVALS.** Seller recognizes and agrees that no public official or employee of the County may be deemed to have apparent authority to bind the County to any contractual obligations not properly authorized pursuant to the County Code.
- x. **RISK OF LOSS.** Except as otherwise expressly provided, risk of loss on all items shipped by Seller to County will pass to County at the F.O.B. Destination point designated in this Purchase Order. Cost of all return shipments, for whatever reason returned, will be borne by Seller and title and risk of loss will pass to Seller at the F.O.B. Shipping point as determined by County.
- y. **TITLE.** Title to the goods purchased under this EULA and any Purchase Order passes to the County upon inspection and acceptance. County shall approve and process payment for the goods upon passing of the title.
- z. **WAIVER.** The remedies contained in this EULA and any Purchase Order will be cumulative, and additional to any other remedies provided in law or equity. No waiver of a breach of any provision of this EULA or any Purchase Order will constitute a waiver of any other breach, or of any provision, and no course of conduct, nor any delay by County in exercising any rights under this Purchase Order will waive any rights of County to modify this Purchase Order.
- aa. **SETOFF.** All claims for monies due, or to become due, from County will be subject to deduction or setoff by County by reason of any counterclaim arising out of this or any other transaction with Seller.
- bb. **SHIPMENT.** If, in order to comply with County's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in this Purchase Order, any increased transportation costs will be paid for by Seller unless County caused the necessity for the rerouting or expedited handling.
- cc. **LIMITATION ON COUNTY LIABILITY.** In no event will County be liable for anticipated profits or for indirect, incidental or consequential damages. County's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this EULA and any Purchase Order or from the performance or breach of this Purchasing Order will in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim. County will not be liable for penalties of any description. Any action resulting from any breach on the part of County as to the goods or services delivered under this Purchase Order will be commenced within one year after the cause of action has accrued. The seller will be liable for all direct damages due to the fault or negligence of the Seller.
- dd. **EQUAL EMPLOYMENT OPPORTUNITY.** Seller 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.

- ee. **DRUG-FREE WORKPLACE.** Seller must comply with all applicable state and federal laws regarding keeping a drug-free workplace. Seller must make a good faith effort to ensure that all its employees, while working on County property, will not have or be under the influence of illegal drugs or alcohol or abuse prescription drugs in any way.
- ff. **ANTI-DISCRIMINATION.** Seller agrees that in its employment of labor, skilled or unskilled, there shall be no discrimination exercised against any person because of race, color, religion, national origin, sex, gender, ancestry, age, disability, sexual orientation, sexual identity, genetic information, military status, or veteran status, and a violation of this term shall be deemed a material breach of this EULA and any Purchase Order. It shall be the policy of Seller to provide equal opportunity to all business persons seeking to contact, or otherwise interested in contracting with Seller, including various eligible Small Business Enterprises, but that such a policy does not create an obligation on the part of Seller to enter into any particular agreements.
- gg. **SECURITY.** Where applicable, Seller agrees to comply with all County security provisions as set forth in the Cuyahoga County Information Technology Policies.

**BY CHECKING THE “ACCEPT” CHECK BOX, OR USING THE PLATFORM, YOU INDICATE YOUR ACCEPTANCE OF THIS EULA.**