

Purchasing Cooperative Contract Award

May 2, 2024

To:

Trane U.S., Inc.
10300 Springfield Pike
Cincinnati, OH 45215

RE: Awarded Contract – RFP Issued April 1, 2024

CONTRACT AWARD

Congratulations! This award is for a cooperative purchasing agreement award solicitation. The Union County Council of Governments (the “UCCOG”), a council of governments organized under R.C. Ch. 167. The Governing Board has awarded an Agreement to Trane U.S., Inc.. This Agreement will be in effect from May 2, 2024 through December 31, 2025. There is one (1) optional contract renewal of an additional two (2) year term optional extensions through December 31, 2027.

ADMINISTRATIVE CONSIDERATIONS

Award of annual contract in compliance with the bid laws of the State of Ohio:

_____ is recommended.

_____ is not recommended for the following reasons:

RECOMMENDATIONS

The UCCOG recommends the following contract be awarded to Trane U.S., Inc. based on the Request for Proposal (RFP) process: **HVAC-R Solutions for Heating, Cooling and Ventilation Systems and Facilities**

VENDOR MASTER AGREEMENT

THIS MASTER AGREEMENT is made effective May 2, 2024 by and between The Union County Council of Governments, a council of governments formed pursuant to Chapter 167 of the Ohio Revised Code to promote cooperative arrangements including purchasing arrangements among its members and other agencies of state and local government, and Trane U.S., Inc. is a Delaware corporation that supplies HVAC-R equipment and services to such entities and others (Supplier).

WHEREAS, UCCOG issued a Request for Proposals (the "**Solicitation Document**") to solicit offers for the supply of **HVAC-R Equipment and Services** (the "**Deliverables**") to UCCOG Voting and Service Members (each referred to in the singular as the "**Purchaser**" or collectively as the "**Purchasers**"); and

WHEREAS, the Supplier was selected to enter into this Master Agreement to establish a Standing Offer by the Supplier (the "**Standing Offer**") for the potential provision of the Deliverables to the Purchasers pursuant to agreements that will set out the particulars of the contract between a Purchaser and the Supplier for the purchase of Deliverables (the "**Purchase Agreement**").

NOW THEREFORE, the parties agree as follows:

1.0 Term of Master Agreement

This Master Agreement shall take effect on May 2, 2024 and shall be in effect until December 31, 2025 (the "Expiration Date"), with an option in favor of UCCOG to extend the term for an additional period of up to **two (2)** years, unless it is terminated earlier in accordance with the terms of this Master Agreement or otherwise by operation of law.

2.0 UCCOG and Supplier Representatives

The UCCOG Representative and contact information for the Master

Agreement is: Brad Lutz

Contact Information:

209 S. Main Street

Marysville, OH 43040

The Supplier Representative and contact information for the Master

Agreement is: Seth Rothery, primary; Mathew Barbicas, secondary

Contact Information:

Seth Rothery
Area General Manager- Southern Ohio

10300 Springfield Pike

Cincinnati OH 45215

Cell: (513) 222-9472

Desk: (513) 326-2478

SROTHEY2@TRANE.COM

Mathew Barbicas

Area General Manager – North Central Ohio

Cell: (216) 299 0284

9555 Rockside Road

Valley View, Ohio 44125

Mathew.Barbicas@trane.com

3.0 Provision Of Deliverables

3.1 Deliverables Provided under Purchase Agreements

The Supplier agrees that the provision of the Deliverables to a Purchaser will be governed by the terms of the Standing Offer, including the Standing Offer Terms and Conditions, as set out in Schedule A to this Master Agreement, and the terms of the mutually agreed to Purchase Agreement entered into between the Supplier and a Purchaser in respect of the Deliverables. In the event of a conflict between the Standing Offer Terms and Conditions, this Master Agreement, and the terms of the Purchase Agreement entered into between the Supplier and a Purchaser in respect of the Deliverables, the terms and conditions of the Purchase Agreement between the Supplier and such Purchaser shall control.

3.2 Pricing of Deliverables

When entering into Purchase Agreements, the Purchaser and Supplier may negotiate improvements to the pricing set out in the Standing Offer; however, pricing offered by the Supplier to any Purchaser for the Deliverables must not exceed the pricing set out in the Standing Offer, unless mutually agreed to in the Purchase Agreement. Supplier may revise and update the Standing Offer on an annual basis by adjusting applicable labor rates based on market increases for such rates and adding new product offerings or removing product offerings no longer available for purchase from Supplier. Supplier's equipment discounts, expressed as percentage off the applicable list price, shall remain in effect throughout the Term.

3.3 Authorized Subcontractors, Distributors and Dealers

Supplier may use authorized subcontractors, distributors, and dealers to perform any Purchase Agreement made under this Master Agreement. However, each such

Purchase Agreement may only be entered into by the Supplier and must provide for payment to be made only to Supplier, unless otherwise approved by UCCOG.

3.4 No Duties, Obligation or Liabilities on the part of UCCOG

While UCCOG has entered into the Master Agreement to facilitate a group purchasing arrangement, the execution of this Master Agreement shall not in any way create any legal duties, obligations or liabilities on the part of UCCOG in respect of the purchase and sale of the Deliverables. Any contract for the purchase and sale of any Deliverables shall be between the Supplier and each individual Purchaser in accordance with the terms of each specific Purchase Agreement. UCCOG shall not be responsible for the payment of any Deliverables provided by the Supplier to a Purchaser under any Purchase Agreement.

3.5 No Exclusivity or Volume Guarantees

The Supplier acknowledges that in entering into this Master Agreement no form of exclusivity has been conferred on, or volume guarantee has been granted by UCCOG in relation to the provision of the Deliverables by the Supplier.

No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by UCCOG in respect of the total quantities or values of the Deliverables required by the Purchasers pursuant to this Master Agreement and the Supplier acknowledges and agrees that it has not entered into this Master Agreement on the basis of any such undertaking, statement, promise or representation.

4.0 Monthly Fees and Sales Reports

4.1 Fees Payable by Supplier to UCCOG

The Supplier shall pay UCCOG monthly fees in the amount of two percent (2%) of the value of all purchases of the Deliverables made by the Purchasers during the month. Fees *for* each calendar month are payable within thirty (30) days following the end of such month and shall be accompanied by the Supplier's Sales Report, as defined below in section 4.3. Fees shall be payable only with respect to Deliverables actually delivered and paid for during such month. The date of purchase shall be deemed the later of (i) payment by the Purchaser to Supplier of the purchase price for the Deliverables in accordance with the Purchase Agreement; and (ii) delivery of the Deliverables to Purchaser to the location specified in the Purchase Order and inspection and acceptance by Purchaser of the Deliverables in accordance with the Purchase Agreement.

4.2 Interest on Late Payment

Any fees in arrears are subject to interest payable by the Supplier to UCCOG at the per annum rate of interest equal to the "prime rate," as published in the "Money Rates" column of The Wall Street Journal, from time to time, in effect on the date that the payment of the fees went into arrears.

4.3 Monthly Sales Reports

The Supplier shall provide UCCOG with an electronic accounting report, in a mutually acceptable format, on a monthly basis summarizing all sales of Deliverables under the Standing Offer for the applicable month ("Sales Reports").

Sales Reports including all sales to Purchasers in each calendar month shall be provided to UCCOG by the 15th day of the following month. If there are no sales to report, the Supplier shall communicate that information via email.

Failure to provide a monthly Sales Report within the time and manner specified herein shall constitute a material breach of this Master Agreement and if not cured within thirty (30) days of written notice to Supplier shall be deemed a cause for termination of the contract at UCCOG's sole discretion.

4.4 Marketing and Promotion of Master Agreement

Intentionally Omitted.

4.5 Document Retention and Audit

For three (3) years after the date this Master Agreement expires (the "Expiration Date") or any date of termination of the Master Agreement or as otherwise required by law, and in each case in accordance with the applicable party's record retention policy, the Supplier and UCCOG shall maintain all necessary records to substantiate all charges and payments under all Purchasing Agreements. During the term of this Master Agreement, the Suppliers shall permit and assist UCCOG in reviewing documents and/or records of Supplier in connection with Purchase Agreements issued by Purchasers hereunder, solely to the extent such documents and/or records are necessary to review Supplier's compliance with the terms and conditions of this Master Agreement. If either Party notifies the other Party that matters relating to the Master Agreement are under audit, the period for retaining records relating to the Master Agreement shall be extended until the audit report has been publicly released.

5.0 General Terms and Conditions Governing the Master Agreement

5.1 No Indemnities from UCCOG

Any express or implied reference to UCCOG providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of UCCOG, whether at the time of execution of the Master Agreement or at any time during the term of the Master Agreement or the term of any Purchase Agreement, shall be void and of no legal effect.

5.2 Failure to Enforce Not a Waiver

Any failure by a party to insist in one or more instances upon strict performance by the other party of any of the terms or conditions of the Master Agreement shall not be construed as a waiver by such party of its right to require strict performance of any such terms or conditions,

and the obligations of each party with respect to such performance shall continue in full force and effect.

5.3 Changes by Written Amendment Only

Any changes to the Master Agreement shall be by written amendment signed by the Supplier and UCCOG. No changes shall be effective or shall be carried out in the absence of such an amendment.

5.4 Notices by Prescribed Means

Except as otherwise specifically set forth in this Master Agreement, notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the following addresses:

(a) As to UCCOG:

Union County Council of Governments

Attn: Brad Lutz

209 S. Main Street

Marysville, OH 43040

(b) As to Supplier

Trane U.S., Inc.

10300 Springfield Pike

Cincinnati, OH 45215

Notice shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Either Party, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Notwithstanding the foregoing, the Parties may utilize any form of communication, including email and facsimile, for routine communications related to the Master Agreement.

5.5 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Master Agreement and there is no agreement with any other Person which would in any way interfere with the rights of UCCOG.

5.6 Supplier Not a Partner, Agent or Employee

Neither party shall have no power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on behalf of such party. Neither party shall hold itself out as an agent, partner or employee of the other party. Nothing in the Master

Agreement shall have the effect of creating an employment, partnership or agency relationship between UCCOG and the Supplier or any of the Supplier's or UCCOG's directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

5.7 No Assignment

Neither party shall assign the Master Agreement without the prior written consent of the other party. Such consent shall be in the discretion of such party.

5.8 Duty to Disclose Change of Control

In the event that the Supplier undergoes a change in control the Supplier shall notify UCCOG of such change in control as soon as reasonably possible to UCCOG and the parties shall negotiate in good faith amendments to this Agreement as may be required or advisable.

5.9 Confidentiality and Promotion Restrictions

Any publicity or publications related to the Master Agreement shall be made through UCCOG's standard publication channels consistent with UCCOG's obligation to keep Supplier's information, customers and Purchase Agreements confidential.

5.10 No Use of Insignia

The Supplier shall not use any insignia or logo of UCCOG without UCCOG's written authorization to do so.

5.11 Immediate Termination

Either party may immediately terminate the Master Agreement upon giving notice to the other party where such party is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of the Supplier's insolvency. Either party may terminate the Master Agreement upon not less than sixty (60) days' advance written notice, provided that the other party does not cure any breach or deficiency set forth in such notice, if (a) the defaulting party, prior to or after executing the Master Agreement, fails to disclose a conflict of interest, makes a material misrepresentation or omission or provides materially inaccurate information to the other party; or (b) the defaulting party's acts or omissions constitute a substantial failure of performance and the above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

Termination of this Master Agreement for any reasons shall not affect any Purchase Agreements executed between Supplier and any Purchaser prior to the effective date of such termination.

5.12 Dispute Resolution by Rectification Notice

If Supplier fails to comply with any of its obligations under this Master Agreement, UCCOG may issue a rectification notice to the Supplier setting out the manner and timeframe for rectification. Within seven (7) business days of receipt of said notice, the Contractor shall either comply with that notice or provide a plan satisfactory to the UCCOG. If the Supplier

fails to either comply with that notice or provide a satisfactory plan, the UCCOG may immediately terminate this Master Agreement.

5.13 Expiration and Extension of Master Agreement

The Master Agreement shall expire on the original Expiration Date, unless UCCOG exercises its option to extend the Master Agreement (subject to Supplier's written consent), such extension to be upon the same terms, conditions and covenants contained herein. The option shall be exercisable by UCCOG giving notice to the Supplier not less than thirty (30) days prior to the original Expiration Date. The notice shall set forth the precise duration of the extension. In the event UCCOG elects to exercise its option to extend the Master Agreement and Supplier consents to such election in writing, this Agreement shall be extended for the mutually agreed upon period; provided that Supplier shall have the option to update the rates, prices and other terms and conditions that would be applicable to such extension at Supplier's sole discretion.

5.14 Supplier's Obligations on Expiration or Termination


The expiration or termination of the Master Agreement shall not relieve the Supplier of any of its obligations under any Purchase Agreement, whether entered into prior to or subsequent to the expiration or termination of the Master Agreement. This paragraph shall survive any termination of the Master Agreement.

6. Execution

This Agreement may be executed in two or more counterparts including signing a facsimile or scanned, electronic version, which together shall constitute a single instrument. This Agreement and any document relating to it may be executed and transmitted to any other party by facsimile or other electronic imaging method, which shall be deemed to be, and utilized in all respects as, an original, wet-inked, manually executed document. This Agreement shall become effective only when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood and agreed that all Parties need not sign the same counterparts.

IN WITNESS WHEREOF the parties hereto have executed this Master Agreement as of the date written below.


THE UNION COUNTY COUNCIL OF GOVERNMENTS

BY: 
TITLE: County Administrator - Alternate to Dave Burke (UCCOG Chair)
DATE: 5/10/24

Approved as to form

Thayne D. Gray, APA
May 10, 2024

TRANE U.S., INC. (Supplier)

BY: Mathew Barbicas 
TITLE: Area General Manager - Trane
DATE: 5.2.2024

SCHEDULE 1

STANDING OFFER _____ HVAC Equipment and Services

_____ (the "**Supplier**") was selected to establish this Standing Offer in accordance with a Request for Proposals - _____ - issued by the Union County Council of Governments ("**UCCOG**") for the potential provision of the goods and services described herein (the "**Deliverables**") to UCCOG Cooperative Members (the "**Purchasers**").

This Standing Offer will take effect on _____ and will be in effect until December 31, 2025, unless it is terminated earlier in accordance with the terms and conditions of the agreement between UCCOG and the Supplier or otherwise by operation of law, and may be extended for an additional term of **two (2) years** in accordance with the terms and conditions of the agreement between UCCOG and the Supplier.

If and when a Purchaser requires the Deliverables during the term of the Standing Offer, the Purchaser may enter into an agreement with the Supplier for the purchase of the required Deliverables in accordance with the terms of this Standing Offer (the "**Purchase Agreement**"). The Purchase Agreement may be in form of agreement attached hereto, or any other form of agreement the Purchaser and Supplier may agree to use.

The provision of the Deliverables by the Supplier to the Purchaser will be governed by the Standing Offer Terms and Conditions attached hereto and/or any specific requirement and supplementary terms and conditions set out in the Purchase Agreement.

Deliverables, Rates and Specific Provisions

A. Description of Deliverables

Deliverables as described in _____, Exhibit A Statement of work, and Supplier's completed Exhibit E Market basket form.

B. Rates and Disbursements

Rates to be as submitted in Exhibit E of _____

STANDING OFFER _____ HVAC Equipment and Services
Standing Offer Terms and Conditions

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ARTICLE 1- INTERPRETATION

1.01 Defined Terms

When used in the Purchase Agreement, the following words or expressions have the following meanings:

"Authority" means any government authority, agency, body or department, whether federal, state or local, having or claiming jurisdiction over the Purchase Agreement; and **"Authorities"** means all such authorities, agencies, bodies and departments;

"Business Day" means any working day, Monday to Friday inclusive, but excluding statutory holidays and other days on which the Purchaser has elected to be closed for business;

"Deliverables" means everything developed for or provided to the Purchaser in the course of performing under the Purchase Agreement or agreed to be provided to the Purchaser under the Purchase Agreement by the Supplier;

"Effective Date" is as set out in the Purchase Agreement;

"Industry Standards" means commonly accepted norms of ethical business practices, which shall include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Purchaser;

"Intellectual Property" means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of the United States, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity;

"Person" if the context allows, includes any individuals, persons, firms, partnerships or corporations or any combination thereof;

"Purchaser Representative" is as set out in the Purchase Agreement;

"Proceeding" means any action, claim, demand, lawsuit, or other proceeding;

"Rates" means the applicable price, in U.S. funds, to be charged for the applicable Deliverables, as set out in the Purchase Agreement;

"Requirements of Law" mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all Authorities that now or at any time hereafter may be

applicable to either the Purchase Agreement or the Deliverables or any part of them;

"**Supplier Representative**" is as set out in the Purchase Agreement, and

"**Term**" is as set out in the Purchase Agreement.

ARTICLE 2 - GENERAL TERMS

2.01 Entire Contract

The Purchase Agreement embodies the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise with respect to the provision of the Deliverables, existing between the parties at the Effective Date of the Purchase Agreement. In the event of a conflict between the Standing Offer Terms and Conditions, this Master Agreement, and the terms of the Purchase Agreement entered into between the Supplier and a Purchaser in respect of the Deliverables, the terms and conditions of the Purchase Agreement between the Supplier and such Purchaser shall control.

2.02 Severability

If any term or condition of the Purchase Agreement, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the Purchase Agreement, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

2.03 Changes by Written Amendment Only

Any changes to the Purchase Agreement shall be by written amendment signed by the parties. No changes shall be effective or shall be carried out in the absence of such an amendment. Any such written changes shall be included in the definition of Purchase Agreement.

2.04 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Purchase Agreement where such delay or failure is caused by an event beyond its reasonable control. If a party seeks to excuse itself from its obligations under the Purchase Agreement due to a force majeure event, that party shall immediately notify the other party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance.

2.05 Notices by Prescribed Means

Notices shall be in writing and shall be delivered by postage-prepaid envelope, personal delivery or email and shall be addressed to, respectively, the Purchaser Representative and the Supplier Representative. Notices shall be deemed to have been given: (a) in the case of postage-prepaid envelope, with confirmation of delivery, one (1) Business Day following the confirmation of delivery; or (b) in the case of personal delivery or email one

(1) Business Day after such notice is received by the other party. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

2.06 Governing Law

The Purchase Agreement shall be governed by and construed in accordance with the laws of Ohio and the federal laws of the United States applicable therein.

ARTICLE 3 - NATURE OF RELATIONSHIP BETWEEN PURCHASER AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Purchase Agreement.

3.02 Representatives May Bind the Parties

The parties represent that their respective representatives have the authority to legally bind them to the extent permissible by the Requirements of Law.

3.03 Supplier Not a Partner, Agent or Employee

Neither party shall have the power or authority to bind the other party or to assume or create any obligation or responsibility, express or implied, on behalf of the other party. Neither party shall hold itself out as an agent, partner or employee of the other party. Nothing in the Purchase Agreement shall have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Supplier or any of their respective directors, officers, employees, partners or affiliates.

3.04 Non-Exclusive Contract, Work Volumes

The Supplier acknowledges that it is providing the Deliverables to the Purchaser on a non-exclusive basis. The Purchaser reserves the right to contract with other parties for the same or similar goods and services as those provided by the Supplier and reserves the right to obtain the same or similar goods and services internally.

3.05 Contract Binding

The Purchase Agreement can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 - PERFORMANCE BY SUPPLIER

4.01 Commencement of Performance

The Supplier shall commence performance in accordance with the Purchase Agreement between Supplier and Purchaser.

4.02 Deliverables Warranty

All warranties with respect to the Deliverables shall be set forth in the applicable Purchase Agreement.

4.03 Compliance with Laws

Without limiting the generality of section 4.02, each party agrees that it has complied with and will comply with, and ensure that any subcontractors comply with, all applicable provincial and federal laws and regulations in relation to the goods and services to be supplied hereunder and in the performance of such party's obligations under the Purchase Agreement.

4.04 Shipment of Goods

To the extent that the Deliverables include the shipment of goods to the Purchaser, all such goods shall be Delivered in accordance with the provisions of the Purchase Agreement.

4.05 Performance by Specified Individuals Only

The Supplier agrees that to the extent that specific individuals are named in the Purchase Agreement as being responsible for the provision of the Deliverables, only those individuals shall provide the Deliverables under the Purchase Agreement. The Supplier shall not replace or substitute any of the individuals named in the Purchase Agreement without the prior written approval of the Purchaser, which may not arbitrarily or unreasonably be withheld. Should the Supplier require the substitution or replacement of any of the individuals named in the Purchase Agreement, it is understood and agreed that any proposed replacement must possess similar or greater qualifications than the individual named in the Purchase Agreement. The Supplier shall not claim fees for any replacement individual greater than the Rates established under the Purchase Agreement.

4.06 Time

Time is of the essence.

ARTICLE 5 - PAYMENT FOR PERFORMANCE AND AUDIT

5.01 Payment According to Purchase Agreement Rates

The Purchaser shall, subject to the Supplier's compliance with the provisions of the Purchase Agreement, pay the Supplier for the Deliverables provided at the Rates established under the Purchase Agreement. Payment shall be made in accordance with the terms and conditions of the Purchase Agreement.

5.02 Payment of Taxes and Duties

Payment of taxes, including excise taxes, shall be allocated and made in accordance with the Purchase Agreement.

ARTICLE 6 - CONFIDENTIALITY

6.01 Confidential Information

During and following the Term, each party shall: (a) keep all Confidential Information received from the other party confidential and secure; (b) limit the disclosure of Purchaser Confidential Information to only those of its directors, officers, employees, agents, partners, affiliates, or subcontractors who have a need to know it for the purpose of performance by such party under this Agreement; (c) not directly or indirectly disclose, destroy, exploit or use any Confidential Information (except for the purpose of performance under the Agreement, or except if required by order of a court or tribunal), without first obtaining: (i) the written consent of the other party and (e) return all Confidential Information to the other party before the end of the Term upon written request, with one copy or kept for compliance purposes. In lieu of return, a party may certify destruction of the applicable Confidential Information, subject to keeping one copy per the above.

6.02 Injunctive and Other Relief

Each party acknowledges that breach of any provisions of this Article may cause irreparable harm to the other party, and that the injury to such party may be difficult to calculate and inadequately compensable in damages. Each party agrees that the other party is entitled to obtain injunctive relief (without proving any damage sustained by it or by any third-party) or any other remedy against any actual or potential breach of the provisions of this Article.

6.03 Notice and Protective Order

If a party or any of its directors, officers, employees, agents, partners, affiliates, or subcontractors become legally compelled to disclose any

Confidential Information of the other party, such will provide the other party with prompt notice to that effect in order to allow the disclosing party to seek one or more protective orders or other appropriate remedies to prevent or limit such disclosure, and it shall co-operate with the other party and its legal counsel to the fullest extent. If such protective orders or other remedies are not obtained, the compelled party will disclose only that portion of the Confidential Information which it is legally compelled to disclose, only to such person or persons to which it is legally compelled to disclose, and the compelled party shall provide notice to each such recipient (in co-operation with legal counsel for the other party) that such Confidential Information is confidential and subject to non-disclosure on terms and conditions equal to those contained in the Purchase Agreement and, if possible, shall obtain each recipient's written agreement to receive and use such Purchaser Confidential Information subject to those terms and conditions.

6.04 Survival

The provisions of this Article shall survive any termination or expiry of the Purchase Agreement.

ARTICLE 7 - INTELLECTUAL PROPERTY

7.01 Purchaser Intellectual Property

The Supplier agrees that all Intellectual Property owned by the Purchaser however recorded, (including images and data) provided by the Purchaser to the Supplier shall remain the property of the Purchaser.

7.02 Ownership of Intellectual Property

Right and title to Intellectual Property with respect to the the Deliverables shall be determined in accordance with the Purchase Agreement.

7.03 Supplier Representation and Warranty Regarding Third-Party Intellectual Property

The Supplier represents and warrants that the provision of the Deliverables shall not infringe or induce the infringement of any Third-Party Intellectual Property rights.

7.04 Survival

The obligations contained in this Article shall survive the termination or expiry of the Purchase Agreement.

ARTICLE 8 -INSURANCE; LIMITATION ON LIABILITY

8.01 Insurance

Supplier and Purchaser shall each provide the insurance required under and in accordance with the requirements of law and Purchase Agreement. Upon written request by UCCOG, Supplier shall provide copies of Supplier's

insurance certificates issued by Supplier in connection with the applicable Purchase Agreements.

8.02 Limitation of Liability

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE AND LOST PROFITS) OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY. No representation or warranty of merchantability or fitness of purpose is made by supplier regarding prevention by the deliverables, or any component thereof, of mold, fungus, bacteria, microbial growth, or any other contaminates. Supplier specifically disclaims any liability if the Scope of the deliverables or any component thereof is used to prevent or inhibit the growth of such materials.

ARTICLE 9 -TERM AND TERMINATION

9.01 Term and Termination. The term of this agreement and the parties' respective rights to terminate the agreement shall be as set forth in the Purchase Agreement.

STANDING OFFER _____ HVAC Equipment and Services

Form of Purchase Agreement

For the purchase of Deliverables under the Standing Offer, the Purchaser and the Supplier may enter into a Purchase Agreement in accordance with the following form:

PURCHASE AGREEMENT

BETWEEN: _____

(*INSERT FULL LEGAL NAME OF THE SERVICE MEMBER*)

(referred to as the "Purchaser")

AND: _____

[*LEGAL NAME OF SUPPLIER*]

(referred to as the "Supplier")

WHEREAS, the Purchaser is a Service Member of the Union County Council of Governments ("UCCOG");

WHEREAS, UCCOG and the Supplier have entered into an agreement to establish Standing Offer _____ **HVAC Equipment and Services** (the "Standing Offer") for the supply of the Deliverables by the Supplier to UCCOG's members;

AND WHEREAS, the Supplier has agreed to provide the particular Deliverables described herein to the Purchaser pursuant to the terms of the Standing Offer and the terms set out below;

NOW THEREFORE, the parties agree as follows:

Article 1- Terms and Conditions

This Purchase Agreement is made pursuant to the Standing Offer and is governed by the terms and conditions contained herein, including Appendix A of this Purchase Agreement, and the Standing Offer Terms and Conditions set out in the Standing Offer.

In the event of any ambiguity, conflict or inconsistency between them, the terms and conditions expressly set out in this Purchase Agreement, including Appendix A, shall take precedence over the Standing Offer Terms and Conditions.

Article 2 - Term of Purchase Agreement

This Purchase Agreement shall take effect on the (*insert date*) (the "Effective Date") and shall be in effect for a period of [*insert # of years or months] (the "Term"), unless it is terminated earlier in accordance with the terms of the Purchase Agreement or otherwise by operation of law.

Article 3 - Representatives

The Supplier Representative and Purchaser Representative shall represent the respective parties for the purposes of the Purchase Agreement:

The Purchaser Representative and contact information for the Purchase Agreement is:

[*insert name and title of the Purchaser's representative and contact details, including mailing address and email address*]

The Supplier Representative and contact information for the Purchase Agreement is:

[*insert name and title of Supplier representative and contact details, including mailing address and email address*]

Article 4 - Performance and Payment

The Supplier agrees to provide the Deliverables to the Purchaser as described in the Appendix A to this Purchase Agreement ("Appendix A"). The Supplier will invoice the Purchaser for the Deliverables provided under this Purchase Agreement in accordance with the payment terms set out in Appendix A.

The Supplier and Purchaser acknowledge that UCCOG, shall not be responsible for the payment of any Deliverables or for any liability arising out of the provision of the Deliverables or failure to provide any Deliverables.

Article 5 - Execution

This Agreement may be executed and (i) delivered by facsimile transmission or (ii) scanned and delivered by electronic transmission, and when so executed and delivered, will be deemed an original.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below.

[Purchaser's Full Legal Name]

Signature: _____

Name: _____

Title: _____

Date of Signature: _____

I have the authority to bind the Purchaser.

[Supplier's Full Legal Name]

Signature: _____

Name: _____

Title: _____

Date of Signature: _____

I have the authority to bind the Supplier.

Appendix A to the Purchase Agreement

(INSERT _____'S STANDARD TERMS AND CONDITIONS AS NEGOTIATED
AND AGREED TO BY THE PURCHASER)

SERVICE MEMBER PURCHASE AGREEMENT

(TEMPLATE)

(Contract _____)

WHEREAS, _____ (“Supplier”) is an awarded vendor under the Union County Council of Governments (“UCCOG”) Contract _____, HVAC Equipment, Supplies, and Installation of HVAC Equipment (“Contract # _____”); and

WHEREAS, _____ (“Purchaser”), an _____ nonprofit corporation and UCCOG Service Member, has received Supplier Proposal Number _____ dated _____, attached hereto as Exhibit A (“Proposal”) and incorporated herein for all purposes regarding the purchase and installation of HVAC equipment and related services as set forth in the Proposal, including Alternate 1; and

WHEREAS, PURCHASER desires to procure those products and services identified in the Proposal, including installation, at the fixed price of \$ _____ (“Contract Price”) as set forth therein (the “Purchase”);

NOW, THEREFORE, the parties here to mutually agree for the consideration recited herein, the receipt and adequacy of which is hereby acknowledged, and upon the stated terms and conditions, as follows:

1. **PURCHASE ORDER.** This Agreement shall serve as the Purchase Order and Service Member Contract, as defined in Contract # _____, by PURCHASER to Supplier through the UCCOG for the Purchase.

2. **CONTRACT GENERAL TERMS AND CONDITIONS:** The parties agree that the scope of Work shall be as set forth in the Proposal (including exclusions or clarifications therein, but excluding any reference to or incorporation of the Supplier Terms and Conditions), and, subject to Paragraph 3 of this Agreement, the Purchase shall be governed by the terms and conditions of Contract # _____, including the General Terms and Conditions set forth in the UCCOG Request for Proposals # _____. The parties further agree that the Supplier Terms and Conditions referenced in the Proposal shall not apply to the Purchase, such Purchase instead being governed by the UCCOG General Terms and Conditions and Additional Terms and Conditions as set forth herein.

3. **ADDITIONAL TERMS AND CONDITIONS:** In addition to the General Terms and Conditions of Contract # _____, the parties agree that the following Additional Terms and Conditions shall apply. In the event of any conflict, these Additional Terms and Conditions shall control, but only to the extent required to resolve the conflict.

a. **WORK.** Supplier shall furnish all labor, supervision, materials, equipment, tools, scaffolding, machinery, transportation, and supplies necessary to complete the improvements set forth in the Proposal (“Work”). All material and equipment shall be new, in full working condition upon final completion, and subject to all applicable warranties as set forth herein and in the Proposal.

b. **TERM/CONTRACT TIME.** This Agreement shall be effective _____ (“Effective Date”). On the Effective Date, PURCHASER shall issue a written notice to proceed to Supplier, at which time Supplier shall promptly, and without delay, take all reasonable steps necessary to order and obtain the equipment at the agreed upon pricing (which, in all events, shall be consistent with UCCOG pricing and include the UCCOG discount Supplier agreed to under Contract # _____). Upon receipt of the Notice to Proceed, Supplier shall complete all necessary design and specifications and upon completion thereof and receipt of any applicable permits for the Work, place the order with the factory. The prices stated in the Proposal are firm, provided that notification or release for immediate production and shipment is received at the

factory not later than 3 months from order receipt. Pricing shall be subject to adjustment as set forth herein if (i) market-wide price increases occur in the time between the execution of the agreement and the release of the equipment for production, (ii) such price increases comply with the awarded pricing under Contract # _____, and (iii) delays in the release of the equipment are not a result, in whole or in part, of Supplier's actions, including any delay by Supplier in ordering or taking such steps as may be required on its part in obtaining release of the equipment.

Except to the extent otherwise expressly agreed in writing signed by an authorized representative of Supplier, all dates provided by Supplier or its representatives for commencement, progress or completion are estimates only. While Supplier shall use commercially reasonable efforts to meet such estimated dates, Supplier shall not be responsible for any damages for its failure to do so. As part of such commercially reasonable efforts, Supplier shall promptly notify PURCHASER of receipt of equipment from the factory, coordinate with PURCHASER to schedule for performance of the Work, and commence the Work on the earliest possible date as agreed upon with PURCHASER ("Commencement Date"). Supplier shall achieve substantial completion of the Work [within 15 days of the Commencement Date] unless otherwise agreed to by the parties in writing. Substantial completion shall be the date that the Work is sufficiently complete so that the Work can be utilized for its intended use and PURCHASER receives beneficial use of the Work. Any Work not completed at the time of substantial completion shall be completed by Supplier as soon as possible after substantial completion. Supplier will diligently perform all parts of the Work at the time scheduled. In this connection, Supplier will keep itself continually informed of the progress of the Work and will confer with PURCHASER so as to plan its Work in coordinated sequence with the work of PURCHASER and of others and so as to be able to expeditiously undertake and perform its Work at the time most beneficial to the entire project. Supplier shall be responsible for all subcontractors working directly for Supplier. In the event of a delay or hindrance caused by PURCHASER, Supplier shall be entitled to any increase in the price of the equipment resulting from such delay per the paragraph above and for an increase in the cost of the Work to the extent affected by such delay or hindrance, including the cost of mobilization and demobilization, as applicable.

When Supplier informs PURCHASER that the Work has been completed, PURCHASER shall inspect the Work in the presence of Supplier's representative, and PURCHASER shall either (a) accept the Work in its entirety in writing, or (b) accept the Work in part and specifically identify, in writing, any exception items. PURCHASER agrees to re-inspect any and all excepted items as soon as Supplier informs PURCHASER that the Work has been completed. Any subsequent re-inspection of excepted items shall take place within 10 business days from the date when Supplier informs PURCHASER that the excepted items have been completed. Subject to any unforeseeable event outside of PURCHASER's control delaying inspections, including, but not limited to weather events, utility failure, and building closures, PURCHASER's failure to cooperate and complete any of said inspections within the required time limits shall constitute complete acceptance of the Work as of 10 business days from the date when Supplier informs PURCHASER that the Work, or the excepted items, if applicable, have been completed.

c. PERMITS. Supplier shall secure all permits required for or by performance of the Work, subject to the limitations set forth in the Proposal.

d. PAYMENTS. Billing and payment shall be on a monthly progress basis. PURCHASER will notify Supplier of any error or disputed amount in an invoice submitted for payment not later than the 21st date after receipt of the invoice, and the parties shall work promptly and in good faith to resolve any disputes. PURCHASER shall pay Supplier's undisputed invoices within net 30 days of invoice receipt. Supplier may invoice PURCHASER for all material furnished, whether delivered to the installation site or to an off-site storage facility and for all Work performed on-site or off-site. If payment is not received as required, Supplier may suspend performance and the time for completion shall be extended for a reasonable period of time not less than the period of suspension. Supplier reserves the right to add to any undisputed account outstanding for more than 30 days a service charge equal to 1.5% of the principal amount due at

the end of each month. PURCHASER shall pay all costs (including attorneys' fees) incurred by Supplier in attempting to collect amounts due but undisputed and unpaid.

Prior to final payment for the Work, Supplier shall provide PURCHASER with proof of release of all liens against PURCHASER from Supplier for Work performed under this Agreement. Should any lien related to this Agreement is placed on PURCHASER's property by a subcontractor of Supplier, Supplier shall promptly and at its own cost either dismiss the lien or, no later than sixty (60) days following the filing of such lien Supplier may, at its option, pay or bond such lien.

e. SUPPLIER EMPLOYEES. PURCHASER shall have no right or obligation (i) to direct the means or methods of the Work, (ii) to supervise the Work for the safety of its performance, or (iii) to check on the qualifications or background of persons employed in the Work. Supplier will exercise due diligence to not send employees or laborers to work inside any PURCHASER building(s) if they have a conviction history of any crime that may pose a serious potential risk of injury to persons working or visiting in the building(s). This includes (but is not limited to) such crimes as rape, molestation, sexual assault, indecent exposure, indecency with a child, murder and kidnapping. It is Supplier's responsibility to determine the best way to exercise that due diligence.

f. WORKING CONDITIONS. Supplier has made itself thoroughly familiar with the Work to ascertain all site conditions and limitations and, except as provided herein, will perform the Work for the fixed price set forth in this Agreement. In the performance of the Work, if Supplier encounters conditions at the Work site that are (i) subsurface or otherwise concealed physical conditions that differ materially

from those indicated on drawings expressly incorporated herein or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character of the Work, Supplier shall notify PURCHASER of such conditions promptly, prior to significantly disturbing same. If such conditions differ materially, were not reasonably discoverable by Supplier during its review of site conditions and limitations prior to entering in this Agreement, and cause an increase in Supplier's cost of, or time required for, performance of any part of the Work, Supplier may shall entitled to an equitable adjustment in the Contract Price, contract time, or both via a Change Order.

The Work shall be performed in a manner to minimize the interference with PURCHASER's operations, and Supplier shall be subject to PURCHASER's reasonable directions to enforce same. Supplier shall use only authorized entrances, elevators, and storage areas as designated by PURCHASER. Supplier shall effectively secure and protect the Work to be done hereunder and assume full responsibility for the condition thereof until substantial completion thereof. Supplier shall be liable for any loss or damage to any Work or any equipment and materials on the job site caused by it or its subcontractors. Supplier shall provide adequate protection of all areas and keep all areas of use clean, and free of debris, and noise levels to a minimum. Supplier shall provide for removal of all trash and debris daily.

g. CHANGES; TERMINATION. Supplier will be compensated as a result of a change in the scope of Work that increases costs through a written change order ("Change Order"), which may also increase the contract time. Supplier shall not proceed with changes in the scope of Work (either additions or deletions) without a Change Order signed by both PURCHASER's Executive Director and Supplier stating the method of payment or amount of dollars and the time involved in the change.

Either party may terminate this Agreement due to a breach by the other party that is not corrected within 30 days of written notice of the breach, provided, that if such breach cannot be reasonably remedied within such thirty (30) day period, the breaching party shall have such time as may be reasonably required to remedy such breach so long as such breaching party is working diligently

to cure or remedy such breach. Each of the following events or conditions shall constitute a breach and shall give the other party the right, without an election of remedies, to terminate this Agreement and suspend performance by delivery of written notice: (1) any failure to pay amounts when due; (2) any general assignment by the party for the benefit of its creditors, or if the party becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of the party or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of the party; (3) any representation or warranty furnished by the party in this Agreement, including the Proposal, is false or misleading in any material respect when made; or (4) any failure by the party to perform or comply with any material provision of this Agreement. In the event of a breach by PURCHASER, PURCHASER shall be liable to Supplier for all Work furnished by Supplier through the date of the notice of termination and for any equipment ordered by PURCHASER, wither in production or delivered and any costs or damages incurred by Supplier as a result of such termination, including demobilization and the cost of terminating any orders for materials, services or supplies. In the event of a breach by either party, that party shall be liable to the other party for actual, direct damages sustained.

h. **WARRANTY.** All warranties for equipment, parts, and labor shall be for the term set forth herein or in the Proposal, whichever is greater.

Supplier shall perform the Work in accordance with industry standards generally applicable in the area under similar circumstances as of the time Supplier performs the Work.

Unless a longer or greater warranty is listed in the Proposal in which case the longer/greater warranty shall apply, Company warrants for a period of 12 months from the date of substantial completion (“Warranty Period”) commercial equipment manufactured and installed by Supplier (including Supplier’s subcontractors) against failure due to defects in material and manufacture and that the labor furnished is warranted to have been properly performed (“Limited Warranty”). Product manufactured by Supplier that includes required startup and is sold in North America will not be warranted by Supplier unless Supplier performs the product start-up. If such defect is discovered within the Warranty Period, Supplier will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and labor associated with the replacement of parts or equipment not conforming to this Limited Warranty. Defects must be reported to Supplier within the Warranty Period. Exclusions from this Limited Warranty include damage or failure arising from: wear and tear; corrosion, erosion, deterioration; PURCHASER’s failure to follow the Supplier-provided maintenance plan; refrigerant not supplied by Supplier; and modifications made by others to Supplier’s equipment. Supplier shall not be obligated to pay for the cost of lost refrigerant. Notwithstanding the foregoing, all warranties provided herein terminate upon termination by Supplier for cause due to PURCHASER default or cancellation by PURCHASER of this Agreement without cause prior to completion. No warranty liability whatsoever shall attach to Supplier until the Work has been paid for in full and then said liability shall be limited to the lesser of Supplier’s cost to correct the defective Work and/or the purchase price of the equipment shown to be defective. Equipment, material, and/or parts that are not manufactured by Supplier are not warranted by Supplier and have such warranties as may be extended by the respective manufacturer. **THE WARRANTY SET FORTH IN THIS AGREEMENT AND THE PROPOSAL ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND/OR OTHERS ARISING FROM COURSE OF DEALING OR TRADE. COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSES, REGARDING PREVENTING, ELIMINATING, REDUCING OR INHIBITING ANY MOLD, FUNGUS, BACTERIA, VIRUS, MICROBIAL GROWTH, OR ANY OTHER CONTAMINANTS (INCLUDING COVID-19 OR ANY SIMILAR VIRUS)**

(COLLECTIVELY "CONTAMINANTS"), WHETHER INVOLVING OR IN CONNECTION WITH ANY EQUIPMENT, ANY COMPONENT THEREOF, SERVICES OR OTHERWISE AND PURCHASER HEREBY SPECIFICALLY ACKNOWLEDGES AND AGREES THERETO.

Supplier will repair or replace defective equipment, materials, or Work or Work that does not otherwise conform to the applicable warranties during the warranty period at no charge. Any warranty work completed shall be subject to no less than an additional one-year warranty from the date of completion of such warranty work. Supplier hereby assigns all equipment and vendor warranties to PURCHASER and will deliver all manuals, books, warranties, and similar documentation to PURCHASER on or before final completion.

i. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT CONSEQUENTIAL, OR PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE, LOST PROFITS, LOST DOLLAR SAVINGS, OR LOST ENERGY USE SAVINGS, EVEN IF A PARTY HAS BEEN ADVISED OF SUCH POSSIBLE DAMAGES OR IF SAME WERE REASONABLY FORESEEABLE REGARDLESS OF WHETHER THE CAUSE OF ACTION IS FRAMED IN CONTRACT, NEGLIGENCE, ANY OTHER TORT, WARRANTY, STRICT LIABILITY, OR PRODUCT LIABILITY). In no event will either party's liability to the other in connection with the provision of products or services or otherwise under this Agreement, but excluding indemnification obligations from third party claims, exceed two times the total amount paid to Supplier by PURCHASER under this Agreement.

j. DRAWINGS. Supplier shall maintain an accurate set of "as built" drawings of the Work performed by Supplier or its subcontractors which shall be provided to PURCHASER as a condition for final payment.

k. INSURANCE. Supplier must maintain at all times while this Agreement is in effect:

Worker's compensation with statutory WC limitations and Employers Liability of \$_____ with a Waiver of Subrogation Endorsement in favor of PURCHASER.

Commercial General Liability with \$_____ per occurrence and a \$_____ aggregate and a \$_____ on Products Completed Operations. PURCHASER must be named an Additional Insured by appropriate endorsement.

Professional Liability (Errors and Omissions) Insurance appropriate to Contractor's profession, with limits of no less than \$_____ per occurrence or claim and \$_____ aggregate; provided that the Professional Liability coverage may be provided by the design professional on record instead of Supplier.

Umbrella liability with limits of \$_____ per occurrence and in the aggregate.

Automobile Liability Insurance in an amount not less than \$_____ combined single limit to cover bodily injury, accidental death, and property damage.

All insurance carriers will carry an A.M. Best rating of A- or better and be of a financial size category of VIII or larger. Supplier's insurance shall be primary insurance as respects PURCHASER, its directors, officers, employees, and volunteers. Any insurance or self-insurance maintained by PURCHASER, its directors, officers, employees, or volunteers shall be excess of Supplier's insurance and shall not contribute with it. Coverage required herein shall not be canceled except with notice to PURCHASER. Supplier must provide PURCHASER proof of the required insurance and endorsements before commencing work.

l. . Indemnification. This indemnification provision shall be the sole indemnification provision between the Parties in lieu of any other indemnification requirement under the Contract

#_____. To the maximum extent permitted by law, Supplier and PURCHASER shall indemnify and hold each other and all respective officers, directors, affiliates, shareholders, and employees harmless from any and all third party actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to property, to the extent arising out of or resulting from the negligence of their respective employees or other authorized agents in connection with the Premises. Neither party shall be required to indemnify the other against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault hereunder, then any obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred prior to expiration or termination. In the event one party hereto knows or has reason to believe that the other party will be required, in connection with this Agreement, by any court or governmental administrative agency to respond to any legal action or other directive by such authorities, such party shall immediately notify the other in writing of the same.

m. DISPUTE RESOLUTION. Before a party commences an action, brings a proceeding, or seeks relief in a court (except an action seeking interlocutory injunctive relief) for any dispute arising under this Agreement, the parties shall comply with this paragraph. The complaining party shall give written notice to the other party specifying the basis for and facts related to the dispute, and the parties shall confer within 20 business days of the other party's receipt of the notice (or longer period as may be agreed between the parties) to attempt to resolve the dispute. If the dispute remains unresolved, the parties agree they will make a good faith effort to resolve the dispute by mediation. Each party's representative in the mediation must have full authority to compromise and settle any dispute that is the cause of the proceeding, and the results of the mediation will be binding only upon agreement of each party to be bound. The mediation will be held in Union County, Ohio. Each party will pay its own expenses for participating in the mediation, including one-half of the mediator's fees.

n. NO ASSIGNMENT. Supplier may not assign or transfer this agreement without the prior written consent of PURCHASER, provided that Supplier may subcontract any portion of the Work in accordance with Supplier's standard processes and procedures.

o. CONFIDENTIALITY. The parties agree that all information provided in connection with this Agreement is proprietary and confidential and subject to the provisions of this confidentiality provision ("Confidential Information"). Each party agrees to hold such Confidential Information in strict confidence and (a) use Confidential Information only for the purpose of services under this Agreement; (b) reproduce Confidential Information only to the extent necessary for such purposes; (c) restrict disclosure of Confidential Information only to employees, agents, representatives, subcontractors and consultants with a need to know; and (d) not disclose Confidential Information to any party without the prior written consent of the party owning the Confidential Information, unless required by law or unless the information at issue has become available to the public other than as a result of a wrongful disclosure by the party seeking to disclose the information. Each party agrees that it shall take all reasonable steps to protect the secrecy of and avoid disclosure or use of Confidential Information by unauthorized persons or for unauthorized purposes. Each party agrees to immediately notify the other party in writing of any misuse or misappropriation of Confidential Information. It is agreed and understood that in the event of a breach, damages may not be an adequate remedy and each party may be entitled to injunctive relief to restrain any such breach, threatened or actual.

p. USE OF NAME. Supplier may not use PURCHASER's name (or the name of any entity affiliated with PURCHASER) in any advertising or promotional materials or as a reference, without PURCHASER's prior written consent. Supplier may not make or publish any statements which imply that PURCHASER is affiliated with Supplier, sponsors Supplier, or endorses Supplier.

q. COUNTERPARTS. This Agreement may be executed by the parties in one or more counterparts, each of which will be an original and all of which will constitute one and the same instrument. A facsimile or imaged signature will be deemed an original.

r. WAIVER. The waiver by either party of any breach or failure to enforce any provision of this Agreement does not affect, limit or waive such party's future enforcement of that or another provision. No right or obligation of a party may be waived without the prior written consent of the other party.

[Signatures on following page.]

WHEREFORE, the parties hereto have caused this Agreement to be duly executed in their respective names by their duly authorized representatives.

SUPPLIER: _____

By:

Printed Name: _____

Title: _____

Date: _____

PURCHASER

By:

Printed Name: _____

Title: _____

Date: _____

Exhibit A

SUPPLIER PROPOSAL / SCOPE OF SERVICES