

**ADDENDUM**  
**FOR THE QUANTITY PURCHASE AGREEMENT FOR**  
**PROJECT 25 COMPLIANCE ASSESSMENT PROGRAM ("P25 CAP") RADIO**  
**EQUIPMENT, MAINTENANCE, REPAIR, PARTS, AND ACCESSORIES**

**Contract # 0000000000000000000028262**

This Addendum is entered into by and between Indiana Department of Administration on behalf of the Integrated Public Safety Commission and all state agencies ("the State") and the entity designated as "Contractor" below.

The purpose of this Addendum is to modify, delete, or amend certain terms and conditions set forth in the attached Form Contract prepared by Contractor (the "Form Contract"). This Addendum and the Form Contract are incorporated into each other and, when read together, shall constitute one integrated document ("this Contract"). Any inconsistency, conflict, or ambiguity between this Addendum and the Form Contract shall be resolved by giving precedence and effect to this Addendum.

The parties enter into this Addendum to establish a Quantity Purchase Agreement ("QPA") for the products and services as described herein pursuant to the terms and conditions set out below.

**Definitions:**

- A. The "State" means the State of Indiana executive branch agencies, the judicial branch, the legislative branch, and separately elected statewide officers.
- B. "Other Governmental Entities" means any Indiana county, municipality, municipal corporation, state educational institution, school corporation, city or county hospital, or bodies corporate and politic.

Contractor Name: E F JOHNSON COMPANY

Contractor Address: 1440 CORPORATE DR  
IRVING, TX 75038

Title of Form Contract: Warranty Statement and Software License Agreement, attached and incorporated herein as **Attachments A and B**, respectively.

**1. Form Contract/Duties of Contractor.**

The Contractor or its Authorized Resellers/Dealers will provide Project 700/800 MHz P25 radio equipment, maintenance, repair, parts and accessories for use on the statewide 800 MHz interoperable public safety communications. The scope of products in this contract include P25 compliant base stations, repeaters, mobile radios, portable radios and vehicular repeaters only as set out in more detail below and in all other exhibits and attachments to this contract referenced below and as described and incorporated in Paragraph 34 [Incorporation by Reference].

The entirety of the Contractor's response to RFI #18-020 being hereby incorporated by reference, even though a complete copy of such Contractor's response to RFI #18-020 is not attached hereto due to its volume and the parties' acknowledgement that each of them has ready access to a complete copy.

The entirety of the State of Indiana RFI #18-020 being hereby incorporated by reference, even though a complete copy of such RFI #18-020 is not attached hereto due to its volume and the parties' acknowledgement that each of them has ready access to a complete copy.

- A. Authorized Reseller/Dealers. The Contractor provides goods and services directly and primarily through Authorized Resellers/Dealers. All orders for the state agencies shall be fulfilled through the Contractor directly while orders for the other governmental entities can be fulfilled through use of authorized resellers/dealers approved by the Integrated Public Safety Commission (IPSC). Each Authorized Reseller/Dealer approved by the State pursuant to this QPA must (i) be registered to do business with the Indiana Secretary of State, and have agreed to accept the terms and conditions of this QPA when accepting an order placed on behalf of the State.
- B. Contractor Oversight of Authorized Resellers/Dealers. The Contractor will work with the State to (1) properly onboard Authorized Resellers/Dealers such that they are fully aware of statewide contract parameters, (2) manage de-certification or off-boarding of Authorized Resellers/Dealers from servicing statewide entities under this contract, and (3) assist in the resolution of any escalated customer issue. The Contractor will track the performance of Authorized Resellers/Dealers to ensure that quality and service levels are maintained and that applicable Contractor certification requirements are met based on specialty of services requested under this QPA. The Contractor will facilitate regular meetings to review QPA progress and Authorized Business Dealer's performance. The Contractor may remove, without approval of the State, or add Authorized Resellers/Dealers, with approval of the State, throughout the life of this QPA. The Contractor should notify the State when changes occur by email to [dcochrane@ipsc.IN.gov](mailto:dcochrane@ipsc.IN.gov), [nocipsc@ipsc.IN.gov](mailto:nocipsc@ipsc.IN.gov), and [mhempel@idoa.IN.gov](mailto:mhempel@idoa.IN.gov).
- C. Goods and Services Provided. The Contractor or its Authorized Resellers/Dealers shall provide the equipment, software, and services set forth in the Form Contract attached and incorporated as **Attachment C [Target Pricing]**.
  - a. New products and/or services that meet the scope of the work may be added to the contract on an annual basis. Pricing shall be equivalent to the percentage discount for existing products. Contractor may replace or add product lines to this contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation.
- D. Orders Placement through Authorized Reseller/Dealer. All Authorized Resellers/Dealers are eligible to quote pricing for procurements under this QPA. The Contractor will not, directly or indirectly, restrict any Authorized Reseller's/Dealer's participation or ability to quote pricing under this QPA. An Authorized Reseller/Dealer will not offer less favorable pricing as reflected in the QPA rates described in the Consideration. Any additional incremental discounts or spot pricing, if offered, may be provided in the discretion and as the sole legal obligation of the Authorized Reseller/Dealer. All requests for quotes and purchase orders placed by the State shall reference this QPA.
- E. Authorized Reseller/Dealer Invoicing. Each Authorized Reseller/Dealer may directly receive a purchase order, submit invoices for its own account, and receive payments in its own name. The Contractor shall make no claim against the State or any Other Governmental Entity for any payment dispute between the Contractor and an Authorized Reseller/Dealer.
- F. Other Governmental Entities may purchase from this QPA by the means of a Purchase Order, a Statement of Work, or such other document as is acceptable to the Contractor

and the Government Entity.

- G. Training. The Contractor shall conduct comprehensive training to instruct IPSC personnel and twice annually to instruct subscriber personnel in the proper programming of the equipment to ensure correct operation of the equipment.
- H. Technical Support. The Contractor will provide details about and technical support to subscriber entities including, but not limited to field service bulletins, installation and operation manuals, and telephone support for technical inquiries.
- I. Service Level Agreements (SLAs) and Key Metrics. The Contractor shall demonstrate a high level of quality control standards and guarantees of service. The Contractor shall tabulate the actual Metrics outcome outlined in **Attachment D** and present the results periodically as requested by the State.

**2. Term.** This Contract This contract shall be effective for a period of three (3) years after the date of the last State signatory.

**3. Consideration.**

- A. The products and/or services quoted shall be for the purchase of products and/or services meeting the specifications requested (products will meet published specification). The discounts and rates listed in Attachment C will be consistent as equipment is updated annually over the contract term. No additional charge may be requested later.
- B. The Contractor or its Authorized Resellers/Dealers will invoice the State or Other Governmental Entity directly for products and/or services for which it received a Purchase Order. All invoices must reference this QPA. The State will not be responsible or financially liable for any orders placed, goods provided, or work performed for any Other Governmental Entity as defined above.
- C. The Contractor will receive no direct financial remuneration from the State for goods and services for the purchases by the State under this QPA made directly with the Authorized Reseller/Dealer, it being understood that the Contractor's remuneration for indirect orders derives from its agreements with its Authorized Resellers/Dealers.

By mutual agreement of the parties, the following terms and conditions are deleted from the Form Contract:

- A. Any provision requiring the State of Indiana to provide insurance
- B. Any provision requiring the State of Indiana to provide indemnity
- C. Any provision providing that the Contract be construed in accordance with laws other than those of the State of Indiana
- D. Any provision providing that suit be brought in any state other than Indiana
- E. Any provision providing for resolution of contract disputes
- F. Any provision requiring the State of Indiana to pay any taxes
- G. Any provision requiring the State of Indiana to pay penalties, liquidated damages, interest or attorney's fees
- H. Any provision modifying the applicable Indiana statute of limitations
- I. Any provision relating to the time within which a claim must be made.
- J. Any provision requiring payment of consideration in advance unless authorized by an exception listed in IC § 4-13-2-20
- K. Any provision limiting disclosure of the contract in violation of the Access to Public Records Act, IC § 5-14-3. This is a Public Contract and will be posted on the transparency portal as required by IC § 5-14-3.5-2.
- L. Any provision requiring payment in less than 35 days

- M. Any provision providing for automatic renewal
- N. Any provision giving the Form Contract precedence over this Addendum

**4. Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

**5. Assignment; Successors.**

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

**6. Assignment of Antitrust Claims.** As part of the consideration for the award of this Contract, the Contractor assigns to the State all rights, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

**7. Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

**8. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC § 5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC § 24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC § 24-5-12 [Telephone Solicitations]; or

(iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.

**11. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

**12. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

**13. Continuity of Services.**

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The



Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

#### **14. Debarment and Suspension.**

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

#### **16. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent

jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

**17. Drug-Free Workplace Certification.** As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for



such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Eligibility Verification.** As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

**19. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

**20. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**21. Funding Cancellation.** As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**22. Governing Law.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**23. HIPAA Compliance.** If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants

that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

**24. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

**25. Independent Contractor; Workers' Compensation Insurance.** The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

**26. Indiana Veteran Owned Small Business Enterprise Compliance.** Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's IVOSB Division ("IVOSB Division") and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract:

IVOSB COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
<b>NOT APPLICABLE</b>			

*Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

A copy of each subcontractor agreement must be submitted to the IVOSB Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to [IndianaVeteransPreference@idoa.IN.gov](mailto:IndianaVeteransPreference@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

**27. Information Technology Enterprise Architecture Requirements.** If this Contract involves information technology-related products or services, the Contractor agrees that any such products or services are compatible with the technology standards, including the assistive technology standard, all found at <https://www.in.gov/iot/2394.htm>. The State may terminate this Contract for default if the terms of this paragraph are breached.

**28. Insurance.**

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
2. Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. The State is to be named as an additional insured.
3. Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
4. Fiduciary liability if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.
5. Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
6. Surety or Fidelity Bond(s) if required by statute or by the agency.
7. Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.



3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
  4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
  5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.
- C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

**29. Key Person(s). Deleted by mutual agreement.**

**30. Licensing Standards.** The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**31. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

**32. Minority and Women's Business Enterprises Compliance.**

Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by MWBE Compliance and may require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following MBE/WBE Division ("Division") certified MBE and/or WBE subcontractors will be participating in this Contract:

MBE or WBE PERCENT	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON
<b>NOT APPLICABLE</b>			

*Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:*

A copy of each subcontractor agreement must be submitted to the Division within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to

[MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to [MWBECompliance@idoa.IN.gov](mailto:MWBECompliance@idoa.IN.gov) for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: [www.in.gov/idoa/mwbe/payaudit.htm](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of this Contract.

**33. Nondiscrimination.** Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**34. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Indiana Department of Administration  
Attn: Account Management  
Indiana Government Center South, Room W468  
Indianapolis, IN 46204

With a copy to:

Integrated Public Safety Commission  
Attn:  
100 North Senate Avenue, N551  
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to:

E.F. Johnson Company  
Attn: SVP, Sales  
1440 Corporate Drive  
Irving, TX 75038

With a copy of legal notices to:

Attn: General Counsel  
1440 Corporate Drive  
Irving, TX 75038

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

**35. Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Addendum, (2) the Form Contract, (3) attachments prepared by the State, (4) Contractor's response to RFI #18-020, (5) RFI #18-020, and (6) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

**36. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed by mutual written agreement under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

**37. Payments.**

A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

**38. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**39. Progress Reports.** The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**40. Public Record.** The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on the transparency portal as required by IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**41. Renewal Option.** This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**42. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**43. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**44. Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**45. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to the Indiana Department of Administration (IDOA) and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

**46. Termination for Default**

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or



4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**47. Travel.** Expenditures made by the Contractor for travel will be reimbursed at the rate paid by the State and in accordance with the Budget Agency's *Financial Management Circular -- Travel Policies and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Circular* guidelines.

**48. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

**49. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

**50. LIMITATION OF LIABILITY.** ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, NEITHER PARTY (nor any of ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES) WILL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT OR THE PERFORMANCE OF SERVICES BY VENDOR PURSUANT TO THIS AGREEMENT.

IN NO EVENT SHALL CONTRACTOR HAVE ANY LIABILITY TO THE STATE (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE FOR ANY DAMAGES FOR LOST PROFITS, LOST SAVINGS, LOSS OF USE, BUSINESS INTERRUPTION, LOST OR DAMAGED FILES OR DATA, OR OTHERWISE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THIS TRANSACTION EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONTRACTOR'S LIABILITY FOR DAMAGES, FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WILL BE LIMITED TO THE ACTUAL DAMAGES PROVEN, IN NO EVENT TO EXCEED THE AGGREGATE PURCHASE PRICE OF PRODUCTS OR SERVICES PURCHASED UNDER THIS CONTRACT.

**51. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the 2018 OAG/ IDOA SCM Template) in any way except as follows:

- #1 Form Contract/Duties of Contractor – updated
- #2 Term – updated
- #3 Consideration – updated
- #28 Insurance - modified
- #29 Key Person(s) – deleted
- #34 Notice to Parties – updated
- #35 Order of Precedence; Incorporation by Reference – modified
- #36 Ownership of Documents and Materials – modified
- #50 Limitation of Liability – added.

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

### Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:

[https://hr85.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP\\_GUEST](https://hr85.gmis.in.gov/psp/pa91prd/EMPLOYEE/EMPL/h/?tab=PAPP_GUEST)

**In Witness Whereof**, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

E F JOHNSON COMPANY

Indiana Department of Administration

By:



By:

Title:

General Counsel

Title:

Date:

08/23/2018

Date:

Electronically Approved by: Indiana Office of Technology  By: _____ (for) Deward Neely, Chief Information Officer <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>	Electronically Approved by: Department of Administration  By: _____ (for) Lesley A. Crane, Commissioner <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>
Electronically Approved by: State Budget Agency  By: _____ (for) Jason D. Dudich, Director <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>	Electronically Approved as to Form and Legality: Office of the Attorney General  By: _____ (for) Curtis T. Hill, Jr., Attorney General <i>Refer to Electronic Approval History found after the final page of the Executed Contract for details.</i>

### Warranty Statement

E.F. Johnson Company ("EFJohnson") warrants to the original purchaser for use ("Customer") that the portable and mobile radio equipment manufactured by EFJohnson ("Products") and software implemented onto the Products ("Software") are free from defects in material and workmanship by conforming to EFJohnson's published technical specifications as of the date of shipment for a period of one (1) year from the date of shipment by EFJohnson with the exception of the Viking series of portable and mobile radios offered by EFJohnson covered by a warranty for a period of three (3) years from the date of shipment by EFJohnson (each respectively the "Warranty Period"). EFJohnson makes no warranty with respect to the equipment not manufactured by EFJohnson, and any such equipment shall carry the original equipment manufacturer's warranty. EFJohnson further makes no warranty as to, and specifically disclaims liability for, availability, range, coverage, grade of service or operation of the repeater system provided by the carrier or repeater operator. Any repaired or replaced Products or Software shall be warranted for the remainder of the original Warranty Period or for ninety (90) days from the Customer's receipt of the repaired or replaced Product or Software, whichever is longer.

**Hardware Warranty:** If any Product fails to meet the warranty set forth above during the applicable Warranty Period and is returned to a location designated by EFJohnson, EFJohnson, at its option, shall either repair or replace such Product, directly or through an authorized service agent, within thirty (30) days of receipt of same. No Products may be returned without the prior written authorization from EFJohnson. EFJohnson will pay the shipping charges if the Product is repaired or replaced under warranty. Repair or replacement of Products as set forth in this paragraph fulfills any and all warranty obligations on the part of EFJohnson.

**Software Warranty:** If any Software fails to meet the warranty set forth above during the applicable Warranty Period, the Customer must notify EFJohnson in writing before the expiration of the Warranty Period. Whether Software defects occur will be determined solely upon reference to EFJohnson's published operational and technical specifications as of the date of shipment, and to any additional technical documentation incorporated into the mutually agreed-upon contractual agreement. EFJohnson does not warrant that the use of the Software will be uninterrupted or error-free or that the Software will meet particular (other than contractually agreed-upon) requirements. Upon receipt of such notice, EFJohnson will investigate the warranty claim. If this investigation confirms a valid warranty claim, EFJohnson will, at its option and at no additional charge to the Customer, repair the defect, replace the defective Software with the same or equivalent Software, or refund the price of the defective Software or individual Product in which the Software is embedded or for which it is provided. Such action will be the full extent of EFJohnson's liability and the Customer's sole remedy for a breach of this warranty. If the investigation indicates that the Warranty claim is not valid, then EFJohnson may invoice the Customer for responding to a claim on a time and materials basis using EFJohnson's then current labor rates.

**Exclusions:** This warranty is void and EFJohnson shall not be obligated to replace or repair any Products and/or Software if: (i) the Product and/or Software has been used in other than its normal and customary manner, (ii) the Product and/or Software has been subject to misuse, accident, neglect or damage or has been used with other than EFJohnson approved accessories and equipment or has been improperly installed, (iii) the Products and/or Software have been installed and/or maintained by individuals who have not followed EFJohnson's then current installation or maintenance procedures and/or are not trained and certified by EFJohnson on the Products and/or Software, (iv) unauthorized alterations or repairs have been made or unapproved parts have been used with the Product and/or Software, or (v) Customer failed to notify EFJohnson or an EFJohnson authorized service agent of the defect during the applicable Warranty Period.



THE AFORESAID WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED AND IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EFJOHNSON AND CUSTOMER AGREE THAT CUSTOMER'S EXCLUSIVE REMEDY FOR ANY BREACH OF ANY SAID WARRANTIES IS AS SET FORTH ABOVE. CUSTOMER AGREES THAT IN NO EVENT SHALL EFJOHNSON BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR EXEMPLARY DAMAGES WHETHER ON THE BASIS OF NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. THE TOTAL LIABILITY OF EFJOHNSON ON ANY AND ALL CLAIMS SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM. The purpose of the exclusive remedies set forth above shall be to provide Customer with repair or replacement of non-complying Products or Software in the manner provided above. These exclusive remedies shall not be deemed to have failed of their essential purpose so long as EFJohnson is willing and able to repair or replace non-complying Products or Software in the manner set forth above.

E.F. JOHNSON COMPANY, 1440 Corporate Drive, Irving, Texas 75038

# EFJohnson

a JVCKENWOOD Company

## SOFTWARE LICENSE AGREEMENT

**WARNING: If you elect to use the Equipment, you agree to be bound by this Software License Agreement.**

1. Limited License. If Licensee elects to use the Equipment, Licensee agrees to be bound by the terms and conditions set forth in this Agreement. For any software provided with, or contained or embedded in, the equipment manufactured by EFJohnson (the "Equipment") and sold the user of such Equipment that this Software License Agreement accompanied (the "Licensee") pursuant to an agreement between EFJohnson and Licensee regarding the purchase of the Equipment by the Licensee (the "Sales Agreement") and any additional EFJohnson manufactured equipment which Licensee may purchase from EFJohnson from time to time hereinafter for use with the Equipment (collectively, the "Software"), EFJohnson hereby grants to Licensee a personal, non-exclusive, non-transferable, non-assignable (by operation of law or otherwise), terminable license to use the Software on the terms and subject to the conditions contained herein with the exception of software developed by a manufacturer other than EFJohnson ("third-party software manufacturer") pursuant to a third-party license agreement. Such third-party software manufacturer may be a beneficiary of this Software License Agreement if required under such third-party license agreement. Licensee shall not have the right to sublicense, rent, lease, copy, modify, reverse engineer, disassemble, decompile or otherwise transfer the Software, except as provided herein. The license granted herein authorizes Licensee to use the Software for its own internal purposes and only in connection with the use of the Equipment. Licensee agrees not to use the Software for any other purpose or install the Software on any replacement or additional computer or equipment. EFJohnson prohibits (a) the use of the programs for rental, timesharing, subscription service, hosting or outsourcing; (b) the removal or modification of any program markings or any notice of proprietary rights; (c) the Licensee from making the programs available in any manner to any third party for use in any third party's business operations. Licensee shall not exercise any rights with respect to the Software that are not expressly granted herein.

2. Maintenance; New Releases; Copies. Provided Licensee is current in its payment of software maintenance fees, Licensee shall be entitled to receive any error or bug fixes provided by EFJohnson as part of the software maintenance. Maintenance shall be provided in accordance with the EFJohnson maintenance policy. EFJohnson may, but has no obligation to do so, offer for an additional license fee new features or enhancements to the Software. Licensee shall not copy, print, disassemble, modify, distribute, translate, reverse engineer or reproduce all or any portion of the Software or related documentation; provided that Licensee shall be entitled to make two (2) copies for back-up purposes only and not production use of the portions of the Software provided to Licensee.

3. Proprietary Rights. Licensee acknowledges that (a) the Software, including each program or system of which it is a part, and all supporting documentation and materials therefore, are the exclusive property of EFJohnson and/or any third-party software manufacturer as applicable, and (b) title to and all rights to the Software, including copyright, patent, intellectual property rights, trade secret and other rights in the Software, shall remain with EFJohnson and/or any third-party software manufacturer as applicable. Licensee shall not copy, reproduce, disclose or divulge the Software to any person, except to the extent reasonably required for purposes consistent with this license to an officer, employee, independent accountant, attorney or other similar agent of Licensee, and then only if Licensee uses the same degree of care, but no less than a reasonable degree of care, that Licensee uses to protect the confidentiality and title thereto of its own confidential or proprietary information of a like nature. Licensee shall not publish any results of benchmark tests run on the programs. Licensee acknowledges EFJohnson's right to seek equitable relief, including an injunction in the event of any breach or threatened breach by Licensee of this license. Notwithstanding the foregoing, Licensee shall have the right to disclose the Software to the extent required by a governmental agency or court with appropriate jurisdiction, provided that Licensee notifies EFJohnson in writing of the need to so disclose in advance of such disclosure. Licensee agrees that if any use of the Software comes to Licensee's attention which, in its opinion is unauthorized, Licensee shall promptly notify EFJohnson of such unauthorized use. Licensee, however, shall be under no affirmative

obligation to make investigations to determine if an unauthorized use has occurred. In addition to the system key and encryption keys (and any programming materials or documents foregoing, Licensee acknowledges and agrees that, in order to protect the privacy of its radio system, it shall treat its encryption key and/or Multi-Net containing such keys) as highly confidential information and not disclose such keys to any third party unless such third party is subject to obligations of confidentiality in favor of Licensee.

4. Warranty of Title. EFJohnson warrants that it has good title to the Software or the right to license the same hereunder and that, to the best of EFJohnson's knowledge, the Software does not infringe upon any valid U.S. patent issued prior to the date of the Agreement. Subject to the terms of this license, EFJohnson will defend, at its expense, any action brought against Licensee to the extent it is based on a claim that the Software, used within the scope of this license, infringes upon any such U.S. patent, but only if (a) Licensee promptly notifies EFJohnson in writing of any such claim or proceeding, (b) Licensee permits EFJohnson to fully control the defense of such action, (c) Licensee fully cooperates with EFJohnson in connection with such defense, (d) Licensee does not compromise or settle any claim without the prior written consent of EFJohnson and (e) the infringement does not relate to any (i) modifications to the Software made other than by EFJohnson, (ii) modifications made to Licensee's specifications or (iii) use of the Software in combination with any equipment or products not manufactured by EFJohnson. EFJohnson shall have no other or further obligation or liability with respect to any claim of infringement or for breach of its warranty of title. If any part of the Software becomes, or if EFJohnson considers any of the Software likely to become, subject to a claim of infringement, EFJohnson may in its sole discretion (a) procure for Licensee the right to continue using such Software, (b) replace or modify the Software to make it non-infringing, refund the paid purchase price of the Equipment upon return of the Equipment in undamaged condition, or (c) take such other action as is necessary and feasible to maintain Licensee's use of the Software.

5. Limited Operational Warranty. Software is warranted in accordance with its then current software care statement.

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### State of Indiana Request for Information 18-020 Target Pricing

Pricing Structure	Contract Element	EF Johnson Original Pricing		EF Johnson Updated Proposed Price				
		P25 Compliant Base Stations/Mobile/Portable/Repeaters/Vehicular Repeaters	Target Pricing	P25 Compliant Base Stations/Consoles	P25 Compliant Repeaters	P25 Compliant Mobile	P25 Compliant Portable	P25 Compliant Vehicular Repeaters
Minimum Discount Off Manufacturer List Price (%)	Minimum discount for radios/equipment	20% (0% on veh repeaters)	BAFO	20.00%	20.00%	20.00%	20.00%	0.00%
	Minimum discount for parts	20% (0% on veh repeaters)	BAFO	20.00%	20.00%	20.00%	20.00%	0.00%
	Minimum discount for accessories	20% (0% on veh repeaters)	BAFO	20.00%	0%	20.00%	20.00%	0.00%
	One-year depot warranty	All Viking equipment come standard with a 3-year depot warranty. (1-year warranty for repeaters and veh repeaters)	BAFO	0%	All ATLAS Repeaters come standard with a 1-year depot warranty and first year's software maintenance.	All Viking Mobiles come standard with a 3-year depot warranty.	All Viking Portables come standard with a 3-year depot warranty.	0% All Pyramid Vehicular Repeaters come standard with a 1-year depot warranty.
Maximum Percentage (%) of Radio Equipment Model's Manufacturer List Price	One-year on-site repair warranty	6.02% for base stations, 8.13% for repeaters, 6.58% for mobile for repeaters and 2.61% for veh repeaters	BAFO	6.02%	8.19%	6.58%	9.17%	2.61%
	Two-year depot warranty	All Viking equipment come standard with a 3-year depot warranty. (4.03% for repeaters and 5.21% for veh repeaters)	BAFO	0%	4.03%	0%	0%	5.21%
	Two-year on-site repair warranty	12.04% for base stations, 12.28% for repeaters, 13.16% for mobiles, 18.34% for portable, 5.21% for veh repeaters	BAFO	12.04%	12.28%	13.16%	18.34%	5.21%
	Three-year depot warranty	All Viking equipment come standard with a 3-year depot warranty. (8.06% for repeaters and 9.36% for veh repeaters)	BAFO	0%	8.06%	0%	0%	9.36%
All-Inclusive Hourly Rate (\$ per Hour)	Three-year on-site repair warranty	18.06% for base stations, 16.37% for repeaters, 19.74% for mobiles, 27.51% for portables, 7.82% for veh repeaters	BAFO	18.06%	16.37%	19.74%	27.51%	7.82%
	User training at State premises (any location in Indiana)	\$328 (\$564.38 per hour with a minimum 8 hour training course for repeaters)	\$60.80	\$328.00	\$564.38 per hour with a minimum 8 hour training course	\$328.00	\$328.00	\$328.00
	User training at Respondent's location	\$225.00	\$60.80	\$225.00	\$225.00	\$225.00	\$225.00	\$225.00
	Online user training (hourly rate per State participant)	EFJohnson's Online Training is free to Registered Equipment Users	\$109.25	EFJohnson's Online Training is free to Registered Equipment Users	EFJohnson's Online Training is free to Registered Equipment Users	EFJohnson's Online Training is free to Registered Equipment Users	EFJohnson's Online Training is free to Registered Equipment Users	EFJohnson's Online Training is free to Registered Equipment Users
Emergency maintenance or repair work performed on State premises (any location in Indiana)	Emergency maintenance or repair work performed at Respondent's location	\$484.50	\$91.23	\$240.00	\$240.00	\$240.00	\$240.00	\$240.00
	Non-emergency maintenance or repair work performed on State premises (any location in Indiana)	\$165.00	\$91.23	\$165.00	\$165.00	\$165.00	\$165.00	\$165.00
	Non-emergency maintenance or repair work performed on State premises (any location in Indiana)	\$323.00	\$80.75	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00
	Non-emergency maintenance or repair work performed at Respondent's location	\$110.00	\$80.75	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00
	Assembly/Installation work performed on State premises (any location in Indiana)	\$338.00	\$80.75	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00
	Assembly/Installation work performed at Respondent's location	\$225.00	\$80.75	\$110.00	\$110.00	\$110.00	\$110.00	\$110.00

#### Cost Assumptions, Conditions and Constraints

Respondents should list and describe as part of the Cost Proposal any special cost assumptions, conditions, and/or constraints relative to, or which impact, the prices presented on the Cost Schedules. It is of particular importance to describe

#### Special Considerations

Please note that while EFJohnson's proposed discounts on equipment are not in line with the State's Target Pricing, our List Prices are often times much lower than comparable products, and therefore our pricing, even with a lesser discount,

**Definitions:**

Respondent: EFJohnson Company

Local Service Provider: Authorized Resellers and Service Providers of equipment manufactured or resold by EFJohnson Company that Purchasing Entities may buy equipment from or contract for services with directly, and benefit from

Purchasing Entity: Any agency or other entity authorized to purchase at pricing based on the resulting Indiana State Contract.

Depot Warranty: Repair or Replacement by the manufacturer of purchased equipment, that has been returned to the manufacturer for said repair.

Emergency Work: Maintenance or Repair Work that is required to be performed at faster than contracted times, or is performed outside of normal business hours such as evenings, weekends, and holidays. Hourly rate is "time and a half" for

**Conditions:**

- 1.) The purchasing entity will bear any costs to remove and package equipment before sending it to EFJohnson for depot repair. Warranty Depot Repair will cover shipping of equipment both ways.
- 2.) If an Annual On-site Service Agreement is not in place, Local Service Providers may charge a travel fee each time they visit a site to perform work on a time and materials basis. In these cases, the Purchasing Entity requesting work may be billed up to \$90.00 per
- 3.) On top of the minimum 20% discount for subscribers, subscriber radios with specific configurations may be eligible for a \$350 trade-in credit if radio replaces an existing non-EFJohnson/Kenwood radio. Details may be negotiated at contract.
- 4.) On top of the minimum 20% discount for subscribers, new purchases of EFJohnson's Kenwood P25 radios may be eligible for the EFJ Perpetual Licensing program, which provides for the transfer of some software licenses to a future EFJohnson Kenwood radio.
- 5.) Years 1, 2 & 3 (and higher) of on-site support do not reflect the State's Target Pricing. Annualized on-site support rates are available with a On-site Service Agreement between the Local Support Provider and the Purchasing Entity/Agency. On-site Support
- 6.) All pricing shown herein is for informational purposes only; better discounts based on high-quantity purchases and/or long On-site Service Agreements may be negotiated at purchase.
- 7.) Although EFJohnson cannot guarantee a discount on the Pyramid Vehicular Repeaters, we believe our pricing is better than published market value, which Purchasing Entities will receive benefit. Also, discounts may be available based on high quantity
- 8.) The price of services may vary by each Local Service Provider, therefore, the actual cost incurred by the Purchasing Entity may be lower than what is stated in our informational cost proposal.
- 9.) Local Service Providers will charge time and a half for emergency and after hour rates; the "worst case" emergency rate shown in the "Emergency Maintenance" line items includes a \$319.50 travel fee and the first hour of service at \$165.00. Additional hours
- 10.) Upon award, one session of comprehensive training will be provided by the Respondent to instruct IPSC personnel in the proper programming of the equipment to help IPSC evaluate the equipment; this training will be provided at no additional cost. Customized
- 11.) To maintain a quality training environment, in-person Repeater training is limited to four students per session and in-person Subscriber training is limited to 10 students per session. Please note that "train the trainer" type classes are available.
- 12.) All Repeater or any other System Training shall be performed by manufacturer personnel. Subscriber Training will be performed by the purchasing entity's local service provider.
- 13.) The Purchasing Entity will be responsible for the travel costs of its personnel to attend training at the Respondent's location.
- 14.) From time to time, EFJohnson will run special promotional pricing that is better than reflected herein. Such pricing will be made available to all eligible Purchasing Entities.

## **Attachment D**

### **Service Levels Agreements and Key Performance Metrics**

#### **Metric #1: Equipment Repair Turnaround Time**

- A. The Contractor shall test, repair equipment to meet original factory specifications, including providing hardware repair coverage for chemical, liquid, and other physical damage, and ship equipment back to the customer within five business days of receipt. The Contractor shall also upgrade all Firmware to the latest version when equipment is submitted for repair. The Contractor shall cover the cost of both outbound and inbound shipment if the customer uses the delivery service of the Contractor's choosing. The Contractor shall track the repair completion through either an online system or service management staff at the repair facilities.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of delivery from the date of product receipt to the date of product shipment to the customer.
  - Performance Standard: By Five Business Days
- C. The Target: By Three Business Days

#### **Metric #2: Order Entry**

- A. The Contractor shall vet requested products, ensure pricing is correct, and enter customer orders into the Contractor's online system within 24 hours of receipt.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of time from the receipt of an order to the entry of the order into the Contractor's online system.
  - Performance Standard: Less Than 24 Hours
- C. The Target: Less Than Two Hours

#### **Metric #3: Order Fulfillment (In-Stock Items)**

- A. The Contractor shall ship an in-stock order within three business days of order entry. The Contractor shall track order fulfillment in the Contractor's online system.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of delivery from the date of order entry to the date of product shipment to the customer.
  - Performance Standard: By Three Business Days
- C. The Target: By Two Business Days

#### **Metric #4: Early Life Failure of Equipment**

- A. The Contractor shall commit to a less than two percent return of equipment due to failure during the standard warranty period.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of units returned divided by units sold while under warranty.
  - Performance Standard: Less Than 2%

- C. The Target: Less Than 2%

**Metric #5: Equipment End-of-Life Notification**

- A. The Contractor shall notify, through email, customers 12 months before the equipment end-of-life (EOL).
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of notifications received by customers 12 months before EOL divided by all EOL notifications received by customers.
- Performance Standard: 98%
- C. The Target: 100%

**Metric #6: Complaint Resolution**

- A. The Contractor shall respond to all complaints, including billing complaints, within 48 hours of complaint file. The Contractor shall pull the order in the online system, review the information in question, and take appropriate action (e.g., apply a credit to the customer's account).
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of time from the receipt of a complaint to the entry of a discrepancy resolution into the Contractor's online system.
- Performance Standard: Less Than 48 Hours
- C. The Target: Less Than 24 Hours

**Metric #7: Sales Reporting**

- A. The Contractor shall prepare reports detailing the sales of subscriber equipment to all agencies and local government entities throughout the State during a 90-day period and submit these reports through email by 15 days following the close of the quarter.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of time from the end of the quarter to the emailing of reports to all customer agencies and local government entities.
- Performance Standard: By 15 Business Days After the Close of the Quarter
- C. The Target: By 10 Business Days After the Close of the Quarter

**Metric #8: Firmware Updates**

- A. The Contractor shall notify, through email, all agencies and local government entities throughout the State of any updates, technical reports, or related documents available for download from the Contractor's company website by 15 business days following public release.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of time from a Firmware update being uploaded on the Contractor's website to the informational email being sent to all agencies and local government entities.
- Performance Standard: By 15 Business Days After Public Release

C. The Target: By 10 Business Days After Public Release

**Metric #9: Radio Equipment Enhancements/Product Announcements**

- A. The Contractor shall notify, through email, all agencies and local government entities throughout the State of any radio equipment enhancements or product announcements by 15 business days following public release.
- B. The Contractor shall monitor and report on a Quarterly basis the metric based on the calculation of time from a product enhancement or announcement being publicly released to the informational email being sent to all agencies and local government entities.

- Performance Standard: By 15 Business Days After Public Release

C. The Target: By 10 Business Days After Public Release

Electronic Approval History

	User ID	Approver Name	Datetime	Description
1	M292915	Kent,Matthew	08/24/2018 10:34:27AM	Agency Fiscal Approval
2	S003602	Jones,Sandy	08/24/2018 10:38:21AM	IOT Approval
3	J210634	Snethen,John D	08/29/2018 10:34:08AM	IDOA Legal Approval
4	M338303	Wolf,Matthew	08/29/2018 4:33:59PM	SBA Approval
5	O277119	Egunyomi,Olusola	09/14/2018 8:44:45AM	SBA Approval
6	M338811	Skarbeck,Molly H	09/14/2018 9:41:26AM	Attorney General Approval
7	S210690	Gard,Susan W	09/14/2018 9:45:01AM	Attorney General Approval