

## **ARBuy- Online Services TERMS OF USE**

Welcome to the ARBuy, operated by the State of Arkansas (“the State”). This is an online service accessible and usable by persons authorized or required by the State of Arkansas to conduct activities related to procurement and contracting, each an “Authorized User.” All references to “Authorized User” mean both the Supplier and each individual acting on behalf of Supplier in using this online service.

These terms and conditions govern use of this online service. By accessing and using this online service, Authorized User is accepting, without modification, the terms, conditions, and notices contained in these Terms of Use or provided through this online service. If Authorized User does not accept these terms and conditions, Authorized User must discontinue use of this online service.

### **Online Service Availability and Information.**

- 1.1. The State will use reasonable efforts to notify Authorized Users of anticipated outages for maintenance or any other reason via messages placed on the login page. The State intends for this online service to be available 24 hours a day, 7 days a week, except for scheduled maintenance or circumstances beyond the State’s control.
- 1.2. The State may provide updates, enhancements, upgrades, or assistance to Authorized User in using this online service as a courtesy to Authorized User, but is not required to do so.
- 1.3. The unavailability of this online service does not impact Authorized User’s reporting, payment, or other obligations under applicable law, rule, or policy.
- 1.4. The State may provide communications electronically to Authorized User through this online service, including notices required under applicable law, rule, or policy. Authorized User agrees to electronic notification by email.

### **Changes to this Agreement and this Online Service.**

- 2.1. The State may update these Terms of Use from time to time to modify, add, or remove terms without notice to Authorized User.
- 2.2. Authorized User accessing and using this online service after these Terms of Use have been updated means Authorized User agrees to the Terms of Use as modified. If Authorized User does not agree to these Terms of Use or to an updated version of these Terms of Use, Authorized User’s remedy is to discontinue use of this online service.
- 2.3. The State intends to provide information on improvements and changes to this online service available on the login page. However, the State may make changes to this online service without notice.

### **Authorized User’s Representations and Obligations.**

- 3.1. Authorized User represents and warrants that Authorized User is authorized to access and use

this online service. Authorized User is responsible for ensuring information provided by Authorized User is accurate, complete, and up to date.

- 3.2. Authorized User shall establish and maintain a unique user ID and password. Authorized User shall maintain the confidentiality of Authorized User's user ID and password. Authorized User is responsible for all activities that occur under Authorized User's user ID. Authorized User shall notify the State immediately if Authorized User's password is lost or stolen, or access to Authorized User's account is otherwise compromised or may be compromised. When notified, the State will, to the extent it determines it is reasonable and able to do so, block access and transactions under Authorized User's user ID and take any other steps it deems necessary to prevent unauthorized use of this online service.
- 3.3. Authorized User warrants to the State that Authorized User will not use this online service for any purpose that is unlawful or unauthorized. Authorized User shall not use this online service to obtain or attempt to obtain any materials or information not authorized or intentionally made available through this online service. This includes information or passwords required to access information of other accounts.
- 3.4. Authorized User is responsible for securing compatible hardware, equipment, and software, and a sufficient internet connection. Authorized User is responsible for complying with the licenses for these third-party products, including software and services that allow Authorized User to connect to this online service.
- 3.5. Authorized User shall not use this online service in any manner which could damage, disable, overburden, or impair this online service or interfere with any other person's use or benefit of this online service.
- 3.6. Authorized User shall not use any content accessed through this online service in any country or in any manner prohibited by governing applicable law, rule, or policy.
- 3.7. Authorized User is responsible for and releases the State from any losses, costs, liabilities, and expenses (including attorneys' fees) relating to or arising out of Authorized User's use or misuse of this online service or violation of these Terms of Use.

**Authorized Use; Limitations.**

- 4.1. Authorized User is hereby granted a non-exclusive, non-transferable, and revocable authorization to access and use this online service only in accordance with these Terms of Use and applicable laws and rules and policies.
- 4.2. All content provided through this online service, such as text, graphics, logos, images, as well as the compilation thereof, and the software used to provide this online service, is the property of the State of Arkansas and its providers or suppliers, including Periscope Holdings, Inc. Such content and software is protected under law as intellectual property rights. Authorized User shall abide by all intellectual property rights notices and other restrictions contained on content accessed through this online service.
  - 4.3.1. Use: Authorized User shall not permit any unauthorized use of the service;
  - 4.3.2. Authorized User shall not permit unauthorized disclosure of information contained in the online service;

- 4.3.3. Authorized User shall not copy, display, distribute, download, license, modify, publish, re-post, reproduce, reuse, sell, transmit, use to create a derivative work, or otherwise use for public or commercial purposes the content or software comprising this online service without the express written permission of the State;
  - 4.3.4. Authorized User shall not manipulate any URL or modify, publish, transmit, reverse engineer, participate in any unauthorized transfer or sale of, create derivative works of, or in any way exploit the content or software comprising this online service, or information made available through this online service;
  - 4.3.5. Authorized User is only authorized to access this online service, view content, and make use of the services solely for activities related to procurement and contracting; and
  - 4.3.6. In addition, Authorized User's use of the online services is subject Periscope Holding, Inc.'s Standard Data Management and Security Policy, Privacy Policy and Acceptable Use Policy will also apply. Those policies are available at: <https://www.periscopeholdings.com/periscope-holdings-inc-use-policies>.
- 4.4. If the State at any time believes that this online service infringes a third party's intellectual property rights, the State may, in its sole discretion: 1) replace the infringing element(s) with a non-infringing element, 2) obtain the right to continue to use the infringing element, 3) modify the infringing element to be non-infringing, or 4) terminate this online service. This is Authorized User's sole remedy for any claim of infringement.
- 4.4.1. This remedy does not extend to any claim based on: 1) modification or redistribution of the content or software that comprises this online service, 2) use of this online service in a manner other than as contemplated in this Agreement, or 3) use of this online service in combination, operation or use with other products other than as contemplated by Terms of Use.

## **5. Security and Confidentiality.**

- 5.1. Authorized User agrees that Authorized User's use of this online service may be monitored to ensure proper performance of applicable security features and procedures. This monitoring may result in acquisition, recording, and analysis of data communicated, transmitted, processed, or stored in this online service.
  - 5.2.1. This online service may contain United States Government or State of Arkansas information that is restricted to authorized users ONLY. Consequently, any unauthorized use, misuse, or access to this online service, data contained in it, or transit of such data to or from this online service may result in Authorized User's civil or criminal liability under state law, federal law, or both.
- 5.3. Authorized User may submit personally identifiable information in order to use this online service. The State's use and disclosure of information submitted or created through this online service are governed by state and federal statutes and rules. Authorized User information is handled as it would be on an in-person visit to a State of Arkansas office. This includes Authorized User information, including personally identifiable information,

being shared with the State's partners to provide services to Authorized User. These Terms of Use do not create additional obligations for the State to protect information submitted by Authorized User or created by this online service.

- 5.2.2. All information collected through this online service becomes a public record subject to disclosure unless an exemption in law exists. There are exemptions to the public's right to access public records, including exemptions to protect the privacy of individuals.

**6. Exclusion of Warranties; Limitation of Liability.**

**6.1. EXCLUSION OF WARRANTIES.** The State makes no warranties, representations, or promises regarding the fitness and efficacy of this online service. Authorized User expressly acknowledges that this online service is made available on an "as is" basis, and Authorized User accesses this online service and information available through it at Authorized User's sole risk. The State disclaims any implied warranties of merchantability or fitness for a particular purpose, including without limitation, any warranty regarding the use of this online service and its correctness, quality, accuracy, completeness, reliability, performance, or otherwise. The State does not have any responsibility to Authorized User to maintain this online service or to supply any corrections, updates, enhancements, upgrades, or releases.

**6.2. LIMITATION OF LIABILITY.** TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT IS THE

STATE OF ARKANSAS, THEIR OFFICERS, EMPLOYEES, CONTRACTORS, OR AGENTS LIABLE IN ANY ACTION ARISING FROM OR RELATED TO THESE TERMS OF USE OR USE OF THIS ONLINE SERVICE, WHETHER BASED IN EQUITY, CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENTIONAL CONDUCT OR OTHERWISE, FOR:

6.2.1. ANY DIRECT, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES;

6.2.2. DAMAGES RELATING TO THE LOSS OF DATA, PROFITS, INCOME, OR GOODWILL, REGARDLESS OF WHETHER AUTHORIZED USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

6.2.3. ANY INTERNET OR TELECOMMUNICATIONS FAILURE, COMPUTER VIRUS, THIRD PARTY INTERFERENCE, OR STATE OF ARKANSAS OR THIRD PARTY SOFTWARE OR HARDWARE THAT MAY INTERRUPT OR DELAY ACCESS TO THIS ONLINE SERVICE OR ANY INTERNET SITE, OR CAUSE OTHER PROBLEMS OR LOSSES (COLLECTIVELY, A "NETWORK FAILURE"); OR

6.2.4. ANY FAILURE OF THIS ONLINE SERVICE THAT RESULTS FROM AN ACT OF GOD, WAR, CIVIL DISTURBANCE, COURT ORDER, LEGISLATIVE OR REGULATORY ACTION, CATASTROPHIC WEATHER CONDITION, EARTHQUAKE, FAILURE OR FLUCTUATION IN ELECTRICAL POWER OR OTHER UTILITY SERVICES, NETWORK FAILURE, OR OTHER CAUSE BEYOND THEIR CONTROL.

**6.3 Governing Law, Compliance with Applicable Law.** These Terms of Use are governed by and construed according to the laws of the State of Arkansas without regard to principles of conflict of laws. Authorized User will comply with all federal, state and local law related to the use of this online service. In no event may this section be construed as (1) a waiver by the State of Arkansas of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (2) consent by the State of Arkansas to the jurisdiction of any court.

## **7. Termination**

Authorized User's authorization to use this online service remain in full force and effect until terminated by Authorized User or by the State.

7.1. The State reserves the right to terminate or suspend Authorized User's authorization to use this online service at any time without prior notice. The State may, to the extent it determines it is reasonable and able to do so, provide advance notice to Authorized User to cure any deficiency or breach of Authorized User's obligations under these Terms of Use.

7.2. Termination of the right to use the online service or these Terms of Use does not cancel any liability or obligation arising under these Terms of Use prior to termination.

7.3. Termination does not affect Authorized User's reporting, payment, or other obligation under applicable law, regulation, or policy.

## **8. Survival; Waiver.**

Authorized User's rights under these Terms of Use and access to this online service cease upon termination, including if access is terminated in accordance with Section #7. Rights and obligations which expressly or by their nature survive termination do so survive, and include this section, and provisions regarding warranties and liabilities, intellectual property, confidentiality and non-disclosure, choice of law, jurisdiction and venue, order of precedence, third party beneficiaries, waiver, headings, and integration. Any failure by the State to enforce any provision of these Terms of Use, or the waiver of any violation or nonperformance in one or more instances, does not constitute a waiver by the State of that or any other provision, nor is it a waiver of any subsequent violation or nonperformance.