

State of Georgia Statewide Standard Contract Form

Solicitation Title Information Technology Temporary Staffing	Solicitation Number 99999-SPD0000149	Contract Number 99999-001-SPD0000149-0001
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1. This Contract is entered into between the Agency and the Contractor named below:

Agency's Name
Department of Administrative Services (hereafter called Agency)

Contractor's Name
Computer Aid, Inc. (hereafter called Contractor)

2. Contract to Begin: 2/15/2019	Date of Completion: 2/14/2021	Renewals: 3
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3. Performance Bond, if any: _____ Other Bonds, if any: _____

4. Authorized Person to Receive Contract Notices for Agency: Tetchjan Simpson	Authorized Person to Receive Contract Notices for Contractor: Ellen Sigl
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5. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Statewide Contract:

Attachment 1: Statewide Contract Terms and Conditions for Services
Attachment 2: Solicitation (referenced above)
Attachment 3: Contractor's Final Response
Attachment 4: Contractor's Clarifications

IN WITNESS WHEREOF, this Contract has been executed by the parties hereto.

6.

Contractor

Contractor's Name (If other than an individual, state whether a corporation, partnership, etc.)

COMPUTER AID, INC. (CAI)

By (Authorized Signature)

James P. Cooney

Date Signed

6-28-2018

Printed Name and Title of Person Signing

JAMES P. COONEY EXEC VP

Address

3801 LAXTON STREET HARRISBURG, PA. 17111

7.

Agency

Agency Name

Department of Administrative Services

By (Authorized Signature)

Lisa Eason

Date Signed

Feb 15, 2019

Printed Name and Title of Person Signing

Lisa Eason, Deputy Commissioner

Address

DOAS - 200 Piedmont Ave, SE Ste 1308, Atlanta GA 30334

**STATE OF GEORGIA
STATEWIDE CONTRACT
Attachment 1
Contract Terms and Conditions for Services**

A. DEFINITIONS AND GENERAL INFORMATION

1. **Definitions.** The following words shall be defined as set forth below:
- (i) **"Acceptance"** means successful performance of the Services at the location designated in the applicable Statement of Work, or completed and successful Acceptance testing in conformance with the Requirements in the applicable requisition as determined by the User Agency in the applicable Statement of Work.
 - (ii) **"Agency"** means the Department of Administrative Services of the State of Georgia.
 - (iii) **"Awarded Item Schedule"** means the summarizing document, if any, listing the Services as awarded and may also denote the Contractor providing such Services.
 - (iv) **"Confidential Information"** Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to any other Party in connection with or as a result of discussions related to this Contract or any order or SOW issued hereunder, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.
 - (v) **"Contract" or "Statewide Contract"** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
 - (vi) **"Contractor" or "Supplier" or "Managed Service Provider" or "MSP"** means the prime contractor responsible for managing a base of Subcontractors who provide the resources to perform the various Services required during the term of the Contract.
 - (vii) **"Deliverable" or "deliverable"** The tangible embodiment of the Services, including the development or creation of Work Product.
 - (viii) **"Party"** Agency, User Agency, or Contractor.
 - (ix) **"Purchase Instrument"** means the documentation issued by the Agency or User Agencies to the Contractor for a purchase of Services in accordance with the terms and conditions of the Statewide Contract. The Purchase Instrument should reference the Statewide Contract and may include an identification of the Services to be purchased, the time and location such Services will be utilized, and any other requirements deemed necessary by the Agency or User Agencies.
 - (x) **"Response", "Contractor's Response" or "Final Response"** means the Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the Agency.
 - (xi) **"RFX"** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the

Statewide Contract Form that was issued to solicit the Services that are subject to the Statewide Contract.

- (xii) **“Service” or “Services”** means the services and deliverables as provided in the RFX and as further described by the Response and the Statewide Contract. Service or Services includes, but is not limited to, the discovery, creation, or development of Work Product, if any.
 - (xiii) **“State”** means the State of Georgia, the Agency, User Agencies, and any other authorized state entities issuing Purchase Instruments against the Statewide Contract.
 - (xiv) **“Statement of Work”** means any incorporated, attached or subsequent document to an order which describes the Deliverables, due dates, assignment duration and payment obligations for a specific project, engagement, or assignment for which Subcontractor will be providing Subcontractor Services.
 - (xv) **“Statewide Contract Form”** means the document that contains basic information about the Statewide Contract and incorporates by reference the applicable Contract Terms and Conditions, the RFX, Contractor’s Response to the RFX, the final pricing documentation for the Services and any mutually agreed clarifications, modifications, additions and deletions resulting from final contract negotiations. No objection or amendment by a Contractor to the RFX requirements or the Statewide Contract shall be incorporated by reference into this Statewide Contract unless the Agency has accepted the Contractor's objection or amendment in writing. The Statewide Contract Form is defined separately and referred to separately throughout the Statewide Contract Terms and Conditions as a means of identifying the location of certain information. For example, the initial term of the Statewide Contract is defined by the dates in the Statewide Contract Form.
 - (xvi) **“Subcontractor”** means any entity with which Supplier has entered a Subcontractor contract to provide the resources to perform the various Subcontractor services required during the term of the Contract. This includes but is not limited to Staffing Resource Providers.
 - (xvii) **“User Agency” or “User Agencies” or “Authorized User”** means any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to or required to make purchases from this Statewide Contract.
 - (xviii) **“Work Product”** means Inventions, combinations, machines, methods, formulae, techniques, processes, improvements, software designs, computer programs, strategies, specific computer-related know-how, data and original works of authorship (collectively, the "Work Product") discovered, created, or developed by Contractor, or jointly by Contractor and User Agenc(ies) in the performance of this Contract. Work Product shall not include configuration of software.
2. **Certified Source of Services.** Pursuant to Section 50-5-57 of the Official Code of Georgia Annotated (O.C.G.A.), the Agency hereby certifies the Contractor as a source of supply to the User Agencies of the Services identified in this Statewide Contract. Orders shall be placed individually and from time to time by the User Agencies. The execution of this Statewide Contract only establishes the Contractor as an authorized source of supply by the Agency and creates no financial obligation on the part of the Agency.
 3. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor’s forms or invoices shall be null and void.

4. **Reporting Requirements.** Contractor shall provide all reports required by the RFX. In addition, unless otherwise provided in the RFX, Contractor shall keep a record of the purchases made pursuant to the Statewide Contract and shall submit a quarterly written report to the Agency, upon Agency's request.

B. DURATION OF CONTRACT

1. **Contract Term.** The Statewide Contract shall begin and end on the dates specified in the Statewide Contract Form unless terminated earlier in accordance with the applicable terms and conditions.
2. **Contract Renewal.** The Agency shall have the option, in its sole discretion, to renew the Statewide Contract for additional terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the Agency's election, in its sole discretion, to renew any part of this Statewide Contract, Contractor shall remain obligated to perform in strict accordance with this Statewide Contract unless otherwise agreed by the Agency and the Contractor.
3. **Contract Extension.** In the event that this Statewide Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the Services, the Agency may, with the written consent of Contractor, extend this Statewide Contract for such period as may be necessary to afford the State a continuous supply of the Services.

C. DESCRIPTION OF SERVICES

1. **Specifications in Bidding Documents.** All Services shall be provided in accordance with the specifications contained in the RFX, the terms of the Statewide Contract, and as further described in Contractor's Response.
2. **Work Product.** Agency and Supplier each acknowledge that performance of this Contract may result in Work Product. The Parties shall document all Work Product specifications and such specifications shall be made an incorporated Exhibit to this Contract. Supplier agrees that it shall promptly and fully disclose to the Agency or the Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Supplier or any of its employees, either solely or jointly with others, during the term or performance of this Contract, which in any way relates to the business of the State, Agency, or any Authorized User. Supplier further agrees that neither Supplier nor any of Supplier's employees, contractors, agents or Subcontractors, nor any party claiming through Supplier or Supplier's employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product. All Services performed hereunder shall include delivery of all Work Product source code, object code, executables, and documentation. Supplier shall at no time deny access to the Work Product, regardless of form, to the Agency or the Authorized User. Supplier agrees that it shall require all Subcontractors to promptly and fully disclose to the ordering Authorized User any and all Work Product generated, conceived, reduced to practice or learned by Subcontractor or any of its employees, either solely or jointly with others, during the term of this Contract, which in any way relates to the business of the Authorized User.

- 3. Ownership of Work Product.** Supplier agrees that, whether or not the Services are considered “works made for hire” or an employment to invent, all Work Product discovered, created or developed under this Contract shall be and shall remain the sole and exclusive property of the State of Georgia and its assigns or the Authorized User and its assigns. Except as specifically set forth in writing and signed by both Agency and Supplier, or Authorized User and Supplier, Supplier agrees that the State of Georgia or the Authorized User shall have all rights with respect to any Work Product discovered, created or developed under this Contract by Supplier or any Subcontractor without regard to the origin of the Work Product.

If and to the extent that Supplier or any Subcontractor may, under applicable law, be entitled to claim any ownership interest in the Work Product, Supplier and/or any of Supplier’s Subcontractors hereby irrevocably transfers, grants, conveys, assigns and relinquishes exclusively to the State of Georgia or the Authorized User any and all right, title and interest it now has or may hereafter acquire in and to the Work Product under patent, copyright, trade secret and trademark law in perpetuity or for the longest period otherwise permitted by law. If any moral rights are created, Supplier and/or any of Supplier’s Subcontractors waives such rights in the Work Product. The Supplier agrees and will require all Subcontractors to agree that neither Supplier, Subcontractor, Subcontractor’s employees, nor any party claiming through Supplier, Subcontractor or Subcontractor’s employees, shall, under any applicable law, be entitled to claim any ownership interest in the Work Product and Subcontractor or Subcontractor’s employee(s) (as applicable) will irrevocably transfer, grant, convey, assign, and relinquish exclusively to the State of Georgia or the Authorized User any and all right, title, and interest it now has or may hereafter acquire in and to the Work product under patent, copyright, trade secret, and trademark law in perpetuity or for the longest period otherwise permitted by law. Supplier and/or any of Supplier’s Subcontractors further agrees as to the Work Product to assist the State or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, and to that end, Supplier and its employees and Subcontractors shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection with respect to such Work Product, as the State or the Authorized User may reasonably request, together with any assignments thereof to the State or the Authorized User or entities designated by the State or the Authorized User. Supplier agrees that it shall require its Subcontractors and Subcontractors’ employees, as to the Work Product to assist the State or the Authorized User in every reasonable way to obtain and, from time to time, enforce patents, copyrights, and other rights and protection, and in protecting trade secrets, with respect to such Work Product, and to that end, Supplier and its employees and Subcontractors shall execute all documents for use in applying for and obtaining such patents, copyrights, and other rights and protection with respect to such Work Product, as the State, Agency, or the Authorized User may reasonably request, together with any assignments thereof to the State or the Authorized User or entities designated by the State or the Authorized User. The Supplier’s, it’s employees and it’s Subcontractor’s obligations to assist the Agency and/or Authorized Users in obtaining and enforcing such rights shall continue beyond the termination of this Contract.

The Supplier agrees and will require all Subcontractors to agree that neither Supplier, Subcontractor, Subcontractor’s employees, nor any party claiming through Supplier, Subcontractor or Subcontractor’s employees, shall, other than in the performance of this Contract, make use of or disclose to others any proprietary information relating to the Work Product.

All Services performed hereunder by Subcontractors for User Agencies shall include delivery of all source and object code and all executables and documentation. The Supplier agrees that it shall require all Subcontractors, to provide the ordering Authorized User a copy of the most recent source code upon completion of the SOW or as specified as a deliverable in the SOW.

4. **Ownership of Intellectual Property.** Supplier represents and warrants that it is the sole and exclusive owner, or has the right to use, all of Supplier's deliverables, measurement and benchmarking tools, templates, methodologies, questionnaires, Supplier-proprietary research and copyrighted material and Supplier data (collectively, "Supplier's Intellectual Property") that are used in the course of Supplier's role in performing Services, provided that Supplier's Intellectual Property was owned or licensed by Supplier prior to the effective date of this Contract or was developed, licensed, or obtained at Supplier's expense.

Supplier and Supplier's Subcontractors may, in the course of executing a SOW discover, create, or develop Work Product. All Work Product discovered, created or developed under any SOW issued hereunder shall be and remain the sole property of the State and/or any Authorized User and its assigns. Except as specifically set forth in writing and signed by both the Authorized User and Supplier, Supplier and Supplier's Subcontractors agree that the Authorized User shall have all rights with respect to any Work Product discovered, created or developed under this Contract without regard to the origin of the Work Product.

The Supplier and Supplier's Subcontractors hereby agree that, notwithstanding anything else in this Contract, in the event of any breach of this Contract by Agency or any Authorized User, the Supplier's and Supplier's Subcontractors' remedy shall not include any right to rescind, otherwise revoke, or invalidate the provisions of this Section. Similarly, no termination of the Contract by Agency, or a termination of any SOW by an Authorized User, shall have the effect of rescinding the provisions of this Section.

With the exception of the foregoing, Supplier shall retain sole and exclusive ownership of Supplier's Intellectual Property.

Contractor shall and Contractor shall require entities and individuals who will be providing services to User Agencies to execute any documents required by the User Agency regarding ownership of intellectual property.

5. **Pre-existing Work.** If and to the extent that any pre-existing rights are embodied or reflected in the Service Deliverables, Supplier and any of its Subcontractors hereby grants to the State or the Authorized User an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, modify, transmit, execute, reproduce, display, perform, distribute copies of and prepare derivative works based upon such pre-existing rights and any derivative works thereof, and (ii) authorize others to do any or all of the foregoing. It is expressly understood that "perpetual" license rights shall commence upon delivery of the Service Deliverables and shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Contract.
6. **Return of Materials.** Upon termination of this Contract, Supplier shall immediately return to Agency or the appropriate Authorized User all copies, in whatever form, of any and all Confidential Information, Work Product and other properties provided by Agency or such Authorized User, which are in Supplier's possession, custody or control.
7. **Exclusive and Non-Exclusive Rights.** The Statewide Contract with regards to IT staff augmentation services is exclusive. The Statewide Contract with regards to all other services, including IT Statement of Work (SOW) services, is not exclusive, and the Agency reserves the right to select other contractors to provide services similar to those Services described in the Statewide Contract during the term of the Statewide Contract.

With regards to all services within the scope of this Statewide Contract, including but not limited to IT staff augmentation services and IT Statement of Work (SOW), User Agencies may obtain similar services from other contractors upon prior approval of the Agency, which approval shall be made at the sole discretion of the Agency when it is deemed to be in the best interests of the State, and shall be conclusive.

8. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level of purchases or use of Services.
9. **Nature of Services and Engagement.** Supplier is an independent contractor engaged to provide IT staff augmentation services and IT Statement of Work (SOW) services, including but not limited to management of the staff augmentation system and management of the Subcontractor base.
10. **Performance of Services.** Supplier shall provide personnel qualified to perform the Services required by any SOW issued hereunder. Supplier shall take such steps as may be necessary to ensure that all Supplier personnel performing Services under this Contract are competent and knowledgeable of the contractual arrangements and the applicable orders and SOWs between Authorized User and Supplier. Supplier shall be solely responsible for the conduct of its employees, agents, and Subcontractors, including all acts and omissions of such employees, agents, and Subcontractors, and shall ensure that such employees and Subcontractors comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws, including export regulations. Authorized User reserves the right to require immediate removal from such Authorized User's premises of any employee, Subcontractor or agent of Supplier whom such Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach. If any individual provided by Supplier fails to perform at an acceptable level of achievement of Requirements within a reasonable length of time, not exceed ten (10) business days, such Authorized User shall have the right to request that Supplier immediately remove such individual and replace such individual with a more qualified individual.

A SOW may designate certain of Subcontractor's personnel as Key Personnel or Project Managers. Supplier and/or Subcontractor's obligations with respect to Key Personnel and Project Managers shall be described in the applicable SOW. Failure of Supplier or Subcontractor to perform in accordance with such obligations may be deemed a default of this Contract or of the applicable SOW.

11. **Unencumbered Personnel.** All persons assigned by the Contractor to perform services for/to the State under this Contract, whether they are employees, agents, Subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons for performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent supplier, or an employee, agent, Subcontractor or principal of another supplier with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
 12. **Authorized Users Responsibilities.** Unless otherwise agreed in writing in the SOW, the Authorized User will provide, as required, access to project documentation and to any technical manuals and references during the normal performance of duties. If work is to be performed by Supplier at Authorized User's location, Authorized User shall also provide proper working facilities and consumable supplies commensurate with the task(s) to be performed.
 13. **Change Orders.** All changes to the Services to be provided pursuant to any given SOW must be described in a written change request which includes any appropriate adjustments to the SOW. Either Party to an SOW may issue a change request that will be subject to written
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approval of the other Party before it becomes part of this Contract. In no event shall any SOW or any modification thereto require the Supplier or any of Supplier's Subcontractors to perform any work beyond the scope of this Contract.

14. Acceptance.

Hourly: Invoices for hourly work shall be subject to review and approval by the assigned User Agency representative. Acceptance of hourly work is not deliverable-based, but rather based on hours-worked.

Scope of Work/ Project Based Work: Service(s) shall be deemed accepted when the Authorized User determines that such Service(s) meets the Requirements set forth in the applicable order or SOW. If applicable, Supplier shall be responsible for ensuring that any individual deliverable functions properly with any other related deliverable provided pursuant to the same SOW. Should a previously accepted deliverable require further modification in order to work properly with any other related deliverable, Supplier shall be responsible for all costs associated with such modification.

Authorized User shall commence acceptance testing within ten (10) business days, or within such other period as set forth in the applicable SOW, after receipt of the Service. Acceptance testing will be no longer than thirty (30) days, or such longer period as may be agreed in writing between Authorized User and Supplier, for each deliverable. Supplier agrees to provide to the Authorized User such assistance and advice as the Authorized User may reasonably require, at no additional cost, during such Acceptance testing. Authorized User shall provide to Supplier written notice of Acceptance upon completion of installation and successful acceptance testing. Should Authorized User fail to provide Supplier written notice of successful or unsuccessful Acceptance testing within five (5) business days following the acceptance testing period, the Service shall be deemed accepted.

Cure Period: Supplier shall correct any non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Service or deliverable for re-testing within seven (7) business days of the appropriate Authorized User's written notice of non-conformance, or as otherwise agreed between such Authorized User and Supplier. In the event that Supplier fails to deliver a Service or Deliverable which meets the requirements, the Authorized User may, in its sole discretion: (i) reject the Service or deliverable in its entirety and recover amounts previously paid hereunder for Services or deliverables that are identified and specified and mutually agreed upon in the SOW as having interdependencies with the non-conforming Service or Deliverable; (ii) issue a "partial Acceptance" of the Service or deliverable with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Service or deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming. Failure of a Service or a deliverable to meet, in all material respects, the specifications and performance standards after the second set of acceptance tests may constitute cause to terminate the SOW for services provided as a Subcontractor service, or constitute a default by the supplier for services provided solely by Supplier. Notwithstanding the foregoing, Agency or the Authorized User shall be entitled to pursue any other remedies that are available to it under this Contract and at law or in equity.

For services provided under a SOW, if the Authorized User rejects the Service or deliverable in its entirety, the Authorized User may seek to recover amounts previously paid to Supplier for such Service or deliverable.

15. Training and Documentation. Any training or documentation necessary for Agency and/or the Authorized User to have full benefit of the Services shall be deemed included in the scope of this Contract unless expressly excluded.

16. **Warranty Period.** Ninety (90) days from Acceptance of the deliverable, or such longer period as may be agreed to in the applicable SOW.
17. **Policies and Procedures Guide.** Within sixty (60) days of the execution date of the Contract or such period mutually agreed to by the parties, Supplier will provide Agency will a policy and procedures guide that describes how the Supplier and Agency will work together and how services are to be delivered. The guide will provide process diagram details, working activities, interface points with Agency and Supplier deliverables. Updated versions of the guide will be provided by Supplier to Agency and all Authorized Users every 6 months during the terms of the Contract or such time as mutually agreed to by the parties. Policies and Procedure Guides shall be subject to Agency review and approval.
18. **State Security.** Agency requires that a criminal background investigation be made of any and all Contractor personnel utilized to provide Services to the State. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Statewide Contract if such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the State. The Contractor's employees, agents and Subcontractors may be granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the Statewide Contract. Such access may be terminated at the sole discretion of the State. The Contractor shall provide immediate notice to Agency of any employees, agents and/or Subcontractors suspected of abusing or misusing such access privilege. The Contractor represents and warrants that Contractor shall provide notice to Agency of the changed status of any employee, agent or Subcontractor granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.

All IT products and services delivered as part of this Contract must conform to the State IT Policies, Standards, and Procedures, including but limited to those which may be found at <https://gta.georgia.gov/psg/> or a successor URL(s), as are pertinent to Supplier's operation and provision of Services. Supplier further agrees to comply with all provisions of the relevant Authorized User's then-current security procedures as are pertinent to Supplier's operation and the provision of Services and which have been supplied to Supplier by such Authorized User. Supplier shall also comply with all applicable federal, state and local laws and regulations. For any individual Authorized User location, security procedures may include but not be limited to: background checks, records verification, photographing, and fingerprinting of Supplier's employees or agents. Supplier and its Subcontractors may, at any time, be required to execute and complete, for each individual Supplier or Subcontractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Supplier's employees or agents acknowledging that all Authorized User information with which such employees and agents come into contact while at the Authorized User site is confidential and proprietary. Any unauthorized release of proprietary or personal information maintained or provided by the State or an Authorized User by the Supplier or an employee, Subcontractor, Subcontractor employee, or agent of Supplier shall constitute a breach of its obligations under this Section and the Contract.

Supplier shall immediately notify Agency, GTA, and Authorized User, if applicable, of any breach of Personal Information, and/or other personal identifying information, such as insurance data or date of birth, provided by Agency, GTA, or Authorized User to Supplier. Supplier shall provide GTA the opportunity to participate in the investigation of the Breach and to exercise control over reporting the unauthorized disclosure, to the extent permitted by law.

Supplier shall indemnify, defend, and hold the State of Georgia, Agency, GTA, and the Authorized User, their officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses, including but not limited to legal costs suffered by, accrued against, or charged to or recoverable from the State of Georgia, Agency, GTA, the Authorized User, their officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant this Section. This shall include, but not be limited to costs related to notification and credit monitoring and repair services, even if the provision of such services are not required by law. Contractor's indemnification obligations shall survive expiration or termination of this Contract.

E. CONTRACT DATA

The following requirements pertain to all data required to be maintained by Contractor in its performance of the Contract ("Contract Data").

- 1. Correcting Errors and Inaccuracies.** At Supplier's expense, Supplier shall promptly correct any errors or inaccuracies in the Contract Data that are caused by Supplier or Supplier's Subcontractors.
- 2. Secure Retention of Contract Data.** During the term of any agreement between Agency and the Supplier (including during any period of transition assistance) Supplier shall maintain a copy of all Contract Data and shall make secure back-ups of the Contract Data on a regular basis.

If, due to an act or omission of Supplier, any Contract Data is corrupted, lost or sufficiently degraded as to be unusable, the Supplier will, at its sole cost and expense, as soon as reasonably practicable and so far as it is reasonably capable, carry out such remedial action as is required to restore the Contract Data as Agency may reasonably require.

- 3. Return of Agency Data.** At any time during the term of the Contract, at Agency's request, Supplier shall provide Agency with a copy of the Contract Data in the format requested by Agency. Upon termination or expiration of the Contract the Supplier must return all Contract Data to Agency or to Agency's nominated agent in the format requested by Agency. The Supplier will provide reasonable assistance to Agency or to Agency's nominated agent in order to transition the responsibilities with respect to the use of and maintenance of the Contract Data back to Agency or to Agency's nominated agent as required.

F. COMPENSATION

- 1. Pricing and Payment.** The Contractor will be paid for Services provided pursuant to the Statewide Contract in accordance with the RFX and final pricing documents as incorporated into the Statewide Contract Form and the terms of the Statewide Contract. Unless clearly stated otherwise in the Statewide Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. User Agencies are solely and individually financially responsible for their respective purchases. The Agency shall not be responsible for payment of any amounts owed by other User Agencies. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging unless otherwise specified. In instances where travel by Contingent Worker is necessary and preapproved by the Authorized User, travel shall be reimbursed by the State according to and at the rates specified in the State's travel policies.
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2. **Billings.** If applicable, and unless the RFX provides otherwise, the Contractor shall submit, on a regular basis, an invoice for the Services supplied to the User Agencies under the Statewide Contract at the billing address specified in the Purchase Instrument or Statewide Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The User Agencies shall pay all approved invoices in arrears and in accordance with applicable provisions of State law. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount Invoiced.

Unless otherwise agreed in writing by the Agency and the Contractor, the Contractor shall not be entitled to receive any other payment or compensation from the User Agencies for Services provided by or on behalf of the Contractor under the Statewide Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Statewide Contract.

3. **Delay of Payment Due to Contractor's Failure.** If the User Agencies in good faith determine that the Contractor has failed to perform or deliver Services as required by the Statewide Contract, the Contractor shall not be entitled to any compensation under the Statewide Contract until such Service is performed or delivered. In this event, the User Agencies may withhold that portion of the Contractor's compensation which represents payment for Services that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the User Agencies to incur costs, the User Agencies may deduct the amount of such incurred costs from any amounts payable to Contractor. The User Agencies' authority to deduct such incurred costs shall not in any way affect the Agency's sole authority to terminate the Statewide Contract.
 4. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the User Agency any sum or the User Agency must obtain substitute performance, the User Agency may set off the sum owed against any sum owed by the User Agency to the Contractor.
 5. **Service Level Agreement Credits.** Supplier agrees to identify and calculate all credits due for outages, performance failures or failure to meet any service level. All service levels will be computed on a quarterly basis. Supplier will ensure that all credits due Agency are provided automatically without requiring Agency to submit a claim or request, and are clearly identified on the credit note to which they are posted (including specifically identifying on the credit note the outage to which the service credit applies.). Service credits will be issued no later than sixty (60) days after such outage or failure to meet such service level occurs. The Service Level Agreements will be reviewed monthly by Agency and the Supplier to identify any issues that may need immediate attention and may be reviewed again during the quarterly meetings between AGENCY and the Supplier. Supplier will be allowed a sixty (60) day grace period during the implementation phase of the contract to ramp up services, without scoring on any of the performance metrics in the Service Level Agreements (SLAs). Supplier will begin measuring the service levels immediately after completion of implementation and migration, beginning with the next calendar quarter, or sixty (60) days thereafter, whichever is longer.
 6. **Affordable Care Act**
 - a. **Contractor's Representations as to Status of Contractor's Employees.** Pursuant to the Contract, Contractor makes certain of its or its Subcontractor's employees available to provide services to User Agencies ("Contractor's Employees"). Contractor represents and warrants that Contractor's Employees are and at all times shall remain its common law employees. Contractor further acknowledges and agrees that,
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throughout the term of the Contract, Contractor or its Subcontractor retains the right to direct and control Contractor's Employees.

- b. No Participation in User Agency's Benefit Plans.** Contractor acknowledges and agrees that Contractor's Employees are not entitled to participate in any of the benefit plans or programs sponsored by any User Agency, the State of Georgia, or Agency.
- c. ACA-Compliant Coverage for Contractor's Employees.** For each of Contractor's Employees who provide services to a User Agency for an average of thirty (30) or more hours per week [as determined pursuant to 26 U.S. Code § 4980H (the "Code") and the rules, regulations and other official guidance thereunder], Contractor represents and warrants that it offers health care coverage that (a) provides minimum value, (b) is affordable and (c) would otherwise satisfy the requirements of the employer responsibility provisions under the Code if it were provided by the User Agency or its affiliates (an "ACA-Compliant Plan"). Contractor further represents and warrants that Contractor's Employees who are covered under the ACA-Compliant Plan are permitted to purchase such coverage under such plan for each child of Contractor's Employees through the end of the month in which the child turns age 26. Contractor represents and warrants that it will comply with the reporting requirements of 26 US Code § 6055 and 26 US Code § 6056 with respect to the ACA-Compliant Plan and Contractor's Employees.

Contractor further acknowledges that the fees a User Agency pays to Contractor include an additional fee attributable to those individuals who perform services for the User Agency and are covered under the ACA-Compliant Plan. This additional fee shall be \$_____ per Contractor's Employee covered under the ACA-Compliant Plan, and shall be designated "ACA Compliance Charge" (or similar). The ACA Compliance Charge may appear as an aggregate total in the invoice. Each of Contractor's invoices to a User Agency shall identify the number of Contractor's Employees who provided services to the User Agency during any portion of the invoice period, and separately identify the number of Contractor's Employees covered by the ACA-Compliant Plan, if different, for any portion or all of the invoice period. The invoice shall not designate Contractor's Employees subject to the ACA Compliance Charge by name. An invoice that does not reflect an additional fee as an ACA Compliance Charge shall constitute a representation that none of Contractor's Employees were covered under the ACA-Compliant Plan during the invoice period. If this Amendment is adopted after the effective date that any of Contractor's Employees were covered under the ACA-Compliant Plan, invoices previously submitted to the User Agency for services provided by such Contractor's Employees shall be corrected to reflect the ACA Compliance Charges in arrears in accordance with the intention of the parties for such period. Corrected invoices shall be submitted to the User Agency within forty-five (45) days following the date this amendment is executed.

E. TERMINATION

- 1. Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, any purchase made pursuant to this Statewide Contract will terminate immediately and absolutely if the User Agency determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the User Agency cannot fulfill its obligations under the Statewide Contract, which determination is at the User Agency's sole discretion and shall be conclusive. Further, the Agency may terminate the Statewide Contract for any one or more of the following reasons effective immediately without advance notice:
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- a. In the event the Contractor is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Statewide Contract effective as of the date on which the license or certification is no longer in effect;
 - b. The Agency determines that the actions, or failure to act, of the Contractor, its agents, employees or Subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
 - c. The Contractor fails to comply with confidentiality laws or provisions; and/or
 - d. The Contractor furnished any statement, representation or certification in connection with the Statewide Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.
 2. **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the Agency to declare the Contractor in default of its obligations under the Statewide Contract:
 - a. The Contractor fails to deliver or has delivered nonconforming services or fails to perform, to the Agency's satisfaction, any material requirement of the Statewide Contract or is in violation of a material provision of the Statewide Contract, including, but without limitation, the express warranties made by the Contractor;
 - b. The Agency determines that satisfactory performance of the Statewide Contract is substantially endangered or that a default is likely to occur;
 - c. The Contractor fails to make substantial and timely progress toward performance of the Statewide Contract;
 - d. The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Agency reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - e. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Statewide Contract;
 - f. The Contractor has engaged in conduct that has or may expose the Agency or the State to liability, as determined in the Agency's sole discretion; or
 - g. The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Agency, the State, or a third party.
 3. **Notice of Default.** If there is a default event caused by the Contractor, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Agency's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the Agency may:
 - a. Immediately terminate the Statewide Contract without additional written notice; and/or
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- b. Procure substitute services from another source and charge the difference between the Statewide Contract and the substitute contract to the defaulting Contractor; and/or,
 - c. Enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.
 - 4. **Termination Upon Notice.** Following thirty (30) days' written notice, the Agency may terminate the Statewide Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation from the User Agencies, upon submission of invoices and proper proof of claim, for Services provided under the Statewide Contract to the User Agencies up to and including the date of termination. A User Agency may terminate an order or SOW, in whole or in part, upon not less than thirty (30) days prior written notice at any time for any reason.
 - 5. **Termination Due to Change in Law.** The Agency shall have the right to terminate this Statewide Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:
 - a. The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or
 - b. The Agency's duties are substantially modified.
 - 6. **Payment Limitation in Event of Termination.** In the event of termination of the Statewide Contract for any reason by the Agency, the User Agencies shall pay only those amounts, if any, due and owing to the Contractor for the Services actually rendered up to the date specified in the notice of termination for which the User Agencies are obligated to pay pursuant to the Statewide Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Statewide Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.
 - 7. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:
 - a. Cease work under the Statewide Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Statewide Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;
 - b. Immediately cease using and return to the State, any of the State's personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
 - c. Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Statewide Contract, which are the property of the State;
 - d. Cooperate in good faith with the Agency, the User Agencies, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
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- e. Immediately return to the User Agencies any payments made by the User Agencies for Services that were not delivered or rendered by the Contractor.

F. CONFIDENTIAL INFORMATION

1. **Access to Confidential Data.** The Contractor's employees, agents and Subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out the Contractor's responsibilities under the Statewide Contract. The Contractor shall presume that all information received pursuant to the Statewide Contract is confidential unless otherwise designated by the State. If it is reasonably likely the Contractor will have access to the State's confidential information, then:
 - a. The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - b. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - c. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Statewide Contract; and
 - d. The Contractor shall provide adequate supervision and training to its agents, employees and Subcontractors to ensure compliance with the terms of the Statewide Contract.

The private or confidential data shall remain the property of the State at all times. Some Services performed for the Agency and/or User Agencies may require the Contractor to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Statewide Contract.

2. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Statewide Contract shall be disseminated except as authorized by law and with the written consent of the State, either during the period of the Statewide Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Statewide Contract, in whatever form it is maintained, promptly at the request of the State.
 3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information.
 4. **Reporting of Unauthorized Disclosure.** The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.
 5. **Survives Termination.** The Contractor's confidentiality obligation under the Statewide Contract shall survive termination of the Statewide Contract.
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G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:
 - a. Any breach of the Statewide Contract;
 - b. Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or Subcontractor utilized or employed by the Contractor;
 - c. Any failure of Services to comply with applicable specifications, warranties, and certifications under the Statewide Contract;
 - d. The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Services provided under the Statewide Contract;
 - e. Claims, demands, or lawsuits that, with respect to the goods (if any) or any parts thereof, allege product liability, strict product liability, or any variation thereof;
 - f. The Contractor's performance or attempted performance of the Statewide Contract, including any employee, agent or Subcontractor utilized or employed by the Contractor;
 - g. Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Statewide Contract;
 - h. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
 - i. Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
 - j. Any failure by the Contractor to adhere to the confidentiality provisions of the Statewide Contract.
 2. **Duty to Reimburse State Tort Claims Fund.** To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.
 3. **Litigation and Settlements.** The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.
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- 4. Patent/Copyright Infringement Indemnification.** Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the Services constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the Agency shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

In case any of the Services is in any suit held to constitute infringement and its use is enjoined, Contractor shall, at its option and expense:

- a. Procure for the State the right to continue using the Services;
- b. Replace or modify the same so that it becomes non-infringing; or
- c. Remove the same and cancel any future charges pertaining thereto.

Contractor, however, shall have no liability to the State if any such patent, or copyright infringement or claim thereof is based upon or arises out of:

- a. Compliance with designs, plans or specifications furnished by or on behalf of the Agency as to the Services;
- b. Use of the Services in combination with apparatus or devices not supplied by Contractor;
- c. Use of the Services in a manner for which the same was neither designed nor contemplated; or
- d. The claimed infringement of any patent or copyright in which the Agency or any affiliate or subsidiary of the Agency has any direct interest by license or otherwise.

- 5. Survives Termination.** The indemnification obligation of the Contractor shall survive termination of the Statewide Contract.

H. INSURANCE

Contractor shall provide all insurance as required by the RFX.

I. BONDS

The Contractor shall provide all required bonds in accordance with the terms of the RFX and as stated in the Statewide Contract Form.

J. WARRANTIES

1. **Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Contractor and/or Subcontractors in all provisions of the Statewide Contract and the Contractor's Response, whether or not the Statewide Contract specifically denominates the Contractor's and/or Subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the Services to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Statewide Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services provided by the Contractor. The provisions of this section apply during the term of the Statewide Contract and any extensions or renewals thereof.
 2. Supplier has the right to provide the Services, including Deliverables, without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.
 3. **Supplier's Viability.** Supplier warrants that it has the financial capacity to perform and continue to perform to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Supplier that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
 4. **Supplier's Past Experience.** Supplier warrants that the Services have been successfully performed for a non-related third- party without significant problems due to the Services or Supplier.
 5. **Performance.** All Supplier Services and all Subcontractor Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, Deliverables and Services furnished under this Contract. The Services and Deliverables shall meet or exceed the Requirements and shall be performed in a professional manner. All services and any deliverables delivered by Contractor to the User Agencies shall be free from any defects in design, material, or workmanship. If any services or goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the User Agencies shall have the option of returning, repairing, or replacing the defective services or goods at Contractor's expense. Payment for services and any goods shall not constitute acceptance. Acceptance by the User Agencies shall not relieve the Contractor of its warranty or any other obligation under the Statewide Contract.;
 6. Services pursuant to a particular Request for Proposal ("RFP"), quote, or Request for Quote (RFQ), and any associated Deliverables shall be fit for the particular purposes specified by Agency in the RFP and in this Contract and, if applicable, by the Authorized User requesting such quote or issuing such RFP or statement of work, and Supplier is possessed of superior knowledge with respect to the Services and Deliverables and is aware that all Authorized Users are relying on Supplier's skill and judgment in providing the Services and Deliverables;
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7. The Supplier warrants that the documentation which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user, possessing sufficient technical knowledge, to understand fully the software or other Deliverables without reference to any other materials or information.
 8. Supplier agrees that it will commit its Subcontractor to using best efforts through quality assurance procedures to ensure that there are no computer viruses or undocumented features in any of the media or means used to deliver the Services. Supplier will commit that its Subcontractors has used the best available means to scan any media on which Deliverables are provided to the Authorized User.
 9. During the Warranty Period, Supplier warrants that the Deliverables do not contain any material errors and shall conform to the Requirements outlined in the SOW. Supplier shall correct all errors at no additional cost to any Authorized User. If Supplier is unable to make the Deliverable conform, in all material respects, to the SOW Requirements within ten (10) days, or a time period mutually agreed upon or specified in the SOW, following written notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of such deliverable and any other related deliverable(s) from the same SOW rendered unusable, and return all monies paid by such Authorized User for the non-conforming deliverable and such other related deliverable(s) rendered unusable.
 10. **Originality and Title to Concepts, Materials, and Goods Produced.** Contractor represents and warrants that all the concepts, materials, goods and services produced, or provided to the State pursuant to the terms of the Statewide Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and services and the State's use of same and the exercise by the State of the rights granted by the Statewide Contract shall not infringe upon any other work, other than material provided by the Statewide Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Statewide Contract.
 11. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Statewide Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
 12. **Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Statewide Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.
 13. **Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials, or equipment shall remain in the Contractor until fully paid for by the User Agencies. Except as otherwise expressly authorized by the
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Agency, all materials produced by Contractor personnel in performance of Services, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall be deemed to be work made for hire and shall be the property of the State of Georgia.

- 14. Industry Standards.** The Contractor represents and expressly warrants that all aspects of the Services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Statewide Contract, which shall take precedence.
- 15. Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform Services under this Statewide Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency as specified in the RFX. All persons assigned to perform Services under this Statewide Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services.
- 16. Independent Contractor.** Contractor represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that neither Agency nor any Authorized User is responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social security contributions, for Contractor. Any and all taxes, interest, or penalties (including but not limited to any federal, state, or local withholding or employment taxes, and any penalties related to health care or employee benefits laws) that are imposed, assessed, or levied as a result of this Contract or Services performed pursuant to this Contract shall be paid or withheld by Contractor or, if assessed against and paid by Agency or any Authorized User, shall be reimbursed by Contractor upon demand by Agency or such Authorized User.
- 17. Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor or Subcontractors for the performance of Services under this Statewide Contract. Contractor shall be responsible for providing transportation necessary to perform all Services.

K. PRODUCT RECALL

If this Statewide Contract includes the provision of goods and in the event that any of the goods are found by the Contractor, the State, any governmental agency, or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to the Agency and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Agency from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and the State shall agree to the performance of such repairs by the State upon mutually acceptable terms.

L. CONTRACT ADMINISTRATION

- 1. Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of the Statewide Contract Terms and Conditions (including any amendments
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accepted by both the Agency and the Contractor attached hereto and the Awarded Item Schedule, if any), the RFX (including any subsequent addenda and written responses to bidders' questions), and the Contractor's Response, any inconsistency or conflict shall be resolved as follows:

- a. First, by giving preference to the Statewide Contract Terms and Conditions.
 - b. Second, by giving preference to the specific provisions of the RFX.
 - c. Third, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a Contractor that have not been explicitly accepted by the Agency in writing shall not be included in this Statewide Contract and shall be given no weight or consideration.
 2. **Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFX and the Contractor's Response. The failure of the parties to make reference to the terms of the RFX or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFX and the Contractor's Response. The contractual obligations of the Agency cannot be implied from the Contractor's Response.
 3. **Compliance with the Law.** The Contractor, its employees, agents, and Subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Statewide Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as Subcontractors or contractors. The Contractor, its employees, agents and Subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Statewide Contract. Contractor and Contractor's personnel shall also comply with all State, Agency, and User Agency policies and standards in effect during the performance of the Statewide Contract, including but not limited to the Agency and User Agencies' policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Statewide Contract. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract, including any renewals or extensions thereof, not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85.
 4. **Drug-free Workplace.** The Contractor hereby certifies as follows:
 - a. Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Statewide Contract; and
 - b. If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Statewide Contract; and
 - c. Contractor will secure from any Subcontractor hired to work on any job assigned under this Statewide Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the
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Subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

Contractor may be suspended, terminated, or debarred if it is determined that:

- a. Contractor has made false certification here in above; or
 - b. Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).
5. **Amendments.** The Statewide Contract may be amended in writing from time to time by mutual consent of the parties and upon approval by the Agency. All amendments to the Statewide Contract must be in writing and fully executed by duly authorized representatives of the Agency and the Contractor.
6. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Statewide Contract. The Statewide Contract is intended only to benefit the State and the Contractor.
7. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Statewide Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Statewide Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.
8. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** In addition to any dispute resolution procedures otherwise required under this Statewide Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Statewide Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however, that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or employees of any mediation service, are inadmissible for any purpose (including but not limited to impeachment) in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Inadmissibility notwithstanding, all written documents shall nevertheless be subject to the Georgia Open Records Act, O.C.G.A. Section 50-18-70 et.seq.

No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date

of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

9. **Assignment and Delegation.** The Statewide Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
 10. **Use of Third Parties.** Except as may be expressly agreed to in writing by the Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Statewide Contract or any of the work subsequently assigned under this Statewide Contract. This provision shall not apply to contracts for employment between Contractor and its employees. The approval of Agency or Authorized User(s) to subcontract for work under this Statewide Contract shall not relieve Contractor in any way of its responsibility for performance of the work. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Statewide Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Statewide Contract and for the acts and omissions of all Subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Statewide Contract shall also apply to the Subcontractors. Any contract with a Subcontractor must also preserve the rights of the Agency and Authorized Users. The Agency and Authorized Users shall have the right to request the removal of a Subcontractor from the Statewide Contract for good cause.
 11. **Integration.** The Statewide Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Statewide Contract.
 12. **Headings or Captions.** The paragraph headings or captions used in the Statewide Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
 13. **Not a Joint Venture.** Nothing in the Statewide Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for the Services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, Subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any Subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. Contractor acknowledges that Contractor, or any of its agents, contractors, or Subcontractors, is and shall be the employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of, provide (to the extent required by law) health care and other benefits for, and terminate the employment of Supplier personnel. Neither Agency nor an Authorized User shall have any such responsibilities for Supplier or Subcontractor personnel. Contractor has no authority to contract for Agency or any Authorized User or in any way to bind, to commit Agency or any Authorized User to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of Agency or any Authorized User. Under no circumstances shall Contractor, or any of its employees, hold itself out as or be considered an agent or an employee of Agency or any Authorized User. No party has the authority to enter into any contract or create an obligation
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or liability on behalf of, in the name of, or binding upon another party to the Statewide Contract.

14. **Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Statewide Contract, and for any default of activities and obligations.
15. **Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Statewide Contract, this Statewide Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Services provided in connection with the Statewide Contract.
16. **Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Statewide Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
17. **Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Statewide Contract on behalf of the party at the address identified in the Statewide Contract Form. Each such notice shall be deemed to have been provided:
 - a. At the time it is actually received; or,
 - b. Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
 - c. Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

18. **Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Statewide Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
 19. **Severability.** If any provision of the Statewide Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Statewide Contract. Further, if any provision of the Statewide Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Statewide Contract shall not affect any other part of this Statewide
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Contract, and the remainder of this Statewide Contract shall continue to be of full force and effect.

- 20. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Statewide Contract. Contractor shall ensure that all personnel providing Services to the State are responsive to the State's requirements and requests in all respects.
 - 21. Authorization.** The persons signing this Statewide Contract represent and warrant to the other parties that:

 - a. It has the right, power and authority to enter into and perform its obligations under the Statewide Contract; and
 - b. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Statewide Contract and the Statewide Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
 - 22. Successors in Interest.** All the terms, provisions, and conditions of the Statewide Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
 - 23. Record Retention and Access.** The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The Contractor should maintain separate accounts and records for the Agency and the User Agencies. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
 - 24. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Statewide Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
 - 25. Public Records.** The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.
 - 26. Clean Air and Water Certification.** Contractor certifies that none of the facilities it uses to provide the Services are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the Agency of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.
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- 27. Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its Subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the Agency if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.
- 28. Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.
- 29. Taxes.** User Agencies are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. User Agencies are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized Subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Statewide Contract, which verification is incorporated herein by reference.
- 30. Certification Regarding Sales and Use Tax.** By executing the Statewide Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Statewide Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.
- 31. Delay or Impossibility of Performance.** Neither party shall be in default under the Statewide Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a Subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Statewide Contract.
- 32. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Statewide Contract, Contractor's liability to the State for any claim of damages arising out of this Statewide Contract shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Statewide Contract.
- No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor further agrees that equipment transported by Contractor personnel in a vehicle belonging to Contractor (including any vehicle rented or leased by Contractor or Contractor's personnel) shall be deemed to be in the sole care, custody, and control of Contractor's personnel while being transported. Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.
- 33. Obligations Beyond Contract Term.** The Statewide Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the
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Statewide Contract. All obligations of the Contractor incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Statewide Contract.

- 34. Counterparts.** The Agency and the Contractor agree that the Statewide Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 35. Further Assurances and Corrective Instruments.** The Agency and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Statewide Contract.
- 36. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Statewide Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to perform the Services for the State. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the Services to the State or to another contractor.

Further, in the event that the State has entered into or enters into agreements with other contractors for additional work related to services rendered under the Statewide Contract, Contractor agrees to cooperate fully with such other contractors. Contractor shall not commit any act, which will interfere with the performance of work by any other contractor.

Upon expiration or termination of this Contract, either the State or another contractor, may continue the services provided pursuant to this Contract. The Contractor shall, upon the State's written notice:

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

The Contractor shall allot as many personnel as practicable to remain on the job to assist the State or the successor with ensuring the continuity and consistency of the services required by this Contract. The Contractor shall provide to the State and/or the successor all necessary personnel records and allow the successor to conduct on-site interviews with such Contingent Workers. 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.

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). Any reimbursable cost must be actual, reasonable, necessary, and previously agreed upon by the State through the

execution of an amendment prior to work being started and prior to the end of the contract expiration.