

INTEGRATED SUPPLY AGREEMENT

BY AND BETWEEN

GENUINE PARTS COMPANY d/b/a NAPA AUTO PARTS

AND

DEKALB COUNTY SCHOOL DISTRICT

Executed under State of Georgia Contract SWC 99999-SPD-G20150610

This contract is a starting point for all State of Georgia city, county, and state governmental agencies and entities that wish to engage NAPA for Integrated Business Solutions services. This is not a binding agreement until both parties have fully negotiated the contract to fit each State entity's unique fleet parts management needs and fully executed the agreement.

**INTEGRATED SUPPLY AGREEMENT
BY AND BETWEEN
GENUINE PARTS COMPANY d/b/a NAPA AUTO PARTS
AND
DEKALB COUNTY SCHOOL DISTRICT**

THIS INTEGRATED SUPPLY AGREEMENT (this "Agreement") is made by and between **GENUINE PARTS COMPANY**, a Georgia corporation (d/b/a NAPA Auto Parts) ("NAPA"), and **DEKALB COUNTY SCHOOL DISTRICT** ("CUSTOMER"), to be effective as of the 1st day of July , 2019 (the "Effective Date").

W I T N E S S E T H

Pursuant to a competitive bidding and selection process by the National Joint Powers Alliance (hereinafter, "NJPA"), a Minnesota-based Service Cooperative created by Minnesota Legislative Statute 123A.21, NJPA and NAPA executed contract #061015 on July 21, 2015 (hereinafter, "NJPA Contract") to provide Customized Vendor Managed Inventory Supply Services - Fleet Light, Medium and Heavy Duty Parts and Supplies – and Warehousing; and

By becoming a participating member of NJPA (hereinafter, "Member"), the State of Georgia and its related entities (hereinafter, "User Agencies") are authorized to utilize the pricing and incentives available to NJPA Members set forth in the NJPA Contract; and

NAPA and the State of Georgia entered into that certain State of Georgia and NAPA/NJPA Integrated Business Solutions Agreement attached hereto as Exhibit D (hereinafter, the "State of Georgia/NAPA IBS Agreement"); and

In connection with entering into the State of Georgia/NAPA IBS Agreement, the State of Georgia adopted the NJPA Contract as State of Georgia Contract SWC 99999-SPD-G20150610; and

NAPA and the Department of Administrative Services on behalf of the State of Georgia, therefore, negotiated and executed State of Georgia Statewide Contract #99999-SPD-G20150610 attached hereto as Exhibit C (hereinafter, "Statewide Contract"), to establish a source of supply to provide integrated business solutions services; and

CUSTOMER desires to become a User Agency under such Statewide Contract and desires to receive integrated business solutions services from NAPA in accordance with terms herein; and

CUSTOMER and NAPA agree that the Statewide Contract is a vehicle by which CUSTOMER may contract directly with NAPA for parts and services, by mutually executing the terms and conditions of this Agreement, and, when the terms and

conditions of this Agreement conflicts with the terms and conditions of the Statewide Contract, this Agreement shall take precedence in governing the relationship of the parties; and

NAPA desires to provide integrated business solutions services and to establish inventories in CUSTOMER's locations to service the fleet parts needs of CUSTOMER and to serve as the primary supplier of automotive replacement parts and other supplies and/or equipment (the "Inventory") to serve the needs of CUSTOMER; and

CUSTOMER desires to provide space for the Inventory on the premises of CUSTOMER for use by NAPA ("On Site Store") and agrees that NAPA will be its primary supplier of the Inventory pursuant to the terms herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

AGREEMENT

1. **DEFINITIONS.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

- (a) ***Primary Supplier*** shall mean the parts supplier that provides a minimum of ninety percent (90%) of the Inventory needs of CUSTOMER.
- (b) ***NAPA Owned Store*** shall mean an auto parts store lawfully using the tradename or trademark "NAPA" which is wholly owned by NAPA.
- (c) ***NAPA Jobber*** shall mean an auto parts store lawfully using the tradename or trademark "NAPA" with respect to which NAPA maintains no ownership interest.

2. **CUSTOMER'S CURRENT LOCATIONS.** NAPA will establish On Site Store(s) at the CUSTOMER'S following location(s):

DeKalb County School District
1780 Montreal Road
Tucker, GA 30084

&

DeKalb County School District
1701 Mountain Industrial Rd.
Tucker, GA 30084

Additional locations of the CUSTOMER may be added to this Agreement but only by a written amendment executed and agreed to by both the CUSTOMER and NAPA.

3. **TERM.** This Agreement shall begin the date this Agreement is fully executed and shall end when the Statewide Contract terminates or expires or when terminated earlier in accordance with the applicable terms and conditions stated herein. As the Statewide Contract is renewed or extended, this Agreement may be renewed or extended for a period of time equal to or shorter than the period of time the Statewide Contract is renewed or extended upon the mutual written agreement of the parties. This Agreement shall terminate automatically upon the termination, for any reason, of the Statewide Contract. Notwithstanding the foregoing, either party may terminate this Agreement at any time for its convenience by giving the other party sixty (60) days prior written notice of such termination.

4. **DUTIES AND RESPONSIBILITIES OF NAPA.** NAPA shall have the following duties and responsibilities during the term of this Agreement:

(a) NAPA will operate the On Site Store(s) and provide the Inventory to CUSTOMER's now existing locations. NAPA shall provide all personnel required to operate the On Site Store(s).

(b) In those circumstances when delivery is required by CUSTOMER, NAPA will provide parts to CUSTOMER's locations on a daily route basis. In addition, NAPA will accelerate delivery on those items CUSTOMER requires to be delivered on an expedited basis. NAPA will make all reasonable efforts to ensure prompt delivery to the CUSTOMER's location(s) requesting part(s).

(c) NAPA shall provide all computers and reports necessary to monitor monthly expenses as they pertain to the daily operation of the On Site Store(s). NAPA shall provide computer ordering and cataloging to each On Site Store.

(d) NAPA shall provide a cost statement of the parts operations to the CUSTOMER on approximately the 15th of each month for each On Site Store.

(e) NAPA shall provide back-up emergency service during non-working hour contingencies. This overtime expense (calculated at time and one half) will be charged on a cost basis to CUSTOMER, and must be pre-approved by CUSTOMER. The parties shall mutually agree upon the pre-approval process for such emergency situations. NAPA will provide a list of personnel, including telephone numbers, who will respond to emergency service requests.

(f) NAPA IBS shall perform a cost savings analysis on the front end of an IBS arrangement vs. clients current acquisition cost as long as CUSTOMER can provide accurate historical SKU information including cost to CUSTOMER, quantity purchased, and historical movement information. Because NAPA has auditable baseline pricing on its internal parts offering and provides transparency to its clients NAPA is positioned well to potentially procure

parts and services at a savings. Additionally NAPA brings the national buying power of the Genuine Parts Company to ensure competitive acquisition prices.

To endeavor to receive the lowest acquisition price for the client NAPA IBS shall employ a KPI function during the term of the contract. Reporting will demonstrate pricing for the CUSTOMER before the contract and current contract pricing within the contracting period for goods purchased under the contract.

Goal of the Report

To show specific parts cost comparisons and other savings metrics realized by the NAPA IBS on-site. This will allow NAPA and IBS to set specific cost savings goals by site and measure the progress monthly and annually.

Overview of the Report

Initial report will track all pre-loaded superseded parts and show IBS specific sku comparisons and sku level parts comparisons. The Cost Comparison or Savings Supersede Reporting is delivered daily to IBS clients.

- Quarterly Business Review Meetings:

NAPA meets quarterly with its IBS clients to discuss price and cost savings and to provide reporting and financial transparency to the management of its client.

- National Fleet Parts buying power and infrastructure:

NAPA represents that it has negotiated a mix of local, regional, and national pricing with top vendors in the fleet sector including tires, bulk lubricants, aftermarket parts / supplies, and original equipment items. NAPA has the internal infrastructure to audit pricing from coast to coast. NAPA's internal database enables NAPA IBS locations to check fleet parts pricing in hundreds of NAPA IBS locations to ensure that the client is getting the lowest acquisition price or best value available to NAPA.

Notwithstanding the foregoing, in the event CUSTOMER meets or exceeds its maximum payment obligation set forth in Section 7 during the term and thereafter is unable or unwilling to appropriate additional funds to pay the amounts due NAPA in connection with the parts and services to be provided hereunder, NAPA shall be excused from providing such services and parts to CUSTOMER.

5. DUTIES AND RESPONSIBILITIES OF CUSTOMER. CUSTOMER shall have the following duties and responsibilities during the term of this Agreement:

(a) CUSTOMER shall provide, at its sole expense, usable space for NAPA's On Site Store(s) and the Inventory. CUSTOMER shall provide access to restroom facilities for NAPA employees. Further, CUSTOMER shall furnish, at its sole expense, all utilities for the On Site Store(s) including: water, sanitation, sewer, light, telephone, heat, gas, electricity, power, fuel, janitorial and all other utilities and services rendered or delivered to the On Site Store(s) whatsoever. CUSTOMER shall provide NAPA a safe work environment that is free from hostility, violence, or discrimination. NAPA reserves

the right to terminate the contract immediately should NAPA encounter a hostile, violent, discriminatory, or unsafe work environment.

(b) CUSTOMER shall use NAPA as its Primary Supplier of the Inventory under this Agreement. CUSTOMER reserves the right to purchase any item outside this Agreement where it is determined to be more economical or timely so long as the purchase of aforesaid part or parts does not result in NAPA no longer being CUSTOMER'S Primary Supplier in which case NAPA may terminate this Agreement.

(c) Each On Site Store location shall be appropriately secured or otherwise maintained separate and apart from the business of CUSTOMER. There shall be no intermingling of CUSTOMER'S parts or other inventory with NAPA'S parts or inventory. Access to the secured On Site Store(s) shall be restricted to NAPA employees and authorized NAPA representatives only. CUSTOMER'S employees, contractors or agents shall not be permitted to enter the secured On-Site Store area unless accompanied by a NAPA employee or other authorized NAPA representative.

(d) CUSTOMER shall, at all times during the term of this Agreement, at CUSTOMER'S sole expense, maintain in good condition and repair (so as to prevent any damage or injury to NAPA'S employees, the Inventory or other personal property located in the On Site Store(s)) the roof, exterior walls, foundation, and structural portions of the On Site Store(s) and all portions of the electrical and plumbing systems lying outside of the On Site Store(s) but serving the On Site Store(s).

(e) CUSTOMER shall provide information regarding fleet changes to NAPA as soon as possible. Fleet changes include but are not limited to the removal of types of vehicles from the fleet and the addition of new vehicles to the fleet.

6. **ALTERNATIVE SUPPLIERS.** Each On Site Store may be serviced by a NAPA Owned Store or a NAPA Jobber. CUSTOMER acknowledges that whether it will be serviced by a NAPA Owned Store or a NAPA Jobber will be determined by NAPA, in its sole discretion, and that if CUSTOMER is to be serviced by a NAPA Jobber, then such NAPA Jobber must evidence its desire to abide by the terms of this Agreement by entering into an Assignment in the form of Exhibit A hereto.

7. **PAYMENT TERMS/PRICING.** NAPA shall invoice the CUSTOMER for all Inventory purchased pursuant to this Agreement on a monthly basis according to the pricing plan below. CUSTOMER agrees to pay the entire amount of all statements received from NAPA by the 25th day of the month following receipt of any such statement. If CUSTOMER has not paid the entire amount of all statements received from NAPA within 10 days of the 25th day of the month following receipt of such invoice, CUSTOMER shall be put on COD until such amount is paid in full. No prompt pay discount is available under this Agreement.

There are two pricing options available to CUSTOMER. The pricing option for *this* Agreement must be indicated by CUSTOMER initials, below.

PRICING OPTION #1

CUSTOMER INITIALS: _____

The overall goal of CUSTOMER's pricing plan is to achieve a seven and a half percent (7.5%) net profit for NAPA (the "Net Profit Target") by adjusting the pricing of two elements:

- (a) **Product Costs.** The pricing of the Inventory to be supplied to CUSTOMER by NAPA pursuant to this Agreement. Product Costs shall be further divided into "*NAPA Product Costs*," which is the pricing of NAPA supplier manufactured products, and "*Non-NAPA Product Costs*," which is the pricing of products which have not been manufactured by NAPA suppliers but which have been acquired for CUSTOMER by NAPA pursuant to this Agreement.

- (b) **Operational Costs.** Any and all costs and expenses associated with the operation of the On Site Store(s), including, but not limited to, vehicle gas and maintenance costs, salary and benefits payable to NAPA employees at the On Site Store(s), worker's compensation benefits and insurance, unemployment insurance, personal property insurance for the On Site Store(s) and Inventory, any deductible for losses covered under the personal property, automobile liability, or general liability insurance policies of NAPA, all equipment supplied by NAPA, Corporate Allocation Expenses (as defined below), inventory investment expense, pension funding costs, executive fees, accounting fees, general office expenses, and shared service expenses. An example of a profit and loss statement reflecting such costs and expenses is attached hereto as Exhibit B. CUSTOMER acknowledges and agrees that the costs and expenses reflected on the profit and loss statement set forth on Exhibit B are subject to change based on actual monthly costs, expenses or Corporate Allocation Expenses incurred relative to the operation of the On Site Store(s). To achieve economies of scale, NAPA utilizes certain headquarter and corporate personnel to assist in the performance of this Agreement. As a result, each On Site Store location is charged a corporate allocation expense ("Corporate Allocation Expense") which is calculated as a percentage of sales for each contract year. As such, there is not a supportive invoice for such expenses other than an annual allocation rate statement. This Corporate Allocation Expense allows NAPA to have fewer employees performing routine general administrative tasks such as paper work and filing at the On Site Store(s), allowing NAPA counter personnel to focus more attention on serving the On-Site Store operations, and maximizing on-site cost efficiency.

PRICING PLAN SUMMARY

NAPA Product Costs	Billed to CUSTOMER on a "9074 NAPA Pricing Profile"
Non-NAPA Product Costs	Billed to CUSTOMER at a 25% gross profit rate (gross profit is acquisition cost divided by .75)
Operational Costs	Paid entirely by NAPA
Net Profit Target	Amounts will be refunded or charged based on failure to achieve an overall 7.5% net profit for the previous month.

NAPA Product Costs shall be billed to CUSTOMER based on a "9074 NAPA Pricing Profile" which has been provided to CUSTOMER in connection with this Agreement. Non-NAPA Product Costs shall be billed by NAPA to yield a gross profit of twenty-five percent (25%). All Operational Costs shall be borne by NAPA.

Sales at each On Site Store location will be reviewed after the first ninety (90) days of operation and on a month by month basis thereafter to ensure a seven and a half percent (7.5%) net profit for NAPA. If monthly sales at each On Site Store, independently as opposed to in the aggregate, are producing more than a seven and a half percent (7.5%) net profit for NAPA, NAPA will pay to CUSTOMER, via a refund check, the overage. Conversely, if NAPA's net profit for the preceding month is less than seven and a half percent (7.5%), NAPA will bill CUSTOMER for the deficiency.

CUSTOMER and NAPA mutually agree that Customer's maximum monthly payment obligation pursuant to this profit guarantee shall be set at \$_____ per month; and CUSTOMER has encumbered such amount to cover this potential liability. NAPA acknowledges that the CUSTOMER may not pledge the State's credit. In the event that such amount may need to be increased during the Term of the contract, NAPA shall provide reasonable notice to CUSTOMER, which shall be at least 60 days. The parties agree to mutually work together to adjust the amount if such amount must be increased during the Term of the contract. CUSTOMER INITIALS _____

In addition, NAPA may use any sub-contractor for the procurement of "outside" purchases or services (i.e., those parts or services not traditionally stocked or performed by NAPA), and CUSTOMER will be billed an additional charge for any such purchases so as to yield NAPA a twenty-five percent (25%) gross profit on such purchases. CUSTOMER must provide pre-approval in writing for such outside purchases. CUSTOMER is solely responsible for improper or inappropriate instructions by CUSTOMER's employees to NAPA regarding NAPA's purchases of nontraditional parts or services, unless CUSTOMER provided prior written notice to NAPA of parts or services that may not be procured by NAPA in relation to this Agreement.

PRICING OPTION #2

CUSTOMER INITIALS



The overall goal of CUSTOMER's pricing plan is to achieve a seven and a half percent (7.5%) net profit for NAPA (the "Net Profit Target") by adjusting the pricing of two elements:

- (a) **Product Costs.** The pricing of the Inventory to be supplied to CUSTOMER by NAPA pursuant to this Agreement. Product Costs shall be further divided into "**NAPA Product Costs**," which is the pricing of NAPA supplier manufactured products, and "**Non-NAPA Product Costs**," which is the pricing of products which have not been manufactured by NAPA suppliers but which have been acquired for CUSTOMER by NAPA pursuant to this Agreement.

- (b) **Operational Costs.** Any and all costs and expenses associated with the operation of the On Site Store(s), including, but not limited to, vehicle gas and maintenance costs, salary and benefits payable to NAPA employees at the On Site Store(s), worker's compensation benefits and insurance, unemployment insurance, personal property insurance for the On Site Store(s) and Inventory, any deductible for losses covered under the personal property, automobile liability, or general liability insurance policies of NAPA, all equipment supplied by NAPA, Corporate Allocation Expenses (as defined below), inventory investment expense, pension funding costs, executive fees, accounting fees, general office expenses, and shared service expenses. An example of a profit and loss statement reflecting such costs and expenses is attached hereto as Exhibit B. CUSTOMER acknowledges and agrees that the costs and expenses reflected on the profit and loss statement set forth on Exhibit B are subject to change based on actual monthly costs, expenses or Corporate Allocation Expenses incurred relative to the operation of the On Site Store(s). To achieve economies of scale, NAPA utilizes certain headquarter and corporate personnel to assist in the performance of this Agreement. As a result, each On Site Store location is charged a corporate allocation expense ("Corporate Allocation Expense") which is calculated as a percentage of sales for each contract year. As such, there is not a supportive invoice for such expenses other than an annual allocation rate statement. This Corporate Allocation Expense allows NAPA to have fewer employees performing routine general administrative tasks such as paper work and filing at the On Site Store(s), allowing NAPA counter personnel to focus more attention on serving the On-Site Store operations, and maximizing on-site cost efficiency.

copy of all Certificates of Insurance evidencing the insurance coverages set forth in the immediately preceding sentence.

NAPA shall procure and maintain, throughout the term of this Agreement, insurance which shall protect the supplier and the State of Georgia (as an additional insured to the extent of NAPA's indemnification obligations) from any claims for bodily injury, property damage, or personal injury covered by the indemnification obligations set forth in the statewide contract attached to this IBS throughout the duration of this Agreement. NAPA shall procure and maintain the insurance policies described below at NAPA's own expense (provided that NAPA shall be permitted to pass through such expenses as Operational Costs in the event Customer selects pricing option #2 in Section 7 above) and shall furnish Agency an insurance certificate listing the State of Georgia as certificate holder and as an additional insured to the extent of NAPA's indemnification obligations. The insurance certificate must document that the Commercial General Liability insurance coverage purchased by the supplier includes contractual liability coverage applicable to the statewide contract. In addition, the insurance certificate must provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of notice of cancellation to DOAS.

NAPA is required to maintain the following insurance coverage's during the term of the statewide contract:

- 1) Workers Compensation Insurance (Occurrence) in the amounts of the statutory limits established by the General Assembly of the State of Georgia (A self-insurer must submit a certificate from the Georgia Board of Workers Compensation stating that the supplier qualifies to pay its own workers compensation claims.) In addition, the supplier shall require all subcontractors occupying the premises or performing work under the statewide contract to obtain an insurance certificate showing proof of Workers Compensation Coverage with the following minimum coverage:

Bodily injury by accident - per employee

\$100,000;

Bodily injury by disease - per employee

\$100,000;

Bodily injury by disease – policy limit

\$500,000.

- 2) Commercial General Liability Policy with the following minimum coverage:

Policy shall include bodily, property damage and broad form contractual liability coverage.

Each	Occurrence	Limit
	\$1,000,000	
Personal &	Advertising	Injury Limit
	\$1,000,000	

	General Aggregate Limit	\$ 2,000,000
	Products/Completed Ops. Aggregate Limit	\$ 2,000,000
3)	Automobile Liability	
	Bodily Injury and Property Damage for any owned, hired or non-owned vehicles used in the performance of the statewide contract	
	Combined Single Limit	
		\$1,000,000
4)	Umbrella Liability	\$ 2,000,000

NAPA shall endeavor to provide that the foregoing policies contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to Customer. Certificates of Insurance (ACORD form or equivalent approved by the State) showing such coverage to be in force shall be filed with Customer prior to commencement of any work under the statewide contract and remain in effect for the duration of the statewide contract. The foregoing policies shall be obtained from insurance companies authorized to do business in Georgia and shall be with companies reasonably acceptable to Customer, which must have a minimum A.M. Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

Within ten (10) business days of award, NAPA must procure the required insurance and provide DOAS with two (2) Certificates of Insurance. Certificates must reference the contract number. No contract performance shall occur unless and until the required insurance certificates are provided.

Additional Insured: The vendor shall add the "State of Georgia, its officers, employees and agents" as an additional insured under the commercial general, automobile and umbrella liability policies to the extent of NAPA's indemnification obligations.

(b) In addition, NAPA shall maintain personal property insurance during the term of this Agreement in an amount sufficient to cover any loss or damage to the Inventory and any other personal property owned by NAPA that is located at the On Site Store(s).

(c) Neither Customer nor the Department of Administrative Services shall procure or provide insurance for NAPA property or Inventory.

9. NO LIENS.

(a) CUSTOMER warrants that it shall take no action, including but not limited to the granting of a security interest, or fail to take any action, which would

operate or does operate in any way to encumber the Inventory of NAPA located in the On Site Store(s).

10. **PERSONNEL.** NAPA and CUSTOMER shall attempt in good faith to mutually agree upon the identity of the persons that will be selected to staff the On Site Store(s). In the event that CUSTOMER for any reason wishes to remove or replace any of the NAPA personnel in the On Site Store(s), the parties will attempt to resolve CUSTOMER's request by mutual agreement.

11. **WARRANTY/LIABILITY DISCLAIMER.** All products supplied pursuant to this Agreement are subject to the terms of written warranties provided by the manufacturer of each product, and NAPA shall use reasonable commercial efforts to assist the CUSTOMER in processing all warranty claims that the CUSTOMER may have against a manufacturer. The manufacturer's warranty will be the sole and exclusive remedy of the CUSTOMER in connection with any claims concerning the products supplied to CUSTOMER pursuant to this Agreement. In addition, NAPA agrees to the express warranties included in the State of Georgia/NAPA IBS Agreement and the Statewide Contract Terms and Conditions. **ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.** Copies of the manufacturers' warranties are available to CUSTOMER upon request.

For suppliers (or categories of suppliers) of Non-NAPA products that CUSTOMER instructs NAPA to utilize or consider for future purchases, NAPA is under no obligation to (and NAPA disclaims all liability in connection with) investigate product quality, management, ownership, reputation, certifications, qualifications, price competitiveness (except to the extent otherwise provided in the RFX (as defined in the Statewide Contract), NAPA's response to the RFX, or this Agreement), or any other related characteristics of the products, individuals or entities at issue.

12. **TERMINATION FOR CAUSE.** This Agreement may be terminated immediately, unless otherwise stated in this Section 12, by either party for cause:

(a) In the event that the other party fails or refuses to pay any amounts due under this Agreement and such failure continues for (30) thirty days;

(b) In the event that the other party fails or refuses to perform any other obligation required under this Agreement, and such failure or refusal continues for thirty (30) days after written notice thereof; or

(c) In the event that the other party files any bankruptcy petition, has any bankruptcy petition filed against it, makes any assignment of its assets for the benefit of creditors, or admits in writing its inability to pay its debts as they become due.

13. EFFECT OF TERMINATION. Immediately upon termination of this Agreement by either party for any reason:

(a) All duties, responsibilities and other obligations of each party hereunder shall terminate, except for the payment of any amounts due and owing to NAPA at the time of termination.

(b) Each party shall immediately return to the other party all equipment, software, books, records, tools and any other personal property owned by the other party that are in such party's possession. CUSTOMER shall allow NAPA full and unrestricted access to enter into the On Site Store(s) and immediately remove all equipment and other items of personal property owned by NAPA without being deemed guilty of trespass or any other violation of the law. All inventory records, sales history, sales analysis and all other information generated by NAPA under this Agreement will be returned to CUSTOMER.

Nothing contained in this Section shall be deemed a waiver of, or in any other manner impair or prejudice, any other legal rights that either party may have against the other party for any breach of this Agreement. The provisions and obligations of Sections 9, 11, 14, 15, 17, 18, and 20 shall survive the termination of this Agreement for any reason.

14. BUY-BACK OF INVENTORY. Upon termination, expiration, or non-renewal of this Agreement, NAPA shall have the option to require CUSTOMER to purchase all non-NAPA branded Inventory owned by NAPA and located in the On Site Store(s) at NAPA's current acquisition cost, and CUSTOMER shall have the option to purchase all NAPA branded Inventory, owned by NAPA and located in the On Site Store(s) at NAPA's current acquisition cost.

CUSTOMER INITIALS

R.S.G

15. CHANGE OF CONTROL. NAPA may unilaterally terminate this Agreement by giving thirty (30) days written notice to CUSTOMER upon the occurrence of any one or more of the following events:

(a) A change in the management or ownership of CUSTOMER;

(b) A sale, lease, assignment or other transfer of CUSTOMER'S business or assets, whether through a stock purchase, merger, asset purchase, or other similar transaction, of at least a ten percent (10%) interest therein.

16. LANDLORD CONSENT AND WAIVER. Not applicable.

17. **INDEMNIFICATION.** NAPA shall be responsible for and shall indemnify and hold CUSTOMER harmless from and against all damages, claims or demands that may, during the term of this Agreement, arise or be occasioned by the negligent or intentional acts of NAPA or NAPA's employees or breach of contract by NAPA.

18. **NOTICES.** Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be hand-delivered in person or sent via facsimile, by overnight mail through a reputable service, or by certified mail, return receipt requested, to the addresses set forth below:

As to NAPA: NAPA IBS District Office
5420 Peachtree Industrial Blvd.
Norcross, GA 30071
Attn: Peter Purpura
Telephone: (504) 884-2315
Facsimile: (770) 441-7582

As to CUSTOMER: DeKalb County School District
1780 Montreal Rd.
Tucker, GA 30084
Attn: Cedric Burse
Telephone: (678) 676-1330

Each such notice shall be deemed delivered (i) on the date of receipt if delivered by hand, overnight courier service or if sent by facsimile, or (ii) on the date three (3) business days after depositing with the United States Postal Service if mailed by registered or certified mail. Either party may change its address specified for this notice by giving the other party at least ten (10) days written notice in accordance with this Section 18.

19. **FORCE MAJEURE / DAMAGE OF PREMISES.**

(a) Whenever performance by either party of any of their respective obligations (other than the obligation to make payment of money due hereunder) is substantially prevented by reason of any act of God, other industrial or transportation disturbance, fire, floods, riots, acts of enemies, national emergencies or by any other cause not within the reasonable control of such party and not occasioned by its negligence, then such performance shall be excused and the performance of such obligations under this Agreement shall be suspended for the duration of such prevention and for a reasonable time thereafter.

(b) NAPA may terminate this Agreement immediately in the event that the CUSTOMER's premises are damaged by any casualty, or such portion of the premises is condemned by any legally constituted authority, such as will make the CUSTOMER's premises unusable for the On Site Store(s) in the reasonable judgment of NAPA.

20. **SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective officers, directors, employees, successors and assigns. Notwithstanding the foregoing, the rights and obligations of either party to this Agreement may not be assigned without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

21. **AMENDMENTS.** No amendment to this Agreement shall be binding on either party hereto unless such amendment is in writing and executed by both parties with the same formality as this Agreement is executed.

22. **NO WAIVER OF RIGHTS.** No failure of either party hereto to exercise any power given such party hereunder or to insist upon strict compliance by the other party to its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

23. **LIMITATIONS ON RIGHTS OF THIRD PARTIES.** All obligations of a party under this Agreement are imposed solely and exclusively for the benefit of the parties, and no other person shall, under any circumstances, be deemed to be a beneficiary of such obligations.

24. **INDEPENDENT CONTRACTOR.** The parties hereto are independent contractors. Nothing in this Agreement shall create or shall be deemed to create any fiduciary relationship or the relationship of principal and agent, partnership, joint venturers or any other similar or representative relationship between the parties hereto.

25. **CHOICE OF LAW.** This Agreement shall be construed and interpreted under the laws of the State of Georgia.

26. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts and each counterpart shall, for all purposes, be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

27. **SECTION HEADINGS.** Section titles or captions contained herein are inserted only as a matter of convenience for reference and in no way define, limit, extend, or describe the scope hereof or the intent of any provision hereof.

28. **SEVERABILITY.** In the event any part of this Agreement shall be finally determined by a court of law to be illegal or unenforceable for any reason, then that illegal or unenforceable part shall be severed from the Agreement, and the remaining terms shall continue in full force and effect.

29. **ENTIRE AGREEMENT.** This Agreement and the attached Exhibits constitute the entire agreement of the parties hereto and no prior representation,

inducement, promise or agreement, oral or written, between the parties not embodied herein shall be of any force and effect.

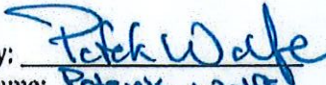
30. **EXHIBITS AND PRECEDENCE**. This Agreement and the Exhibits referenced herein constitute the entire contract between CUSTOMER and NAPA concerning the subject matter hereof. In the event of a conflict between the terms of the below referenced documents, the terms in the document with highest relative precedence shall govern. The order of precedence shall be the order of documents as listed below, with the first listed document having the highest precedence and the last listed document having the lowest precedence.

1. This Agreement.
2. Sample Operational Costs Statement attached as Exhibit B to this Agreement and incorporated herein by reference.
3. The Statewide Contract attached as Exhibit C to this Agreement and incorporated herein by reference.
4. The State of Georgia/NAPA IBS Agreement attached as Exhibit D to this Agreement and incorporated herein by reference.
5. The RFX (as defined in the Statewide Contract attached as Exhibit C).
6. NAPA's Final Response to the RFX.

[Remainder of page intentionally left blank / Signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto cause their hands and seals to be affixed by their duly-authorized representatives effective as of the date and year first above written.

GENUINE PARTS COMPANY

By: 
Name: Patrick Wolfe
Title: DIVISION VICE PRESIDENT

DEKALB COUNTY SCHOOL DISTRICT


By: 
Name: Dr. R. Stephen Green
Title: Superintendent/CEO

EXHIBIT B

SAMPLE OPERATIONAL COSTS STATEMENT

See attached.

EXHIBIT B



DeKalb County Sample IBS Monthly Profit & Loss Statement (Exhibit B)				
 	CURRENT	%	Expense Short Description	
	MONTH	SALES	*All values displayed as whole dollars*	
Purchases	\$ 249,966	100.00%	← The total purchased this month	
Loss Cost of Sales	\$ 231,219	92.50%	← NAPA's cost of the goods sold	
Sales Less Cost	\$ 18,747	7.50%	← The Gross Profit, or sales minus cost	
Less Handling Charge		0.00%		
GROSS PROFIT	\$ 18,747	7.50%	← State of Georgia Pricing Plan Option Two	
EXPENSES:				
Advertising		0.00%		
Sales Salaries		0.00%		
Handling Credit		0.00%		
Not Salaries		0.00%		
Travel		0.00%		
Sales - Miscellaneous		0.00%		
G. M. Travel		0.00%		
TOTAL SALES EXPENSE	\$ -	0.00%		
SALARIES - EXEC.	\$ -	0.00%		
PAYROLL:				
Acctg & Data Proc.	\$ 1,250	0.50%	← Headquarters Fees based on 0.50% of Sales	
General Office	\$ 1,250	0.50%	← Headquarters Fees based on 0.50% of Sales	
Salaries Manager/Counter	\$ 14,878	5.95%	← Payroll figure for all counterparts combined	
Site Manager	\$ -	0.00%	← Payroll figure for Parts Department Manager	
Handling Credit		0.00%		
Not Stockroom		0.00%		
Delivery / Driver	\$ 2,288	0.92%	← Payroll figure for all drivers combined	
TOTAL PAYROLL	\$ 19,666	7.87%		
Bad Debts		0.00%		
Data Proc. Eqpt. & Suppl.	\$ -	0.00%		
Delivery - Insurance	\$ 600	0.24%		
Maintenance	\$ 350	0.14%	← Veh class Expenses, normally fuel, repairs, and Toll tag fees	
Truck Depn.	\$ 044	0.34%	← Truck Depreciation, Lease Fees, Taxes and Registrations	
Depreciation - F. & F.	\$ -	0.00%	← This represents shelving and equipment depreciation expense	
Empl. Benefits - Pension	\$ 1,125	0.45%	← Headquarters Fees based on 0.45%	
Other	\$ 1,939	0.78%	← Group Insurance, Uniforms, Employee Center Fees	
Freight & Postage	\$ 712	0.28%	← Freight & Postage	
Frt. Allowance		0.00%		
Insurance	\$ 375	0.15%	← General Liability Insurance, Workmans Comp	
Interest	\$ -	0.00%		
Legal & Professional		0.00%		
Light, Heat, Water	\$ -	0.00%		
Moving		0.00%		
Rent	\$ 55	0.02%	← Rental & Leasehold Charges, Insurance for assets / Inventory	
Stationery, Ship, Suppl.	\$ 174	0.07%		
Stock Loss	\$ -	0.00%		
Store	\$ 661	0.26%	← Miscellaneous store expenses	
Taxes (Not Income)	\$ 1,720	0.69%	← Taxes: Payroll, Sales and Use, Personal Property (Inv)	
Telephone	\$ 360	0.14%	← Phone/Modem lines, DSL Support, Joel access fees AWAN	
Travel (Not Sales)		0.00%		
TAMS	\$ 790	0.32%	← Computers (Lease or Depreciation), support fees	
Training	\$ 50	0.02%	← Fee for training material, uniforms, etc	
TOTAL MISC. EXPENSES	\$ 9,755	3.90%		
Executive Fees		0.00%		
TOTAL EXPENSES	\$ 29,421	11.77%		
Operating Income	\$ (10,674)	-4.27%	← Sum of gross profit minus total expenses	
Misc. Inc; Cash Disc. (Net)	\$ -	0.00%	← Store discounts	
Expense Bill due to NAPA	\$ 29,421	11.77%	← Net Expense Invoice Due NAPA	
PROFIT BEFORE TAXES	\$ 18,747	7.50%	← 7.5% NAPA Management Fee	

EXHIBIT C
STATEWIDE CONTRACT

See attached.



**State of Georgia and NAPA/NJPA Agreement
Integrated Business Solutions
NAPA/NJPA Contract #081015-GPC &
State of Georgia Contract 99999-SPD-G20150610
July 20, 2016**



OVERVIEW: Genuine Parts Company, dba NAPA AUTO PARTS ("NAPA"), is a Georgia based company founded in 1928 and headquartered in Atlanta. The NAPA Store system in Georgia includes an Automotive Parts Distribution Center located in Norcross, Ga stocking over \$15,000,000 of inventory. To service the full scope of vehicle needs of the State, NAPA also operates the Tracolon, NAPA Heavy Duty Truck parts distribution center in Atlanta, Ga. This operation supplies parts for vehicle classes 6, 7 & 8 with over \$15,000,000 in heavy duty parts supplied from the major OEM Heavy Duty Manufacturers and Suppliers. Our NAPA AUTO PARTS Stores stock their own inventories to serve the markets they represent and have overnight delivery service from those NAPA Distribution Centers to provide next day availability from these multi-million dollar inventories.

The U.S. NAPA Distribution system services 6,000 stores across the country with 100 NAPA AUTO PARTS Stores located throughout the State of Georgia. Of these 100 stores; 136 are independently owned NAPA stores operating in their communities and 62 are owned by Genuine Parts Company.

NAPA operates Integrated Business Solutions (IBS) within the State of Georgia.

NAPA AUTO PARTS Stores are strategically located across the State and are in the best position to service the potential users of the IBS contract. Service not only applies to providing the aftermarket parts, but includes access to technical training from dedicated NAPA Supply Chain providers, onsite support to help identify any needs or service issues.

WHEREAS, NAPA and NJPA (National Joint Powers Alliance), Contract Number #081015-GPC Customized Vendor Managed Inventory Supply Services - Fleet Light, Medium and Heavy Duty Parts and Supplies -- and Warehousing, commonly called Integrated Business Solutions (IBS), provides the State of Georgia (hereinafter "State") the ability to legally purchase off contract without the requirement of completing a competitive bid process. Minnesota Statute 123A.21, the Uniform Municipal Contracting Law M.S.471.345 Subd.15 and M.S.471.59 insures compliance for the State. The benefits to the State include:

- Efficiency in Time and resource savings in the purchasing / bid process
- Large volume pricing, regardless of quantity needed
- Access to national network of suppliers and their products
- Purchases made in compliance with applicable laws

Whereas, The Terms and Conditions of this State of Georgia and NAPA/NJPA Agreement (this "Agreement") are a separate, stand-alone agreement which incorporates the terms of the NAPA/NJPA Contract #081015-GPC and the NJPA/State of Georgia Marketing Partner Agreement (Exhibit A) and all associated amendments.

Whereas, The term of this Agreement shall run concurrent with the term of the NJPA Contract #081015-GPC.

Whereas, Both Parties agree that all IBS customized agreements, which are under the current NAPA/State of Georgia Agreement (NAPA/NJPA Contract #081015-GPC and State of Georgia contract 99999-SPD-G20150610), referenced herein, and are in effect at the execution of this Agreement by the final signing party, are hereby incorporated into this Agreement. The terms and conditions of the IBS customized agreements shall remain unchanged.

Whereas, NAPA and the State of Georgia agree that this Agreement is limited to government entities within the State of Georgia.

NAPA and the State of Georgia agree to the following terms:

Each of the recitals set forth above is hereby incorporated into this Agreement in its entirety.

- **Service:** NAPA will provide NAPA parts, supplies, tools and equipment to each IBS in accordance with the execution of the Customizable IBS Agreement (Exhibit B). This agreement allows for NAPA and the proposed IBS customer to customize the service to their individual service needs. This mutually agreed upon option, once executed, becomes an official contract document and the terms and conditions in the Customizable IBS Agreement will supplement the base contract terms and conditions.

In the event of a conflict between the terms and conditions of the Customizable IBS Agreement and the terms and conditions in the NAPA/NJPA Contract #001016-GPC and State of Georgia contract 00000-SPD-G20150810, the terms and conditions in the Customizable IBS Agreement will control.

- **IBS:** NAPA offers its Integrated Business Solutions model to any State Agency, Entity, Local Municipality, or any other State-approved authorized entity that NAPA agrees can support the program volume and requirements;
- **Current State of Georgia IBS Agreements:** State of Georgia/ NAPA IBS sites, currently operating under the State /NAPA IBS Contract, will remain under the same 7 ½% NAPA Net Profit. These IBS site locations are as follows: Newton County Bus Shop (Covington, GA), City of Columbus, GA, Muscogee County Schools (Columbus, GA), DeKalb County Schools (Tucker, GA), and Atlanta Public Schools (Atlanta, GA).

IBS Agreements Not Under State of Georgia Contract: Any State of Georgia authorized entity, that is not currently under the State of Georgia IBS contract, as reflected in the immediate prior section of this document, may qualify for the program in accordance with the terms of the NJPA Contract #001016-GPC/State of Georgia Contract 00000-SPD-G20150810. Acceptance is determined by the entity's willingness to participate in the IBS program and the determination of the entity's "qualified status" by NAPA. This determination of "qualified for the IBS program" is based on the results of a cost-free business analysis conducted by NAPA. The analysis will determine whether NAPA can recover all overhead expenses and yield a return of 7.6% net profit. Potential participating authorized entities will be required to furnish NAPA certain business metrics, which include but are not limited to 1) total dollar inventory 2) personnel requirements 3) number and types of vehicles in fleet 4) the percent of obsolete inventory, and 5) hours of operation.

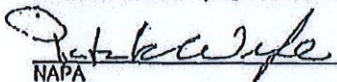
- **Contract Reviews:** NAPA and the State of Georgia DOAS will establish a semiannual review process to monitor contract activity based on a rolling 12 month sales period.
- **Revenue Share:** NAPA offers a revenue generation for the State of Georgia DOAS of half of one percent (.005%) of total purchases (NAPA and Non-NAPA) through the contracted State IBS facility on all IBS business under the NAPA/State of Georgia Agreement. Per NJPA Contract #001015, all participating NAPA stores are required to pay a 1% contract fee of total purchases to NJPA. Per the Georgia Marketing Partner Agreement, NJPA has agreed to provide the State of Georgia with one half (½) of this 1%.

Note: This contract fee is separate from the business relationship between the NAPA Store and the facility and is paid directly to NJPA.

- **Pricing:** Pricing will be in accordance with the State of Georgia pricing as set forth above and the Customizable IBS Agreement.
- **Support:** Dedicated account manager to focus on Program participation, Compliance,
- **Marketing:** Market the IBS services in Trade Shows, NAPA IBS enrollments, updates, Communications and other functions needed by the State of Georgia that fall within the scope of this agreement and contracts cited herein.
- **Customized Reporting:** NAPA agrees to submit Quarterly Sales in accordance with the State of Georgia's Quarterly report format. All other reports are available per the State's needs
- EDI is available to the State

The State of Georgia has determined this Agreement, the Customizable IBS Agreement and associated NJPA IBS Contract constitutes the components of Georgia Statewide Contract 00000-SPD-G20150810.

Both parties mutually agree to the terms of this agreement:


NAPA
Patrick Wolfe
Printed name
Division Vice President
Title
11/15/16
Date

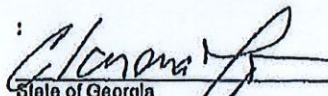

State of Georgia
Clarence Ingram
Printed Name
Group Category Mgr
Title
11/18/16
Date

EXHIBIT D

STATE OF GEORGIA/NAPA IBS AGREEMENT

See attached.

**State of Georgia
Statewide Standard Contract Form**

Solicitation Title Integrated Business Solutions AKA (Inventory Parts Management Services)	Solicitation Number NJPA 07/21/15	Contract Number 00000-SPD-G20160610
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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 Genuine Parts Company d/b/a NAPA Auto Parts	(hereafter called Contractor)

2. Incorporation of Georgia Terms and Conditions to existing IBS NJPA/Georgia Contract, Terms and Conditions to Begin 07/20/2017 08/08/2017 <i>Amtd</i>	Date of Completion: 07/20/2019	Renewals: One (1) Year Renewal (Optional) See paragraph B 2.
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3. Performance Bond, if any: N/A	Other Bonds, if any: N/A
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4. Authorized Person to Receive Contract Notices for Agency: Billy R. Gilbert, billy.gilbert@dcaas.ga.gov 404-404-0717	Authorized Person to Receive Contract Notices for Contractor: Polor Purpura polor.purpura@napaf.com 604-004-2316
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6. 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 for Goods and Ancillary Services |
| Attachment 2: Solicitation NJPA 07/21/15 (referenced above) |
| Attachment 3: Contractor's Final Response to Solicitation NJPA 07/21/15 |
| Attachment 4: State of Georgia/NAPA IBS Agreement |
| Attachment 4: Customized Agreement (08/01/2017) between Contractor and Individual IBS Customers (When Executed) (the "IBS Agreement") |

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.) <i>Genuine Parts Company d/b/a NAPA AUTO PARTS</i>	
By (Authorized Signature) <i>Dennis P. Tolivar</i>	Date Signed <i>8-3-17</i>
Printed Name and Title of Person Signing <i>Dennis P. TOLIVAR VP MAJOR ACCOUNTS</i>	
Address <i>2999 Wildwood Parkway ATLANTA GA 30339</i>	

7. Agency

Agency Name Department of Administrative Services	
By (Authorized Signature) <i>Carl Allen Hall</i>	Date Signed <i>8/8/2017</i>
Printed Name and Title of Person Signing <i>CARL HALL, CATEGORY MANAGER</i>	
Address 200 Piedmont Avenue, Ste 1300, West Tower, Atlanta, GA 30334	

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

A. DEFINITIONS AND GENERAL INFORMATION

1. **Definitions.** The following words shall be defined as set forth below:

- (i) "Agency" means the Department of Administrative Services of the State of Georgia.
- (ii) "Awarded Item Schedule" means the summarizing document, if any, listing the goods and services as awarded and may also denote the Contractor providing such goods and services.
- (iii) "Contract" or "Statewide Contract" means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
- (iv) "Contractor" means the provider(s) of the goods and services under the Statewide Contract.
- (v) "Purchase Instrument" means the documentation issued by the Agency or User Agencies to the Contractor for a purchase of goods and 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 items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Agency or User Agencies.
- (vi) "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.
- (vii) "RFX" means the NJPA 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 goods and/or services that are subject to the Statewide Contract.
- (viii) "State" means the State of Georgia, the Agency, User Agencies, and any other authorized state entities issuing Purchase Instruments against the Statewide Contract.
- (ix) "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 goods and 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.

(x) "User Agency" or "User Agencies" 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.

2. **Certified Source of Goods and Services.** Pursuant to Section 60-5-57 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 goods and 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 State of Georgia/NAPA IBS Agreement. In addition, unless otherwise provided in the State of Georgia/NAPA IBS Agreement, Contractor shall keep a record of the purchases made pursuant to the Statewide Contract and shall submit a quarterly written report to the Agency.

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. Pursuant to O.C.G.A. Section 60-5-64, this Statewide Contract shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
2. **Contract Renewal.** If NJPA executes their 6th year option, the Agency shall have the option, in its sole discretion, to renew the Statewide Contract for an additional one (1) year term as specified in the Statewide Contract Form by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial 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 identified goods and 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 identified goods and services.

C. DESCRIPTION OF GOODS AND SERVICES

1. **Specifications in Bidding Documents.** The Contractor shall provide all goods, services, and other deliverables in compliance with the specifications contained in the RFX and the terms of the Statewide Contract, plus those equipment, services and deliverables as may additionally be described in the Response.

2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All items shall be at the Contractor's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery.
3. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. The Agency reserves the right to select other contractors to provide goods and services similar to goods and services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar goods and 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.
4. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level of purchases.

D. COMPENSATION

1. **Pricing and Payment.** Pricing and payment terms are set forth in each customized IBS Agreement (as defined above on the Statewide Contract Form). The parties agree that Contractor's pricing profile will remain firm with the pricing plan achieving a seven and a half percent (7.5%) net profit for NAPA, but prices on individual products will increase and decrease throughout the term of the Statewide Contract and IBS Agreement. User Agencies are solely and individually financially responsible for their respective purchases.
2. **Billings.** Invoicing terms are set forth in each customized IBS Agreement. If applicable, and unless the IBS Agreement provides otherwise, the Contractor shall submit, on a monthly basis, an invoice for goods and services supplied to the User Agencies under the IBS Agreement at the billing address specified in the IBS Agreement. The invoice shall comply with all applicable rules concerning payment of such claims. User Agencies shall pay all approved invoices in accordance with the IBS Agreement.

The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Statewide Contract (provided that Contractor may pass through certain charges in the event the User Agency elects pricing option #2 in Section 7 of the IBS Agreement).

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 any service or product as required by the Statewide Contract, the Contractor shall not be entitled to any compensation under the Statewide Contract until such service or product is performed or delivered. In this event, the User Agencies may withhold that portion of the Contractor's compensation which represents payment for services or products 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.

E. TERMINATION

1. **Immediate Termination.** Pursuant to O.C.G.A. Section 60-5-64, 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:

- (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and 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;
 - (ii) 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;
 - (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or
 - (iv) 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:
- (i) The Contractor fails to deliver services in a timely manner or has delivered nonconforming NAPA 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 and such failure or violation is not cured within thirty (30) days following receipt of written notice thereof;
 - (ii) The Agency determines that satisfactory performance of the Statewide Contract is substantially endangered or that a default is likely to occur;
 - (iii) The Contractor fails to make substantial and timely progress toward performance of the Statewide Contract;
 - (iv) 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;
 - (v) 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;

- (vi) 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 and reasonable discretion; or
 - (vii) 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; provided, however, that Contractor shall not be in default should any product supplied hereunder infringe any third party intellectual property right as Contractor is a distributor of products only.
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:
- (i) Immediately terminate the Statewide Contract without additional written notice; and/or
 - (ii) Procure substitute goods or services from another source and charge the difference between the Statewide Contract and the substitute contract to the defaulting Contractor; and/or,
 - (iii) Enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.
4. **Termination Upon Notice.** Following sixty (60) 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; provided, however, that the parties shall remain obligated for their respective obligations and liabilities incurred prior to the effective date of termination. Following termination upon notice, the Contractor shall be entitled to compensation from the User Agency, upon submission of invoices and proper proof of claim, for goods and services provided under the Statewide Contract to the User Agencies up to and including the date of termination.
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:
- (i) The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or
 - (ii) 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 goods and 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 as well as any other undisputed amounts due and owing to Contractor. 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 unless the State otherwise agrees to be responsible for such costs and expenses in the IBS Agreement.

7. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:

- (I) 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;
- (II) Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
- (III) 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;
- (IV) 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
- (V) Immediately return to the User Agencies any payments made by the User Agencies for goods and services that were not delivered or rendered by the Contractor.

8. **Contractor's Termination Rights.** Following sixty (60) days' written notice, Contractor may terminate the Statewide Contract for its convenience without the payment of any penalty. Further, Contractor may terminate the Statewide Contract for cause in the event that the Agency or State fails or refuses to perform any obligation required under this Statewide Contract, and such failure or refusal continues for sixty (60) days after written notice thereof.

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:
- (I) The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - (II) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
 - (III) 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
 - (IV) 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.

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, and agents (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:
 - (i) Any breach by Contractor of the Statewide Contract;
 - (ii) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor hereunder;
 - (iii) Any failure of NAPA branded goods to comply with applicable specifications, express warranties, and certifications under the Statewide Contract;
 - (iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the NAPA branded goods or any parts thereof provided under the Statewide Contract;
 - (v) Claims, demands, or lawsuits that, with respect to the NAPA branded goods or any parts thereof, allege product liability, strict product liability, or any variation thereof;
 - (vi) The Contractor's negligent performance or attempted negligent performance of the Statewide Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
 - (vii) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Statewide Contract;

- (viii) 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;
 - (ix) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right by Contractor. This obligation would not apply to non-NAPA branded goods provided by Contractor under the Contract; or
 - (x) 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.
 4. **Patent/Copyright Infringement Indemnification.** Contractor agrees to provide an indemnity for intellectual property claims based on intellectual property rights owned or represented to be owned by Contractor but cannot provide a direct copyright, trademark or patent indemnity for the products supplied pursuant to the contract, as Contractor does not manufacture the products. Contractor can agree to use reasonable commercial efforts to assist the State in processing any infringement claim against the applicable manufacturer.
 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 IBS Agreement.

I. BONDS

Not applicable.

J. WARRANTIES/DISCLAIMER

1. **Warranty:** Contractor shall provide the warranties as specified in the IBS Agreement.
2. **Conformity with Contractual Requirements.** The Contractor will use commercially reasonable efforts to ensure that the goods and services provided in accordance with the Statewide Contract will appear and operate in conformance with the terms and conditions of the Statewide Contract.

3. **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.
4. **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.
5. **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. Title to any supplies, materials, or equipment shall remain in the Contractor until delivered to the User Agencies.
6. **Industry Standards.** The Contractor will use commercially reasonable efforts to ensure that all aspects of the goods and 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.
7. **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 herein. 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.
11. **Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of services under this Statewide Contract. Contractor shall be responsible for providing transportation necessary to perform all services.

K. PRODUCT RECALL

Contractor agrees to use commercially reasonable efforts in identifying and promptly notifying the State in writing of any recalls or other similar safety related announcements or disclosures that relate to or affect any of the products sold hereunder, and Contractor shall provide such reasonable assistance as the State may request in connection with contacting the applicable manufacturer and obtaining any replacement, refund, repair or other relief to which the State may be entitled in connection with or as a result of such recall or other safety related announcement or disclosure.

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 and the terms and conditions set forth in the attachments included on the Statewide Contract Form above, any inconsistency or conflict shall be resolved as indicated in Paragraph 31 of the IBS Agreement.

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 mutually agreed upon 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 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:
 - (I) 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
 - (II) 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
 - (III) 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 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:

- (I) Contractor has made false certification here in above; or
 - (II) 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 either party shall not exceed five thousand dollars (\$5,000.00) without written consent of such party.

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. 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. The Agency 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 goods and 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; provided, however, that Contractor will be reimbursed by the State or User Agency for certain costs incurred by contractor, including workers' compensation insurance and payment of wages, if mutually agreed upon in the IBS Agreement. No party has the authority to enter into any contract or create an obligation 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 goods and 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:

- (I) At the time it is actually received; or,
- (II) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- (III) 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 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 goods and 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:

- (I) It has the right, power and authority to enter into and perform its obligations under the Statewide Contract; and
- (II) 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. Audit results will be based upon overcharges and undercharges being combined to determine the net impact. If the audit results in a net overcharge, Contractor will issue a check to the State equal to the net overcharge amount. In the event that the audit reveals a net overcharge of ten percent (10%) or more than the total amount that should have been invoiced during the audit period, then Contractor shall reimburse the State for the reasonable costs of the audit. Otherwise, all costs and expenses related to any audit will be borne solely by the State. 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 distribute goods under the Statewide Contract 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.
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 may be responsible for reimbursing cost incurred by Contractor if User Agency agrees to be responsible for such cost in the IBS Agreement. 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. For the avoidance of any doubt, the term "subcontractor" as used herein and throughout this Statewide Contract shall specifically exclude all third party suppliers and manufacturers of the products and all third party delivery service providers (i.e. UPS and FedEx).
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 unless such loss or damage is caused by the negligent acts or omissions or intentional misconduct of the State, Agency and/or any User Agency. 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 Statewide Contract. All obligations of the Contractor incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation that are reasonably intended by their nature to survive termination, expiration or conclusion of the Statewide Contract, 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 services for the State, as well as all data collected during performance of the Contract; provided that, to the extent permitted by law, the foregoing shall exclude the individual salary and wage information of Contractor's employees and the prices on individual parts provided to User Agencies under an IBS Agreement, as well as other non-public and confidential information of Contractor and its software. To the extent permitted by contract, 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; provided, however, that Contractor will not be obligated to transfer or assign its proprietary TAMS (Total Automotive Management System) or any other proprietary software or system.

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.