

State of Georgia

Statewide Standard Contract Form

Solicitation Title School Buses with Related Equipment, Options, and Accessories.	Solicitation Number 99999-001-SPD0000236	Contract Number 99999-001-SPD0000236-0003
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1. This Contract is entered into between the Agency and the Supplier named below:

Agency's Name Department of Administrative Services	(hereafter called Agency)
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Supplier's Name Peach State Truck Centers, LLC	(hereafter called Supplier)
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2. Contract to Begin: 12/16/2025	Date of Completion: 12/15/2027	Renewals: Five (5) one (1) year renewals
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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: Emily Harris, Contract Manager Emily.harris@doas.ga.gov ; 470-668-2663	Authorized Person to Receive Contract Notices for Supplier: Gary Carlisle (gcarlisle@peachstatetrucks.com), Jim Elliott (jimelliott@peachstatetrucks.com) and Greg Fenn (gfenn@peachstatetrucks.com)
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5. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Statewide Contract:

Attachment 1: Contract Terms and Conditions for Goods and Services
Exhibit 1: Data Security, Confidentiality, and Ownership Terms and Conditions
Attachment 2: Solicitation (referenced above)
Attachment 3: Supplier's Final Response

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

6. **Supplier**

Supplier's Name (If other than an individual, state whether a corporation, partnership, etc.)
Peach State Truck Centers, LLC.

By (Authorized Signature) 	Date Signed 6/18/2025
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Printed Name and Title of Person Signing
Greg Fenn

Address
6535 Crescent Drive, Norcross, GA 30071

7. **Agency**

Agency Name
Department of Administrative Services

By (Authorized Signature) 	Date Signed 9/24/2025
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Printed Name and Title of Person Signing
Jim Barnaby, Deputy Commissioner, State Purchasing

Address
200 Piedmont Avenue, S.E., Ste 1804, West Tower, Atlanta, Georgia 30334-9010

**STATE OF GEORGIA
STATEWIDE CONTRACT
Attachment 1**

Contract Terms and Conditions for Goods and 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. Additional definitions and acronyms are set forth in Attachment 2 to this Statewide Contract. Such terms will apply to the Statewide Contract and all documents incorporated herein unless a different meaning is otherwise assigned to specific terms in this Attachment 1.
- (ii) **“Awarded Item Schedule”** means the summarizing document, if any, listing the goods and services as awarded and may also denote the Supplier providing such goods and services.
- (iii) **“Contract”** or **“Statewide Contract”** means the agreement between Agency and Supplier as defined by the Statewide Contract Form and its incorporated documents. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall be deemed to be an original, but all such counterparts shall together constitute one and the same Contract.
- (iv) **“Supplier”** means the provider(s) of the goods and services under the Statewide Contract.
- (v) **“Purchase Instrument”** means the documentation issued by Agency or User Entities to Supplier 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 goods and services to be purchased, the delivery date and location, the address where Supplier should submit the invoices, and any other requirements deemed necessary by Agency or User Entities.
- (vi) **“Response”, “Supplier’s Response” or “Final Response”** means the Supplier’s submitted response to the RFP, including any modifications or clarifications accepted by Agency.
- (vii) **“Statewide Contract with Terms and Conditions for Goods and Services RFP”** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto), if any, 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, Agency, User Entities, 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 RFP, Supplier’s Response to the RFP other incorporated documents, 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 Supplier to the RFP requirements or the Statewide Contract shall be incorporated by reference into this Statewide Contract unless Agency has accepted Supplier'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 Entity” or “User Entities”** means any offices, agencies, departments, boards, bureaus, commissions, institutions, local political subdivisions, 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 50-5-57 of the Official Code of Georgia Annotated (O.C.G.A.), the Agency hereby certifies Supplier as a source of supply to the User Entities of the goods and services identified in this Statewide Contract. Orders shall be placed individually and from time to time by User Entities. The execution of this Statewide Contract only establishes Supplier as an authorized source of supply by Agency and creates no financial obligation on the part of Agency.
3. **Priority of Contract Provisions.** Any contract terms and conditions included on Supplier's forms or invoices shall be null and void.
4. **Reporting Requirements.** Supplier shall provide all reports required by the Statewide Contract. In addition, unless otherwise provided in the Statewide Contract, Supplier 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. §50-5-64, 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 except as otherwise permitted by law.
2. **Contract Renewal.** Agency shall have the option, in its sole discretion, to renew the Statewide Contract for additional terms on a year-to-year basis by giving Supplier written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Supplier's performance. Renewal will be accomplished through the issuance of a Renewal Notice. Upon Agency's election, in its sole discretion, to renew any part of this Statewide Contract, Supplier shall remain obligated to perform in strict accordance with this Statewide Contract unless otherwise agreed by Agency and Supplier.
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, Agency may, with the written consent of Supplier, 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 Documents.** Supplier shall provide all goods, services, and other deliverables in compliance with the specifications contained in the statewide Contract.
2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. destination, where title shall pass directly from Supplier to User Entity, subject to User Entity's right to reject upon inspection. Destination shall be the location(s) specified in the RFP or any provided Purchase Instrument. All items shall be at the Supplier's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of Supplier to remedy without cost to User Entities, regardless of when the hidden damage is discovered.
3. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. Agency reserves the right to select other Suppliers to provide goods and services similar to goods and services described in the Statewide Contract during the term of the Statewide Contract. User Entities may obtain similar goods and services from other Suppliers. Where applicable, User Entities must obtain prior approval of Agency, which approval shall be made at the sole discretion of Agency when it is deemed to be in the best interests of the State and shall be conclusive. Supplier and its subcontractors, if any, will cooperate with User Entity and other suppliers and will so provide the goods and services that other cooperating suppliers will not be hindered, delayed, or interfered with in the progress of their work, and so that all of such work will be a finished and complete job of its kind.
4. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level of purchases.
5. **Liability for User Entity Furnished Property.** Supplier assumes complete liability for any materials User Entity furnishes to Supplier in connection with the Contract and Supplier agrees to pay for any User Entity materials Supplier damages or otherwise is not able to account for to User Entity's satisfaction. User Entity furnishing to Supplier any materials in connection with the Contract will not be construed to vest title thereto in Supplier.

D. COMPENSATION

1. **Pricing and Payment.** Supplier shall be paid for the goods and services sold pursuant to the terms of the Statewide Contract. Unless clearly stated otherwise in the Statewide Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. User Entities are solely and individually financially responsible for their respective purchases. Agency shall not be responsible for payment of any amounts owed by other User Entities.
2. **Billings.** If applicable, and unless the Statewide Contract provides otherwise, Supplier shall submit, on a regular basis, an invoice for goods and services supplied to User Entities under the Statewide Contract at the billing address specified in the Purchase Instrument or Statewide Contract. The invoice shall comply with all applicable rules concerning payment of such claims. User Entities shall pay all approved invoices in arrears and in accordance with applicable provisions of State law.

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

3. **Delay of Payment Due to Supplier's Failure.** If User Entities in good faith determine that Supplier has failed to perform or deliver any service or product as required by the Statewide Contract, Supplier shall not be entitled to any compensation under the Statewide Contract until such service or product is performed or delivered. In this event, User Entities may withhold that portion of Supplier's compensation which represents payment for services or products that were not performed or delivered. To the extent that Supplier's failure to perform or deliver in a timely manner causes User Entities to incur costs, User Entities may deduct the amount of such incurred costs from any amounts payable to Supplier. User Entities' authority to deduct such incurred costs shall not in any way affect Agency's sole authority to terminate the Statewide Contract.
4. **Set-Off Against Sums Owed by the Supplier.** In the event that Supplier owes User Entity any sum or User Entity must obtain substitute performance, User Entity may set off the sum owed against any sum owed by User Entity to Supplier.

E. TERMINATION

1. **Immediate Termination.** Pursuant to O.C.G.A. §50-5-64, any purchase made pursuant to this Statewide Contract will terminate immediately and absolutely if User Entity determines that adequate funds are not appropriated or granted or funds are de-appropriated such that User Entity cannot fulfill its obligations under the Statewide Contract, which determination is at User Entity's sole discretion and shall be conclusive. Further, Agency may terminate the Statewide Contract for any one or more of the following reasons effective immediately without advance notice:
 - (i) In the event Supplier 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) Agency determines that the actions, or failure to act, of Supplier, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
 - (iii) Supplier fails to comply with confidentiality laws or provisions; and/or
 - (iv) Supplier 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 Agency to declare Supplier in default of its obligations under the Statewide Contract or User Entity to declare Supplier in default of its obligations under a Purchase Instrument:
 - (i) Supplier fails to deliver or has delivered nonconforming goods or services or fails to perform, to the satisfaction of Agency or User Entity, as applicable, any material requirement of the Statewide Contract or is in violation of a material provision of the Statewide Contract, including, but without limitation, the warranties made by Supplier;
 - (ii) Agency or User Entity, as applicable, determines that satisfactory performance of the Statewide Contract or Purchase Instrument is substantially endangered or that a default is likely to occur;

- (iii) Supplier fails to remain responsible during the term of the Contract;
 - (iv) Supplier fails to make substantial and timely progress toward performance of the Statewide Contract or Purchase Instrument;
 - (v) Supplier 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; Supplier terminates or suspends its business; or Agency reasonably believes that Supplier has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - (vi) Supplier 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;
 - (vii) Supplier has engaged in conduct that has or may expose the Agency, User Entity, or the State to liability, as determined in the sole discretion of the Agency or User Entity, as applicable; or
 - (viii) The Supplier has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Agency, the State, or a third party.
- 3. Notice of Default.** If there is a default event caused by Supplier, Agency or User Entity, as applicable, shall provide written notice to Supplier requesting that the breach or noncompliance be remedied within the period of time specified in the notice. If the breach or noncompliance is not remedied within the period of time specified in the written notice, Agency or User Entity may:
- (i) Immediately terminate the Statewide Contract or Purchase Instrument; and/or
 - (ii) Procure substitute goods or services from another source and charge the difference between the Statewide Contract and the substitute contract to Supplier; and/or,
 - (iii) Enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.
- 4. Termination Upon Notice.** Following thirty (30) days' written notice, Agency may terminate the Statewide Contract or User Entity may terminate a Purchase Instrument, in whole or in part, without the payment of any penalty or incurring any further obligation to Supplier. Following termination upon notice, Supplier shall be entitled to compensation from User Entity, upon submission of invoices and proper proof of claim, for goods and services provided under the Statewide Contract to User Entities up to and including the date of termination.
- 5. Termination Due to Change in Law.** Agency shall have the right to terminate this Statewide Contract and User Entity shall have the right to terminate a Purchase Instrument without penalty by giving thirty (30) days' written notice to Supplier as a result of any of the following:
- (i) Agency's or User Entity's authorization to operate is withdrawn or there is a material alteration in the programs administered by Agency or User Entity; and/or
 - (ii) Agency's or User Entity'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 Agency or termination of a Purchase Instrument by User Entity, User

Entities shall pay only those amounts, if any, due and owing to Supplier for goods and services actually rendered up to the date specified in the notice of termination for which User Entities are obligated to pay pursuant to the Statewide Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of Supplier'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 Supplier in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.

7. Supplier's Termination Duties. Upon receipt of notice of termination or upon request of Agency or User Entity, as applicable, Supplier shall:

- (i) Cease work under the Statewide Contract or Purchase Instrument 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 Supplier;
- (iii) Comply with the State's instructions for the timely transfer of any active files and work product produced by Supplier under the Statewide Contract;
- (iv) Cooperate in good faith with Agency, User Entities, and their employees, agents and Suppliers during the transition period between the notification of termination and the substitution of any replacement Supplier; and
- (v) Immediately return to User Entities any payments made by User Entities for goods and services that were not delivered or rendered by Supplier.

F. CONFIDENTIAL INFORMATION

1. Access to Confidential Data. Supplier's employees, agents and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out Supplier's responsibilities under the Statewide Contract. Supplier 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 Supplier will have access to the State's confidential information, then:

- (i) Supplier shall provide to the State a written description of Supplier'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) Supplier must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by Supplier in connection with the performance of the Statewide Contract; and
- (iv) Supplier 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 Agency and/or User Entities may require Supplier to sign a nondisclosure agreement. Supplier understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Statewide Contract or Purchase Instrument, as applicable.

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 or as required by law, either during the period of the Statewide Contract or thereafter. Any data supplied to or created by Supplier shall be considered the property of the State. Supplier 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, Open Records Request, or Other Legal Process.** In the event that a subpoena, open records request, or other legal process is served upon Supplier for records containing confidential information or any data or other property of the State, Supplier shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information and property.
4. **Reporting of Unauthorized Disclosure.** Supplier shall immediately report to the State any unauthorized disclosure of confidential information.
5. **Survives Termination.** Supplier's confidentiality obligation under the Statewide Contract shall survive termination of the Statewide Contract.

G. INDEMNIFICATION

1. **Supplier's Indemnification Obligation.** Supplier agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:
 - (i) Any breach of the Statewide Contract;
 - (ii) Any negligent, intentional or wrongful act or omission of Supplier or any employee, agent or subcontractor utilized or employed by Supplier;
 - (iii) Any failure of goods or services to comply with applicable specifications, warranties, and certifications under the Statewide Contract;
 - (iv) The negligence or fault of Supplier in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Statewide Contract;
 - (v) Claims, demands, or lawsuits that allege product liability, strict product liability, or any variation thereof;
 - (vi) Supplier's performance or attempted performance of the Statewide Contract, including any employee, agent or subcontractor utilized or employed by Supplier;
 - (vii) Any failure by Supplier to comply with the "Compliance with the Law" provision of the

Statewide Contract;

- (viii) Any failure by Supplier 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 Supplier 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; or
- (x) Any failure by Supplier 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"), Supplier (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, Supplier 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. Supplier 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 Supplier unless approved in writing by Supplier. No settlement or compromise of any claim, loss or damage entered into by Supplier shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.

4. Patent/Copyright Infringement Indemnification. Supplier shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the software constitutes an infringement of any United States Letters Patent or copyright, provided the State gives Supplier immediate notice in writing of the institution of such suit, permits Supplier to fully participate in the defense of the same, and gives Supplier all available information, assistance and authority to enable Supplier to do so. Subject to approval of the Attorney General of the State of Georgia, Agency shall tender defense of any such action to Supplier upon request by Supplier. Supplier shall not be liable for any award of judgment against the State reached by compromise or settlement unless Supplier accepts the compromise or settlement. Supplier shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

In case any of the goods or services are in any suit held to constitute infringement and its use is enjoined, Supplier shall, at its option and expense:

- (i) Procure for the State the right to continue using the goods or services;
- (ii) Replace or modify the same so that it becomes non-infringing; or
- (iii) Remove the same and cancel any future charges pertaining thereto.

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

- (iv) Compliance with designs, plans or specifications furnished by or on behalf of Agency as to the goods or services;
- (v) Use of the goods or services in combination with apparatus or devices not supplied by Supplier;
- (vi) Use of the goods or services in a manner for which the same was neither designed nor contemplated; or
- (vii) The claimed infringement of any patent or copyright in which the Agency or any affiliate or subsidiary of the Agency has any direct interest by license or otherwise.

5. Survives Termination. The indemnification obligation of Supplier shall survive termination of the Statewide Contract or purchase thereunder.

H. INSURANCE

Within ten (10) business days of award and before commencing work on this Contract, Supplier must provide Agency with certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of Supplier to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of Supplier for Supplier's operations. These are solely minimums that have been established to protect the interests of the State. Supplier shall procure and maintain the insurance policies described below and shall furnish Agency two insurance certificates referencing the contract number. The certificates must list the State of Georgia as certificate holder and as an additional insured on the Commercial General Liability policy. The insurance certificates must document that the Commercial General Liability insurance coverage provided by 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; 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 Agency. Supplier is required to maintain the following insurance coverage's during the term of the Statewide Contract:

- A. Workers Compensation Insurance (Occurrence) in the amounts of the limits established by applicable law (A self-insurer must submit a certificate from the applicable state entity stating that Supplier qualifies to pay its own workers compensation claims.) In addition, Supplier shall require all subcontractors 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.

- B. Commercial General Liability Policy with the following minimum coverage:

Each Occurrence Limit	\$1,000,000
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Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Ops. Aggregate Limit	\$2,000,000
C. Professional Liability/Errors and Omissions	\$2,000,000
D. Umbrella Liability	\$2,000,000
E. Automobile Liability	
Combined Single Limit	\$1,000,000

Should any of the foregoing policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. In addition, Supplier shall notify the State immediately upon receiving any information that any of the coverages required herein are or will be changed, cancelled, or replaced. The foregoing policies shall be obtained from insurance companies licensed or authorized to do business in Georgia and shall be with companies acceptable to Agency, 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.

I. BONDS

Supplier shall provide all required bonds in accordance with the terms of the RFP and as stated in the Statewide Contract Form. User Entities may require additional bonds for some Purchase Instruments.

J. WARRANTIES

- 1. Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by Supplier and/or subcontractors in all provisions of the Statewide Contract and Supplier's Response, whether or not the Statewide Contract specifically denominates Supplier's and/or subcontractors' promise as a warranty or whether the warranty is created only by Supplier's affirmation or promise, or is created by a description of the materials, goods and services to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Statewide Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by Supplier. The provisions of this section apply during the term of the Statewide Contract and any extensions or renewals thereof.
- 2. Warranty – Nonconforming Goods and Services.** All goods and services delivered by Supplier to User Entities shall be free from any defects in design, material, or workmanship. If any goods or services offered by Supplier are found to be defective in material or workmanship, or do not conform to Supplier's warranty, User Entities shall have the option of returning, repairing, or replacing the defective goods or services at Supplier's expense. Payment for goods or services shall not constitute acceptance. Acceptance by User Entities shall not relieve Supplier of its warranty or any other obligation under the Statewide Contract. Notwithstanding anything to the contrary, Supplier agrees that the Goods and/or Services furnished under this Agreement shall

be covered by the most favorable commercial warranties the Supplier gives to any customer for such Goods and/or Services, and that the rights and remedies provided herein shall extend to the User Agency and are in addition to and do not limit any rights afforded to the User Agency by any other Clause of this Agreement or order. Supplier agrees not to disclaim warranties of fitness for a particular purpose or merchantability to the extent that the Goods and/or Services must comply with the requirements of the RFP.

3. **Originality and Title to Concepts, Materials, Goods, and Services Produced.** Supplier represents and warrants that all the concepts, materials, goods and services produced, or provided to the State pursuant to the terms of the Statewide Contract shall be wholly original with Supplier or that Supplier has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Supplier represents and warrants that the concepts, materials, goods and services and the State's use of same and the exercise by the State of the rights granted by the Statewide Contract shall not infringe upon any other work, other than material provided by the Statewide Contract to Supplier to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. Supplier represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Statewide Contract.
4. **Conformity with Contractual Requirements.** Supplier represents and warrants 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.
5. **Authority to Enter into Contract.** Supplier 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.
6. **Responsibility.** Supplier represents and warrants that it shall remain responsible at all times during the term of the Contract.
7. **Obligations Owed to Third Parties.** Supplier represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by Supplier pursuant to the Statewide Contract are or will be fully satisfied by Supplier so that the State will not have any obligations with respect thereto.
8. **Title to Property.** Supplier represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials, or equipment shall remain in Supplier until fully paid for by User Entities. Except as otherwise expressly authorized by the State, all materials produced by Supplier personnel in the performance of Services, including but not limited to software, charts, graphs, diagrams, video tapes, and other project documentation shall be deemed to be works made for hire and shall be the property of the State. In the event such works do not constitute works made for hire as defined in Section 101 of the Copyright Act, Supplier hereby assigns to the State title to all such materials.
9. **Industry Standards.** Supplier represents and expressly warrants that all aspects of the goods and services provided or used by it shall at a minimum conform to the highest applicable standards in Supplier's industry. This requirement shall be in addition to any express warranties,

representations, and specifications included in the Statewide Contract, which shall take precedence.

10. Supplier's Personnel and Staffing. Supplier warrants that all persons assigned to perform services under this Statewide Contract are either lawful employees of Supplier or lawful employees of a subcontractor authorized by Agency as specified in the RFP. All persons assigned to perform services under this Statewide Contract shall be qualified to perform such services. Personnel assigned by Supplier shall have all professional licenses required to perform the services.

11. Use of State Vehicles. Supplier warrants that no State vehicles will be used by Supplier for the performance of services under this Statewide Contract. Supplier shall be responsible for providing transportation necessary to perform all services.

12. Web Accessibility Requirements. As applicable to the goods and/or services being provided under the Contract, Supplier warrants that:

- (i) Its products and services comply with and shall remain in compliance with all applicable federal disability laws and regulations, including but not limited to the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended, and its implementing regulations; and
- (ii) Its products and services, as applicable, conform with the prevailing Web Content Accessibility Guidelines (WCAG) Standards to AA level-currently WCAG 2.1 AA;
- (iii) Supplier shall maintain, retain, and provide to the State upon request its accessibility testing results and written documentation verifying accessibility in a VPAT or other format specified by the State;
- (iv) It shall permit the state to conduct an accessibility audit by any auditor of the State's choice and promptly respond to, resolve, and remediate at no cost to the state any complaint regarding accessibility of its products and services; and
- (v) It shall hold the State harmless from and indemnify the State for any claims arising out of its failure to comply with these obligations.

K. PRODUCT RECALL

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

L. CONTRACT ADMINISTRATION

1. Order of Precedence. In the case of any inconsistency or conflict among the specific provisions of the Statewide Contract Terms and Conditions (including any amendments accepted by both

the Agency and the Supplier attached hereto and the Awarded Item Schedule, if any), the RFP if any, (including any subsequent addenda), and the Supplier's Response, and other documents incorporated into the Statewide Contract, any inconsistency or conflict shall be resolved as follows:

- (i) First, by giving preference to the Statewide Contract Terms and Conditions and Exhibit 1 "Data Security, Confidentiality, and Ownership Terms and Conditions".
- (ii) Second, by giving preference to the specific provisions of the RFP.
- (iii) Third, by giving preference to the specific provisions of Supplier's Response, except that objections or amendments by Supplier that have not been explicitly accepted by the Agency in writing shall not be included in this Statewide Contract and shall be given no weight or consideration.
- (iv) Fourth, by giving preference to the other documents incorporated into the Statewide Contract, except that no terms and conditions contained in any of Supplier's documents, whether in conflict with terms higher in the order of preference or not, shall materially diminish the rights of the State and/or the obligations of Supplier.

Priority of Contract Provisions and URL Links. Any contract terms and conditions included on Supplier's forms, invoices or payment documents shall be null and void. Notwithstanding anything to the contrary herein, for Supplier goods and services, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Supplier's website or any provision incorporated into any click-through or online agreements unless that provision or link is explicitly incorporated into this Contract in full. For the avoidance of doubt, the Contract includes goods and services specific terms in Supplier's hyperlinks only that do not:

- 1. Conflict with terms higher in the order of preference;
- 2. Conflict with terms negotiated by the parties; for illustration purposes only, negotiated SOWs or project specific terms;
- 3. Materially diminish the rights of the State and/or the obligations of Supplier; or
- 4. Materially change previous hyperlinked terms unless the State approves the changes after prior written notice.
- 5. To the extent such hyperlinks provide the State with options or rights in addition to those otherwise available under this Contract, nothing in this Contract is intended to limit the State's exercise of such options or rights.

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 RFP, if any, and the Supplier's Response and other documents, exhibits, and attachments incorporated into the Statewide Contract. The failure of the parties to make reference to the terms of the RFP or the Supplier's Response in this document shall not be construed as creating a conflict and will not relieve Supplier of the contractual obligations imposed by the terms of the RFP and Supplier's Response. The contractual obligations of Agency and User Entity cannot be implied from Supplier's Response.

3. Compliance with the Law. The Supplier, 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 Suppliers. Supplier, 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. Supplier and Supplier's personnel shall also comply with all State, Agency, and User Entity policies and standards in effect during the performance of the Statewide Contract, including but not limited to the Agency and User Entities' policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. §45-10-20 et seq. have not and must not be violated under the terms of this Statewide Contract. If the value of this Contract is \$100,000 or more and Supplier is a company that employs more than five persons, Supplier certifies that Supplier 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. Supplier agrees to provide User Entity (the contact listed on the PO) with written notification that identifies export-controlled goods and such goods' export classification if any of the goods is export-controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), the Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list. Supplier agrees to provide User Entity (the contact listed on the PO) with written notification if Supplier will be providing information necessary for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing of the goods that is beyond a standard user manual (i.e. "Use" technology as defined under the EAR 15 CFR § 772.1), or "Technical Data" (as defined under the ITAR 22 CFR § 120.10).

4. Drug-free Workplace. If Supplier is:

- (i) Any person engaged in the business of constructing, altering, repairing, dismantling, or demolishing buildings; roads; bridges; viaducts; sewers; water and gas mains; streets; disposal plants; airports; dams; water filters, tanks, towers, and wells; pipelines; and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including, but not limited to, constructing, altering, or repairing property to be held either for sale or rental when the contract involves an expenditure by a state agency of at least \$25,000.00; or
- (ii) Any person supplying goods, materials, services, or supplies pursuant to a contract or lease on behalf of a state agency as described in O.C.G.A. § 50-5-64 when the contract involves an expenditure by the state agency of at least \$25,000.00, Supplier hereby certifies as follows:
 - a. Supplier will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Statewide Contract; and
 - b. If Supplier has more than one employee, including Supplier, Supplier 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. §50-24-1 et seq., throughout the duration of this Statewide Contract; and
 - c. Supplier 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 (Supplier's Name), (Subcontractor's Name) certifies to the Supplier 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 O.C.G.A. § 50-24-3."

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

- d. Supplier has made false certification hereinabove; or

- e. Supplier has violated such certification by failure to carry out the requirements of O.C.G.A. §50-24-3.

5. Federal Funds. Payments under this Contract may be made from federal funds obtained by the State. Supplier is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed as a result of Supplier's failure to comply with such requirements. User Entities may include additional terms and conditions with their Purchase Instruments that incorporate language required by federal contracts, grants, or other awards.

6. Sexual Harassment Prevention. The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, suppliers, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia maintains an expectation that its suppliers and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other suppliers of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy (the "Policy"), all Suppliers who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

If Supplier, including its employees and subcontractors, violates the Policy, including but not limited to engaging in sexual harassment and/or retaliation, Supplier may be subject to appropriate corrective action. Such action may include, but is not limited to, notification to the employer, removal from State premises, restricted access to State premises and/or personnel, termination of contract, and/or other corrective action(s) deemed necessary by the State.

(i) If Supplier is an individual who is regularly on State premises or who will regularly interact with State personnel, Supplier certifies that:

- a. Supplier has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;
- b. Supplier has completed sexual harassment prevention training in the last year and will continue to do so on an annual basis; or will complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and,
- c. Upon request by the State, Supplier will provide documentation substantiating the completion of sexual harassment training.

(ii) If Supplier has employees and subcontractors that are regularly on State premises or who will regularly interact with State personnel, Supplier certifies that:

- a. Supplier will ensure that such employees and subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>;
- b. Supplier has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Supplier will ensure that such employees and subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at this direct link <https://www.youtube.com/embed/NjVt0DDnc2s?rel=0> prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and
- c. Upon request of the State, Supplier will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

7. State Security. Supplier shall obtain a criminal background investigation on its officers, agents, employees, subcontractors, or other workers ("Workers") assigned to have regular interaction with children, students, employees, money, sensitive or confidential data, or access to User Entity's premises, computers, hardware, software, programs, and/or information technology infrastructure or operations. User Entity reserves the right to require additional background checks to be made on any of Supplier's Workers. Supplier shall review the results of the background investigation. If such background investigation reveals or at any time Supplier discovers that a Worker has a criminal record that includes a felony or misdemeanor involving terroristic behavior, violence, use of a lethal weapon, breach of trust/fiduciary responsibility, or which raises concerns about facility, system, or personal security or is otherwise job related, Supplier shall not permit that Worker to access any state facilities, data, or technology, shall remove any access privileges already given to that Worker, and shall not permit any such access unless Supplier notifies User Entity and User Entity expressly consents to the access, in writing, prior to the access. Supplier shall immediately notify User Entity of any change in a Worker's criminal history. User Entity may, in its sole discretion, terminate a Worker's access to User Entity's facilities, computers, hardware, software, programs, and/or information technology infrastructure or operations. Supplier shall participate fully in the defense of, indemnify, and hold harmless User Entity for its failure to obtain appropriate background investigations and for the actions of its Workers.

8. Amendments. The Statewide Contract or a Purchase Instrument may be amended in writing from time to time by mutual consent of the parties. All amendments to the Statewide Contract or Purchase Instrument must be in writing and fully executed by duly authorized representatives of Agency or User Entity, as applicable, and Supplier as provided in Section A.1.(iii) above.

9. Third Party Beneficiaries. There are no third-party beneficiaries to the Statewide Contract. The Statewide Contract is intended only to benefit the State and Supplier.

10. 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 Superior Court of 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.

- 12. 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 Supplier, 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 Supplier may elect to submit the matter for mediation. Either the State or Supplier may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

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.

- 13. Assignment and Delegation.** The Statewide Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of Agency. For the purpose of construing this clause, a transfer of a controlling interest in Supplier shall be considered an assignment.
- 14. Use of Third Parties.** Except as may be expressly agreed to in writing by Agency, Supplier shall not subcontract, assign, delegate or otherwise permit anyone other than Supplier or Supplier's personnel to perform any of Supplier's obligations under this Statewide Contract or any of the work subsequently assigned under this Statewide Contract. No subcontract which Supplier enters into with respect to performance of obligations or work assigned under the Statewide Contract shall in any way relieve Supplier 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 Supplier under the Statewide Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of Agency. Agency shall have the right to request the removal of a subcontractor from the Statewide Contract for good cause.

- 15. 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.
- 16. 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.
- 17. 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 Supplier contracting for goods and services and acting toward the mutual benefits expected to be derived herefrom. Neither Supplier nor any of Supplier's agents, servants, employees, subcontractors or Suppliers shall become or be deemed to become agents, servants, or employees of the State. Supplier 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. 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.
- 18. Joint and Several Liability.** If Supplier 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.
- 19. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Statewide Contract, this Statewide Contract supersedes all prior contracts or agreements between Agency and Supplier for the goods and services provided in connection with the Statewide Contract.
- 20. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representative of the party making the waiver, 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.
- 21. 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) Upon receipt or refusal to accept delivery in the case of certified or 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.

22. 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.

23. 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 Agency and Supplier 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.

24. Time is of the Essence. Time is of the essence with respect to the performance of the terms of the Statewide Contract. Supplier shall ensure that all personnel providing goods and services to the State are responsive to the State's requirements and requests in all respects.

25. Authorization. The persons signing this Statewide Contract represent to the other parties that:

- (i) They have the right, power and authority to enter into and perform its obligations under the Statewide Contract; and
- (ii) They have 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.

26. 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.

27. Record Retention and Access. Supplier 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. Supplier should maintain separate accounts and records for Agency and User Entities. Records to be maintained include both financial records and service records. Supplier 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 Supplier 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. Supplier shall not impose a charge for audit or examination of the Supplier's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge Supplier for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

28. Solicitation. Supplier 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.

29. Public Records. The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. §50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.

30. Debarred, Suspended, and Ineligible Status. Supplier certifies that Supplier 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. Supplier will immediately notify the Agency if Supplier is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Suppliers by a federal entity.

31. Use of Name or Intellectual Property. Supplier 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.

32. Taxes. User Entities are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Supplier's employee's wages. User Entities are exempt from State and Local Sales and Use Taxes on the goods and services. Tax Exemption Certificates will be furnished upon request. Supplier or an authorized subcontractor has provided Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Supplier to perform services required in this Statewide Contract, which verification is incorporated herein by reference.

33. Certification Regarding Sales and Use Tax. By executing the Statewide Contract Supplier 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. §48-8-2. Supplier also acknowledges that the State may declare the Statewide Contract void if the above certification is false. Supplier also understands that fraudulent certification may result in Agency or User Entity filing for damages for breach of contract.

34. Force Majeure. Neither Party shall be deemed to be in default of or to have breached any provision of this Contract or a Purchase Instrument due to a delay, failure in performance or interruption of service, if such performance or service are impossible to execute, illegal or commercially impracticable, because of the following "force majeure" occurrences: acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, transportation contingencies, freight embargoes, acts or orders of any government or agency or official thereof, earthquakes, fires, floods, unusually severe weather, epidemics, pandemics, quarantine restrictions and other catastrophes or any other similar occurrences beyond such party's reasonable control. In every case, the delay or failure in performance or interruption of service must be without the fault or negligence of the party claiming excusable delay and the party claiming excusable delay must promptly notify the other party of such delay. Performance time under this Contract or a Purchase Instrument shall be considered extended for a period of time equivalent to the time lost because of the force majeure occurrence; provided, however, that if any such delay continues for a period of more than thirty (30) days, Agency shall have the option of terminating this Contract or User Entity shall have the option of terminating a Purchase Instrument upon written notice to Supplier.

35. Limitation of Supplier's Liability to the State. Except as otherwise provided in this Statewide Contract, Supplier's liability to the State for any claim of damages arising out of this Statewide

Contract shall not exceed two times the total amount to be paid to Supplier for the performance under this Statewide Contract.

No limitation of Supplier's liability to the State shall apply to Supplier's liability for (a) claims for loss of or damage to real or tangible personal property; (b) claims for personal injury or bodily injury, including death; (c) claims resulting from gross negligence, recklessness, bad faith, or intentional misconduct; (d) amounts due or obligations under a clause providing for liquidated damages or, if such clause is ruled unenforceable, as a penalty; (e) Supplier's indemnification obligations hereunder; (f) data loss or security breach; (g) breach of confidentiality obligations; or (h) any loss or claim to the extent such loss or claim is covered by a policy of insurance maintained, or required by this Contract to be maintained, by Supplier. Nothing in this section shall limit or affect Supplier's liability arising from claims brought by any third party.

36. 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 Supplier incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Statewide Contract. All provisions which by their nature should survive termination or expiration of this contract shall do so.

37. Counterparts. The Agency and the Supplier 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. The parties agree to conduct transactions by electronic means as provided under O.C.G.A. § 10-12-1 et seq. Electronic signatures complying with O.C.G.A. § 10-12-1 et seq., as amended from time-to-time, or other applicable law, shall be deemed original signatures for purposes of this Contract. Notwithstanding the foregoing, email signature blocks do not constitute signatures for the purpose of executing contracts or amendments and email communications do not constitute contracts or amendments; however, transmission by telecopy, electronic mail, or other transmission method of an executed counterpart of this Contract will constitute due and sufficient delivery of such counterpart.

38. Further Assurances and Corrective Instruments. Agency and Supplier 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.

39. Transition Cooperation and Cooperation with other Suppliers. Supplier 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 Supplier. Supplier shall provide full disclosure to the State and the third-party Supplier about the equipment, software, or services required to perform services for the State. Supplier shall transfer licenses or assign agreements for any software or third-party services used to provide the services to the State or to another Supplier.

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

Exhibit 1

Data Security, Confidentiality, and Ownership Terms and Conditions

In the course of providing goods and/or services to the State of Georgia and governmental entities of the State pursuant to this contract, Supplier may gain access to Sensitive State Data as defined below. In such event, these Data Security Terms and Conditions shall apply.

I. DEFINITIONS AND GENERAL INFORMATION

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

1. **“Authorized Persons”** means Supplier and its employees, subcontractors, or other agents to the extent necessary for such persons to access Sensitive State Data to enable Supplier to provide goods and/or services under this Agreement.
2. **“Data Breach”** means a security-relevant event in which the security of a system or procedure used to create, obtain, transmit, maintain, use, process, store, or dispose of data is breached and Sensitive State Data or information technology resources is exposed to unauthorized access, use, disclosure, alteration, or theft.
3. **“Personally Identifiable Information”** includes, but is not limited to, personal identifiers such as name, address, phone number, date of birth, Social Security number, and student or personnel identification number; Personal Information as defined in O.C.G.A. 10-1-911 and/or any successor laws of the State of Georgia; Personally Identifiable Information contained in student education records as that term is defined in the Family Educational Rights and Privacy Act, 20 USC 1232g; Medical Information as defined in Georgia Code Section 32.1-127.1:05; Protected Health Information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 CFR Part 160.103; Nonpublic Personal Information as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 USC 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, driver's license numbers; and state- or federal-identification numbers such as passport, visa or state identity card numbers.
4. **“Personal Data”** as defined in O.C.G.A. § 10-1-911 means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:
 - a. Social security number;
 - b. Driver's license number or state identification card number;
 - c. Account number, credit card number, or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes, or passwords;
 - d. Account passwords or personal identification numbers or other access codes; or

- e. Any of the items contained in subparagraphs (A) through (D) of this paragraph when not in connection with the individual's first name or first initial and last name, if the information compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised.
5. **“Sensitive State Data”** means all Personally Identifiable Information and other information that is not intentionally made available by the State on public websites or publications, including but not limited to business, administrative, and financial data, intellectual property, and patient, student and personnel data and records not required to be publicly disclosed under the Georgia Open Records Act, O.C.G.A. § 50-18-72 et seq., including any plan, blueprint, or material which if made public would compromise security. Sensitive State Data includes data created or in any way originating with or on behalf of the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, Supplier’s hardware or exists in any system owned, maintained or otherwise controlled by the State or Supplier.
 6. **“Security Incident”** means the potentially unauthorized access by non-Authorized Persons to Sensitive State Data that could reasonably result in the use, disclosure, alteration, or theft of the Sensitive State Data or information technology resources within the possession or control of Supplier or any cyber-attack, data breach, or identified use of malware that may create a life-safety event, substantially impair the security of data or information systems, or affect critical systems, equipment, or service delivery. A Security Incident may or may not turn into a Data Breach.

II. DATA OWNERSHIP AND PROTECTION

- A. Data Ownership. The State will own all right, title and interest, including all intellectual property rights, in its data that is related to the goods and services provided under this Agreement. Supplier shall not access Sensitive State Data, except 1) as is reasonably necessary to perform data center operations, 2) in response to service or technical issues, 3) as required by Supplier to provide the goods and services covered by this Agreement or 4) at the State’s request. Supplier has a limited, non-exclusive license to use Sensitive State Data solely for the purpose of performing its obligations under this Agreement.
- B. Data Protection. Protection of personal privacy and data shall be an integral part of the business activities of Supplier and designed to ensure that there is no inappropriate or unauthorized access to or use of Sensitive State Data at any time. To this end, Supplier shall safeguard the confidentiality, integrity, and availability of Sensitive State Data and comply with the following conditions:
 1. Supplier shall maintain appropriate administrative, physical, and technical security measures to safeguard against unauthorized access, use, disclosure, alteration, or theft of Sensitive State Data. Such security measures shall be in accordance with current NIST 800-53 standards commensurate with the FISMA data classification specified by the State. If no data classification is specified by the State, in accordance with the measures applicable to the FISMA moderate classification.
 2. Supplier shall use industry best practices and up-to-date security tools, technologies, and practices such as network firewalls, anti-virus protections,

vulnerability scans, system logging, 24x7 system monitoring, third-party penetration testing, and intrusion detection methods in providing services under this Agreement.

3. Where the security objectives of confidentiality, authentication, non-repudiation, or data integrity are categorized FISMA compliance level moderate or higher, all electronic Sensitive State Data shall be encrypted using a cryptography method specified by the State while at rest on all devices controlled by Supplier and in transit across public networks with controlled access. Unless otherwise provided in the Agreement, Supplier is responsible for encryption of the Sensitive State Data.
4. Unless otherwise provided in the Agreement Supplier shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Sensitive State Data to that which is absolutely necessary to perform job duties.
5. Supplier shall not disclose Sensitive State Data to any third party without the prior written consent of the State except as otherwise provided by the Agreement or required by law. Nor shall supplier, copy, or retain Sensitive State Data except as provided for in the RFP. Supplier shall ensure that its employees and agents who will have potential access to Sensitive State Data have passed appropriate, industry standard background screening and, where applicable, federally mandated background screening and possess the qualifications and training to comply with the terms of this Agreement. Supplier shall promote and maintain an awareness of the importance of securing Sensitive State Data among Supplier's employees and agents.

C. Data Location. In providing goods and services to the State, supplier shall access, store, and process Sensitive State Data solely from location(s) or data centers in the U.S. and Supplier shall notify State of such locations. Storage of Sensitive State Data at rest shall be located solely in location(s) or data centers in the U.S. and Supplier shall notify State of such locations. Supplier shall not allow its personnel or Authorized Persons to store Sensitive State Data on portable devices, including personal computers, except for devices that are used and kept only at U.S. location(s) or data centers. Supplier shall only permit its personnel and consultants to remotely access Sensitive State Data as required to provide goods and services under this Agreement and shall only allow such remote access from locations within the U.S.

III. SECURITY INCIDENT AND DATA BREACH RESPONSIBILITIES

Supplier shall inform the State of any Security Incident or Data Breach.

- A. Incident Response.** Supplier may need to communicate with outside parties regarding a Security Incident or Data Breach, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually agreed upon, defined by law, or contained in the Agreement. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Supplier's communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Agreement. Any contacting of law enforcement on matters regarding State systems or data must be followed by a report to the Georgia Information Sharing and Analysis Center (GISAC) at (404) 561-8497.
- B. Security Incident and Data Breach Reporting Requirements.** Upon becoming aware of a Security Incident or Data Breach, Supplier shall:

1. Promptly notify the State identified contact within twenty-four hours of discovery or sooner, unless shorter time is required by the Agreement or applicable law;
2. Fully investigate the Security Incident or Data Breach and cooperate fully with the State's investigation of and response thereto. Except as otherwise required by law, Supplier shall not provide notice of the Security Incident or Data Breach directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the State;
3. Promptly implement necessary remedial measures reasonably determined by the State; and
4. Document responsible actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
5. Supplier will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Service Provider to the State Identified Contact until the Data Breach has been effectively resolved to the State's satisfaction.
6. Supplier shall quarantine the Data Breach, ensure secure access to Data, and repair IaaS and/or PaaS as needed in accordance with the SOW and/or SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.

IV. LIABILITY

- A. If Supplier will under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of Sensitive State Data known as Personally Identifiable Information, the following provisions apply: In addition to any other remedies available to the State under law or equity, Supplier shall reimburse the State in full for all costs incurred by the State in investigation and remediation of any Data Breach or Security Incident caused by Supplier, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; a website or toll-free number and call center for affected individuals required by law, providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed by regulatory agencies or contracting partners as a result of the Data Breach or Security Incident.
- B. If Supplier will NOT under this agreement create, obtain, transmit, use, maintain, process, or dispose of the subset of Sensitive State Data known as Personally Identifiable Information, the following provisions apply: In addition to any other remedies available to the State under law or equity, Supplier will reimburse the State in full for all costs reasonably incurred by the State in investigation and remediation of any Data Breach or Security Incident caused by Supplier.

V. SECURITY

- A. Data Center Audit. If applicable in the provision of the goods and services covered by this Agreement, Supplier shall ensure an independent audit or provide ISO 27001 certification of

its data centers at least annually at its expense and provide a copy of the audit report upon request. A Service Organization Control (SOC) 2 Type II audit report or approved equivalent (the ISO 27001 certification, State RAMP certification, or FedRAMP certification) sets the minimum level of a third-party audit.

- B. Security Processes.** Supplier shall disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and Supplier.
- C. Encryption of Data at Rest.** For data categorized as moderate or high in Federal Information Processing Standard 199, Supplier shall ensure confidentiality and integrity of information at rest consistent with security control SC-28, Protection of Information at Rest, using control enhancement 1, Cryptographic Protection, in NIST Special Publication 800-53.

VI. RESPONSE TO LEGAL ORDERS, DEMANDS, OR REQUESTS FOR DATA

- A.** Except as otherwise expressly prohibited by law, Supplier shall:
 - 1. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by Supplier seeking Sensitive State Data;
 - 2. Consult with the State regarding its response;
 - 3. Cooperate with the State's reasonable requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request; and
 - 4. Upon the State's request, provide the State with a copy of its response.
- B.** If the State receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Georgia Open Records Act) or request seeking Sensitive State Data maintained by Supplier, the State shall promptly provide a copy to Supplier. Supplier shall promptly supply the State with copies of data required for the State to respond and shall cooperate with the State's reasonable requests in connection with its response.

VII. TERMINATION OBLIGATIONS

- A.** Upon termination or expiration of the Agreement, Supplier shall implement In the State's sole discretion, a secure, orderly (1) destruction of, or (2) return of Sensitive State Data in the format and at a time specified by State. Transfer to State or a third party designated by State shall occur without significant interruption of service and, to the extent technologically feasible, State shall have access to Sensitive State Data during the transfer. Following such transfer, Supplier shall securely destroy Sensitive State Data in its possession or control. Supplier shall not destroy any Sensitive State Data that has not been returned to State in the event of ongoing contract or other disputes between the parties or for so long as amounts remain payable by State.
- B.** Destroyed Sensitive State Data shall be permanently deleted and shall not be recoverable in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, Guidelines for Media Sanitization, using the purge method from Appendix A, Minimum Sanitization Recommendations, for the type of media being purged. Certificates of destruction shall be provided to the State. Supplier may retain a copy of Sensitive State Data if necessary to comply with law or its applicable professional standards.

VIII. COMPLIANCE

- A.** Supplier shall comply with all applicable laws and industry standards in providing goods and services under this agreement. Any Supplier personnel visiting the State's facilities will comply with all applicable State policies regarding access to, use of, and conduct within such facilities. The State shall provide copies of such policies to Supplier upon request.
- B.** Supplier warrants that in providing goods and services to the State it is fully compliant with relevant laws, regulations, and guidance that may be applicable to the goods and services such as: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.
- C.** If the Payment Card Industry Data Security Standards (PCI-DSS) are applicable to the goods and services provided to the State, Supplier shall, upon written request, furnish proof of compliance with PCI-DSS within 10 business days of the Request.