

ES&S Contract with GA for 2018 and 2019 ballot building, voting machine programming, tabulation programming, pollbook programming, etc.

Annotations by Coalition for Good Governance

2018 contract pricing for ES&S ballot coding and pollbook creation.

**ATTACHMENT 2
SUMMARY OF SERVICES**

Sale Summary:		
Description	Refer to	Total for Term
Ballot Layout, Coding, and Voice File Services	See below	\$250,000.00
Creation of ExpressPoll data sets for Advance Voting purposes	See below	\$50,000.00
Total for the Term:		\$300,000.00

BALLOT LAYOUT, CODING, AND VOICE FILE SERVICES

Scope of Services includes the data entry and maintenance of County level databases in the State of Georgia for all county, state, and federal elections in Georgia in calendar year 2018, including primary, primary runoffs, general election, general election runoffs and any special elections. ES&S will receive the data required to facilitate the creation of paper and electronic ballots as well as audio file recordings to the State of Georgia for review and approval.

EXPRESSPOLL DATA SETS FOR ADVANCE VOTING PURPOSES

Scope of Services includes the data entry and maintenance of County level data sets in the State of Georgia for all county, state, and federal elections in Georgia in calendar year 2018, including primary, primary runoff, general election, general election runoff, and any special elections. ES&S will receive the data required to facilitate the creation of ExpressPoll data sets for Advance Voting purposes to the State of Georgia for review and approval. Creation of ExpressPoll data sets does not include any handling or conversion of voter data.

REQUIRED HARDWARE AND SOFTWARE CONFIGURATION

1. These services shall utilize the GEMS PC Configuration that has been specified by the Georgia Secretary of State's office.
2. No software will be loaded on to the GEMS PC Configuration except that which is specifically provided by the Georgia Secretary of State's office.
3. Any update or changes to GEMS PC Configuration must be approved by the Georgia Secretary of State's office.

CONTRACT FOR BALLOT BUILDING SUPPORT SERVICES**AMENDMENT 1**

The Agreement between Election Systems & Software ("Contractor" or "ES&S") and Georgia Secretary of State dated February 8, 2018 for Ballot Building Support Services is hereby renewed for a term of January 1, 2019 through December 31, 2019 and amended as set forth below:

SUMMARY OF SERVICES

Sale Summary:		
Description	Refer to	Total for Term
Ballot Layout, Coding, and Voice File Services	See below	\$120,000.00
Creation of ExpressPoll data sets for Advance Voting purposes	See below	\$25,500.00
Onsite Technical Support	See below	\$4,500.00
Total for the Term:		\$150,000.00

Payment Terms: 50% of total due (\$75,000.00) shall be payable on January 1, 2019 upon receipt of corresponding contractor invoice. The remaining 50% of total due (\$75,000.00) shall be payable on July 1, 2019 upon receive of corresponding contractor invoice

1. BALLOT LAYOUT, CODING, AND VOICE FILE SERVICES

Scope of Services includes the data entry and maintenance of County level databases in the State of Georgia for all county (including municipal elections that are administered by counties), state, and federal elections in Georgia in calendar year 2019, including primary, primary runoffs, general election, general election runoffs, and special elections. ES&S will receive the data required to facilitate the creation of paper and electronic ballots as well as audio file recordings to the State of Georgia for review and approval.

2. EXPRESSPOLL DATA SETS FOR ADVANCE VOTING PURPOSES

Scope of Services includes the data entry and maintenance of County level data sets in the State of Georgia for all county (including municipal elections that are administered by counties), state, and federal elections in Georgia in calendar year 2019, including primary, primary runoff, general election, general election runoff, and any special elections. ES&S will receive the data required to facilitate the creation of ExpressPoll data sets for Advance Voting purposes to the State of Georgia for review and approval. Creation of ExpressPoll data sets does not include any handling or conversion of voter data.

3. ONSITE TECHNICAL SUPPORT

Scope of Services includes the availability of a dedicated GEMS technician to be onsite on Election Day to assist as needed at the request of the Georgia Secretary of State for all county (including municipal

elections that are administered by counties), state, and federal elections in Georgia in calendar year 2019 including primary, primary runoff, general election, general election runoff, and any special elections.

4. REQUIRED HARDWARE AND SOFTWARE CONFIGURATION

- 1. These services shall utilize the GEMS PC Configuration that has been specified by the Georgia Secretary of State's office.
- 2. No software will be loaded on to the GEMS PC Configuration except that which is specifically provided by the Georgia Secretary of State's office.
- 3. Any update or changes to GEMS PC Configuration must be approved by the Georgia Secretary of State's office.

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

Contractor

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

Election Systems & Software, LLC

By (Authorized Signature)

Richard J. Jablonski

Date Signed

1/7/2019

Printed Name and Title of Person Signing

Richard J. Jablonski, VP of Finance / Secretary

Address

11208 John Galt Blvd., Omaha, Ne 68137

State Entity

State Entity Name

Georgia Secretary of State

By (Authorized Signature)

Jessica M. Simmons

Date Signed

1/8/19

Printed Name and Title of Person Signing

Jessica M. Simmons, Chief of Staff

Address

2 MLK Jr. Dr. SE, West Tower, Suite 802



Sole-Source Intent to Award Justification

Request Information	
Date of Request:	(mm-dd-yy)
Entity Information	
State Entity Name:	
State Entity Code (5-Digit Code):	
Procurement Officer (APO / CUPO):	
APO / CUPO e-Mail Address:	Telephone: - -
Request Submitted By	
Name:	
Title:	
e-Mail Address:	
Telephone: - -	
Request Details	
<p>Sole-Source – A purchasing situation in which the procurement is available from only one source. The announcement must be posted to the GPR in accordance with the Georgia Procurement Manual, Section 2.3.2.2.</p> <p>Identify efforts made to locate other possible sources.</p>	
Supplier / Source Name: Elections Systems and Software	Telephone: - -
Supplier / Source Contact:	
Scope of Work	
<p>Provide a detailed description of commodities/services to be provided. Also, include the following details: exact or estimated quantity, per unit price, and the total estimated value of the open contract to include the estimated quantity X unit price (if the exact quantities are not known).</p> <p>State Entity seeks to enter into a contract to provide assistance in data preparation for ExpressPoll 4000 and 5000 running EZRoster version 2.1.2 and the Georgia Election Management System (GEMS) database version 1.18.22g!. State Entity requires data preparation for <u>159 counties</u> for <u>all county, state, and federal races</u> in Georgia including primary, primary runoffs, general election, general election runoffs, and any special elections. The cost will be \$25,000 per month for the calendar year <u>2018</u>.</p>	

mrm

**For Commodities, Complete the Following:
(For justifying a Sole Source/Sole Brand)**

Provide an explanation why only a particular style, model, type or manufacturer is required (i.e. why the commodity is the only commodity which will meet the state entity needs).



Sole-Source Intent to Award Justification

n/a
Letter from Original Equipment Manufacturer (required): <input type="checkbox"/> Attached
Exclusive Capability The State of Georgia utilizes ExpressPoll 4000 and 5000 running EZRoster version 2.1.2 and GEMS version 1.18.22g!. Assistance in the data preparation requires a license to utilize both pieces of software. These services were previously provided by the Center for Election Systems, which, as a state entity, was able to utilize the license purchased by the State of Georgia from ES&S. ES&S provided both systems to the state and has a license to maintain both databases. Through contracts with all Georgia counties, ES&S has been the sole maintenance provider on the system since its purchase, and is most familiar with the specific processes utilized in Georgia. ES&S also worked closely with the Center for Election Systems and is most familiar with the processes it utilized to provide these data sets. Now that the functions of the Center for Election Systems have been moved to the State Entity, State Entity requires a vendor who has licenses to both components of the voting system to assist in the data preparation. State Entity also requires a vendor who best knows the Georgia voting system, who is familiar to Georgia counties, and who knows the specific processes utilized by the Center for Election Systems in how they built their data sets. ES&S has specific knowledge that is necessary to the fulfillment of these services and is the only company that has licenses to work with both components of Georgia's voting system.



To Be Used for State Entity Records Only	
<input type="checkbox"/> PeopleSoft / Team Georgia Marketplace REQ ID#:	
GPR Bid #:	
Number of Protests:	
Outcome:	
<input type="checkbox"/> Awarded Sole-Source	
<input type="checkbox"/> Issued PO / Contract	
<input type="checkbox"/> Not Awarded / Competitively Bid	Bid Number:



Sole-Source Intent to Award Justification

Request Information	
Date of Request:	(mm-dd-yy)
Entity Information	
State Entity Name:	
State Entity Code (5-Digit Code):	
Procurement Officer (APO / CUPO):	
APO / CUPO e-Mail Address:	Telephone: - -
Request Submitted By	
Name:	
Title:	
e-Mail Address:	
Telephone: - -	
Request Details	
<p>Sole-Source – A purchasing situation in which the procurement is available from only one source. The announcement must be posted to the GPR in accordance with the Georgia Procurement Manual, Section 2.3.2.2.</p> <p>Identify efforts made to locate other possible sources.</p>	
Supplier / Source Name: Elections Systems and Software	Telephone:
Supplier / Source Contact:	- -
<p>Scope of Work</p> <p style="color: red;">Provide a detailed description of commodities/services to be provided. Also, include the following details: exact or estimated quantity, per unit price, and the total estimated value of the open contract to include the estimated quantity X unit price (if the exact quantities are not known).</p> <p>State Entity seeks to enter into a contract to provide assistance in data preparation for ExpressPoll 4000 and 5000 running EZRoster version 2.1.2 and the Georgia Election Management System (GEMS) database version 1.18.22g!. State Entity requires data preparation for 159 counties for all county, state, and federal races in Georgia including primary, primary runoffs, general election, general election runoffs, and any special elections. The cost will be \$25,000 per month for the calendar year 2018.</p>	

**For Commodities, Complete the Following:
(For justifying a Sole Source/Sole Brand)**

Provide an explanation why only a particular style, model, type or manufacturer is required (i.e. why the commodity is the only commodity which will meet the state entity needs).



Sole-Source Intent to Award Justification

n/a
Letter from Original Equipment Manufacturer (required): <input type="checkbox"/> Attached
Exclusive Capability <p>The State of Georgia utilizes ExpressPoll 4000 and 5000 running EZRoster version 2.1.2 and GEMS version 1.18.22g!. Assistance in the data preparation requires a license to utilize both pieces of software. These services were previously provided by the Center for Election Systems, which, as a state entity, was able to utilize the license purchased by the State of Georgia from ES&S. ES&S provided both systems to the state and has a license to maintain both databases. Through contracts with all Georgia counties, ES&S has been the sole maintenance provider on the system since its purchase, and is most familiar with the specific processes utilized in Georgia. ES&S also worked closely with the Center for Election Systems and is most familiar with the processes it utilized to provide these data sets. Now that the functions of the Center for Election Systems have been moved to the State Entity, State Entity requires a vendor who has licenses to both components of the voting system to assist in the data preparation. State Entity also requires a vendor who best knows the Georgia voting system, who is familiar to Georgia counties, and who knows the specific processes utilized by the Center for Election Systems in how they built their data sets. ES&S has specific knowledge that is necessary to the fulfillment of these services and is the only company that has licenses to work with both components of Georgia's voting system.</p>

To Be Used for State Entity Records Only	
<input type="checkbox"/> PeopleSoft / Team Georgia Marketplace REQ ID#:	
GPR Bid #:	
Number of Protests:	
Outcome:	
<input type="checkbox"/> Awarded Sole-Source	
<input type="checkbox"/> Issued PO / Contract	
<input type="checkbox"/> Not Awarded / Competitively Bid	Bid Number:

[BID MENU](#)[BROWSE FOR BIDS](#)[CONTACT US](#)

Sole Source Notification

(NOIA)

Notice Process Sole Source Notification
Purchase Type Sole Source
Category Type Information Technology
Notice Number SN-SoleSource-47800-86
Agency Code/Name 47800 - SECRETARY OF STATE
Fiscal Year 18
47800 - SECRETARY OF STATE is providing public notice of its intent to award a sole source contract for the following event, SN-SoleSource-47800-86 See below Purpose of the Sole Source for more details.
Notice Posted Date 01-19-2018 10:58 AM
Notice Title Data Preparation for ExpressPoll 4000 & 5000
Buyer Name Verneicher Favors
Buyer Phone 4046560998
Buyer E-mail vfvavors@sos.ga.gov
Notice Status Notice of Intent to Award

Purpose of the Sole Source

The State of Georgia utilizes ExpressPoll 4000 and 5000 running EZRoster version 2.1.2 and GEMS version 1.18.22g!. Assistance in the data preparation requires a license to utilize both pieces of software. These services were previously provided by the Center for Election Systems, which, as a state entity, was able to utilize the license purchased by the State of Georgia from ES&S. ES&S provided both systems to the state and has a license to maintain both databases. Through contracts with all Georgia counties, ES&S has been the sole maintenance provider on the system since

Market Research

Sole Source: A purchasing situation in which the procurement is available from only one source. The announcement must be posted to the GPR in accordance with the Georgia Procurement

Manual, Section 2.3.2.2.

Identify efforts made to locate other possible sources

Current License provider for Georgia Election Management System. Changing systems would be to costly.

Supplier Name: Election Systems and Software

Supplier Contact: Jeb Cameron

Supplier email: info@essvote.com

Supplier Phone: 8773778683

Scope Of Work

Provide a detailed description of exact or estimated quantity, per unit price, and the total estimated value of the open contract to include the estimated quantity X unit price(if the exact units are not known).

State Entity seeks to enter into a contract to provide assistance in data preparation for ExpressPoll 4000 and 5000 running EZRoster version 2.1.2 and the Georgia Election Management System (GEMS) database version 1.18.22g!. State Entity requires data preparation for 159 counties for all county, state, and federal races in Georgia including primary, primary runoffs, general election, general election runoffs, and any special elections. The cost will be \$25,000 per month for the calendar year 2018.

Complete the Following:(For justifying a Sole Source)

Provide an explanation why only a particular style, model, type or manufacturer is required (i.e. why the solution is the only solution which will meet the state entity needs).

Currently running EZRoster versio 2.1.2 and the Georgia Election Management System (GEMS) database version 1.18.22g.

Exclusive Capability

Provide a detailed description of proposed source's unique capabilities and/or personnel to perform the work and why this is the only source.

A letter from the Original Equipment Manufacturer (OEM) or Publisher is required that warrants that no other items/products are available for purchase that would serve the same purpose or function or items/products for which competition is precluded because of the existence of a patent, copyright or monopoly.

Election Systems & Software has specific knowledge that is necessary to the fulfillment of these services and is the only company that has licenses to work with both components of Georgia's Voting System.

NIGP Code Selection

20968---Programming: Basic, Assembler, etc., Software, Mainframes and Servers

20987---Software, Mainframes and Servers (Not Otherwise Classified)

20913---Application Software, Servers

20946---Expert System Software, Mainframes and Servers

20931---Computer Aided Design (CAD) Software, Mainframes and Servers

20988---Tools, Programming and Case Software, Mainframes and Servers

Documents List

Procedure to challenge a solicitation

Any supplier capable of providing the identified goods/services may challenge this event determination by filing a written protest with the Deputy Commissioner of the State Purchasing Division (SPD) in accordance with the protest procedures outlined in Section 6.5. Step 4-Supplier Participates in Protest Process of the GPM Georgia Procurement Manual. The protest must be received prior to the closing date and time identified herein.

MAIL	Attn: Deputy Commissioner - Procurement State Purchasing Division, Department of Administrative Services 200 Piedmont Ave., SE, Suite 1308. West Tower, Atlanta, GA 30334-9010
EMAIL	protests@doas.ga.gov
MORE INFORMATION	http://doas.ga.gov/state-purchasing/law-administrative-rules-and-policies/gpm

Close Window

PR_new_sole_source

State of Georgia State Entity Standard Contract Form

Solicitation Title Ballot Building Support Services	Solicitation Number SoleSource-47800-86	Contract Number
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1. This Contract is entered into between the State Entity and the Contractor named below:

State Entity's Name Georgia Secretary of State	(hereafter called State Entity)
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Contractor's Name Election Systems & Software, A Delaware Limited Liability Company	(hereafter called Contractor)
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2. Contract to Begin: 2/8/2018	Date of Completion: 12/30/2018	Renewals: 5
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3. Performance Bond, if any: n/a	Other Bonds, if any: n/a
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4. Maximum Amount of this Contract: \$300,000\$	Total Financial Obligation of the State Entity for the First Fiscal Year: \$300,000	Total Financial Obligation of the State Entity for each Renewal Period if Renewed: \$300,000
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5. Authorized Person to Receive Contract Notices for State Entity: Michael Barnes Georgia Secretary of State 2 MLK Jr. Dr. SE, West Tower Suite 802 Atlanta, GA 30334	Authorized Person to Receive Contract Notices for Contractor: Jeb Cameron Election Systems & Software 1208 John Galt Boulevard Omaha, NE 68137 Fax: 402-970-1291 Tel: 678-472-9895
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6. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Contract:

Attachment 1: State Entity Contract Terms and Conditions for Services
Attachment 2: Summary of Services
Attachment 3: Data Security Attachment
Attachment 4: Sole Source Justification
Attachment 5: Sole Source Notification of Intent to Award

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

7. **Contractor**

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

By (Authorized Signature)	Date Signed
---------------------------	-------------

Printed Name and Title of Person Signing

Address

8. **State Entity**

State Entity Name
Georgia Secretary of State

By (Authorized Signature)	Date Signed
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Printed Name and Title of Person Signing
Lorri Smith- Chief Operating Officer

Address

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

A. DEFINITIONS AND GENERAL INFORMATION

1. **Definitions.** The following words shall be defined as set forth below:
 - (i) **"Contractor"** means the provider(s) of the Services under the Contract.
 - (ii) **"Purchase Instrument"** means the documentation issued by the State Entity to the Contractor for a purchase of Services in accordance with the terms and conditions of the Contract. The Purchase Instrument should reference the Contract and may include an identification of the Services to be purchased, the time and location such Services will be utilized, and any other requirements deemed necessary by the State Entity.
 - (iii) **"Response", "Contractor's Response" or "Final Response"** means the Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the State Entity.
 - (iv) **"RFX"** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the State Entity Standard Contract Form that was issued to solicit the Services that are subject to the Contract.
 - (v) **"Services"** means the services and deliverables as provided in the RFX and as further described by the Response and the Contract.
 - (vi) **"State"** means the State of Georgia, the State Entity, and any other authorized state entities issuing Purchase Instruments against the Contract.
 - (vii) **"State Entity"** means the State of Georgia entity identified in the State Entity Standard Contract Form to contract with the Contractor for the Services identified in the Contract.
 - (viii) **"State Entity Standard Contract" or "Contract"** means the agreement between the State Entity and the Contractor as defined by the State Entity Standard Contract Form and its incorporated documents.
 - (ix) **"State Entity Standard Contract Form"** means the document that contains basic information about the Contract and incorporates by reference the applicable Contract Terms and Conditions, the RFX, Contractor's Response to the RFX, the final pricing documentation for Services and any mutually agreed clarifications, modifications, additions and deletions resulting from final contract negotiations. No objection or amendment by a Contractor to the RFX requirements or the Contract shall be incorporated by reference into this Contract unless the State Entity has accepted the Contractor's objection or amendment in writing. The State Entity Standard Contract Form is defined separately and referred to separately throughout the State Entity Standard Contract as a means of identifying the location of certain information. For example, the initial term of the Contract is defined by the dates in the State Entity Standard Contract Form.

2. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.
3. **Reporting Requirements.** Contractor shall provide all reports required by the RFX. In addition, unless otherwise provided in the RFX, Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a quarterly written report to the State Entity.

B. DURATION OF CONTRACT

1. **Contract Term.** The Contract between the State Entity and the Contractor shall begin and end on the dates specified in the State Entity Standard Contract Form unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
2. **Contract Renewal.** The State Entity shall have the option, in its sole discretion, to renew the Contract for additional terms as defined in the State Entity Standard Contract Form on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the State Entity's election, in its sole discretion, to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the State Entity and the Contractor.
3. **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the Services, the State Entity may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford the State a continuous supply of the Services.

C. DESCRIPTION OF SERVICES

1. **Specifications in Bidding Documents.** All Services shall be provided in accordance with the specifications contained in the RFX, the terms of the Contract, and as further described in Contractor's Response.
2. **Product Shipment and Delivery.** All products, if any, shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All items shall be at the Contractor's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the State Entity, regardless of when the hidden damage is discovered.
3. **Non-Exclusive Rights.** The Contract is not exclusive. The State Entity reserves the right to select other contractors to provide services similar to the Services described in the Contract during the term of the Contract.
4. **No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases or use of Services.

D. COMPENSATION

1. **Pricing and Payment.** The Contractor will be paid for Services provided pursuant to the Contract in accordance with the RFX and final pricing documents as incorporated into the State Entity Standard Contract Form and the terms of the Contract. Unless clearly stated otherwise in the 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.
2. **Billings.** If applicable, and unless the RFX provides otherwise, the Contractor shall submit, on a regular basis, an invoice for the Services supplied to the State Entity under the Contract at the billing address specified in the Purchase Instrument or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The State Entity shall pay all approved invoices in arrears and in accordance with applicable provisions of State law.

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

3. **Delay of Payment Due to Contractor's Failure.** If the State Entity in good faith determines that the Contractor has failed to perform or deliver Services as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such Service is performed or delivered. In this event, the State Entity may withhold that portion of the Contractor's compensation which represents payment for Services that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the State Entity to incur costs, the State Entity may deduct the amount of such incurred costs from any amounts payable to Contractor. The State Entity's authority to deduct such incurred costs shall not in any way affect the State Entity's authority to terminate the Contract.
4. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the State Entity and/or the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State Entity and/or the State may set off the sum owed against any sum owed by the State Entity to the Contractor in the State Entity's sole discretion.

E. TERMINATION

1. **Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if the State Entity determines that adequate funds are de-appropriated such that the State Entity cannot fulfill its obligations under the Contract, which determination is at the State Entity's sole discretion and shall be conclusive. Further, the State Entity may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:
 - (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - (ii) The State Entity determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
 - (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or

- (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.
2. **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the State Entity to declare the Contractor in default of its obligations under the Contract:
- (i) The Contractor fails to deliver or has delivered nonconforming Services or fails to perform, to the State Entity's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
 - (ii) The State Entity determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
 - (iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;
 - (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the State Entity reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 - (v) The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;
 - (vi) The Contractor has engaged in conduct that has or may expose the State Entity or the State to liability, as determined in the State Entity's sole discretion; or
 - (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State Entity, the State, or a third party.
3. **Notice of Default.** If there is a default event caused by the Contractor, the State Entity shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the State Entity's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the State Entity may:
- (i) Immediately terminate the Contract without additional written notice; and/or
 - (ii) Procure substitute services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor; and/or,
 - (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.
4. **Termination Upon Notice.** Following thirty (30) days' written notice, the State Entity may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be

entitled to compensation, upon submission of invoices and proper proof of claim, for Services provided under the Contract to the State Entity up to and including the date of termination.

5. **Termination Due to Change in Law.** The State Entity shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:
 - (i) The State Entity's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State Entity; and/or
 - (ii) The State Entity's duties are substantially modified.

6. **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the State Entity, the State Entity shall pay only those amounts, if any, due and owing to the Contractor for the Services actually rendered up to the date specified in the notice of termination for which the State Entity is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State Entity under the Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

7. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the State Entity, the Contractor shall:
 - (i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State Entity may require;
 - (ii) Immediately cease using and return to the State Entity, any personal property or materials, whether tangible or intangible, provided by the State Entity to the Contractor;
 - (iii) Comply with the State Entity's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - (iv) Cooperate in good faith with the State Entity and its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor(s); and
 - (v) Immediately return to the State Entity any payments made by the State Entity for Services that were not delivered or rendered by the Contractor.

F. CONFIDENTIAL INFORMATION

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

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

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

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:

- (i) Any breach of the Contract;
 - (ii) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
 - (iii) Any failure of Services to comply with applicable specifications, warranties, and certifications under the Contract;
 - (iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Services provided under the Contract;
 - (v) Claims, demands, or lawsuits that, with respect to the goods (if any) or any parts thereof, allege product liability, strict product liability, or any variation thereof;
 - (vi) The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;
 - (vii) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Contract;
 - (viii) Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
 - (ix) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
 - (x) Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.
2. **Duty to Reimburse State Tort Claims Fund.** To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.
3. **Litigation and Settlements.** The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.
4. **Patent/Copyright Infringement Indemnification.** Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the Services constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the State Entity shall

tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

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

- (i) Procure for the State the right to continue using the 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.

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

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

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

H. INSURANCE

Contractor shall provide all insurance as required by the RFX.

I. BONDS

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

J. WARRANTIES

1. **Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Response, whether or not the Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the Services to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Services provided by the Contractor. The provisions of this section apply during the term of the Contract and any extensions or renewals thereof.
2. **Warranty – Nonconforming Services and Goods.** All Services and any goods delivered by Contractor to the State Entity shall be free from any defects in design, material, or workmanship. If any Services or goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the State Entity shall have the option of returning, repairing, or replacing the defective Services or goods at Contractor's expense. Payment for Services and any goods shall not constitute acceptance. Acceptance by the State Entity shall not relieve the Contractor of its warranty or any other obligation under the Contract.
3. **Compliance with Federal Safety Acts.** Contractor warrants and guarantees to the State that the Services provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A; and the Anti-Kickback Act of 1986.
4. **Originality and Title to Concepts, Materials, and Goods Produced.** Contractor represents and warrants that all the concepts, materials, goods and Services produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and Services and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and Services contemplated by the Contract.
5. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the Services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.
6. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the 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 and the State Entity.

- 7. Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State and the State Entity will not have any obligations with respect thereto.
- 8. Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials, or equipment shall remain in the Contractor until fully paid for by the State Entity. Except as otherwise expressly authorized by the State Entity, all materials produced by Contractor personnel in performance of Services, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall be deemed to be work made for hire and shall be the property of the State of Georgia.
- 9. Industry Standards.** The Contractor represents and expressly warrants that all aspects of the Services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.
- 10. Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform Services under this Contract are either lawful employees of Contractor or lawful employees of a subcontractor authorized by the State Entity as specified in the RFX. All persons assigned to perform Services under this Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services.
- 11. State Security.** State Entity requires that a criminal background investigation be made of any and all Contractor personnel utilized to provide Services to the State. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Contract if such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the State. The Contractor's employees, agents and subcontractors may be granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the Contract. Such access may be terminated at the sole discretion of the State. The Contractor shall provide immediate notice to State Entity of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor represents and warrants that Contractor shall provide notice to State Entity of the changed status of any employee, agent or subcontractor granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.
- 12. Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of Services under this Contract. Contractor shall be responsible for providing transportation necessary to perform all Services.

K. PRODUCT RECALL

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

L. CONTRACT ADMINISTRATION

1. **Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of the State Entity Standard Contract Terms and Conditions (including any amendments accepted by both the State Entity and the Contractor attached hereto), the RFX (including any subsequent addenda), and the Contractor's Response, any inconsistency or conflict shall be resolved as follows:
 - (i) First, by giving preference to the specific provisions of the State Entity Standard Contract Terms and Conditions.
 - (ii) Second, by giving preference to the specific provisions of the RFX.
 - (iii) Third, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a Contractor that have not been explicitly accepted by the State Entity in writing shall not be included in this Contract and shall be given no weight or consideration.
2. **Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFX and the Contractor's Response. The failure of the parties to make reference to the terms of the RFX or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFX and the Contractor's Response. The contractual obligations of the State Entity cannot be implied from the Contractor's Response.
3. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Contract. Contractor and Contractor's personnel shall also comply with all State and State Entity policies and standards in effect during the performance of the Contract, including but not limited to the State Entity's policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Contract. Contractor certifies that

Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85.

4. Drug-free Workplace. The Contractor hereby certifies as follows:

- (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and
- (ii) If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. Section 50-24-1 et seq., throughout the duration of this Contract; and
- (iii) Contractor will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

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

- (i) Contractor has made false certification here in above; or
- (ii) Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

5. Amendments. The Contract may be amended in writing from time to time by mutual consent of the parties. If the contract award exceeds the delegated purchasing authority of the State Entity, then the State Entity must obtain approval of the amendment from the Department of Administrative Services (DOAS). All amendments to the Contract must be in writing and fully executed by duly authorized representatives of the State Entity and the Contractor.

6. Third Party Beneficiaries. There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State Entity, the State, and the Contractor.

7. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this 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 Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.

8. Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation. In addition to any dispute resolution procedures otherwise required under this Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by

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

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

No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

9. **Assignment and Delegation.** The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the State Entity. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
10. **Use of Third Parties.** Except as may be expressly agreed to in writing by the State Entity, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Contract or any of the work subsequently assigned under this Contract. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the State Entity. The State Entity shall have the right to request the removal of a subcontractor from the Contract for good cause.
11. **Integration.** The 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 Contract.
12. **Headings or Captions.** The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
13. **Not a Joint Venture.** Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for the Services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents,

servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. 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 Contract.

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

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

18. **Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
19. **Severability.** If any provision of the 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 Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to

the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the State Entity and the Contractor to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect.

20. **Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Contract. Contractor shall ensure that all personnel providing Services to the State are responsive to the State's requirements and requests in all respects.
21. **Authorization.** The persons signing this Contract represent and warrant to the other parties that:
 - (i) It has the right, power and authority to enter into and perform its obligations under the Contract; and
 - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
22. **Successors in Interest.** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
23. **Record Retention and Access.** The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the State throughout the term of the 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. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
24. **Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
25. **Public Records.** The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.
26. **Clean Air and Water Certification.** Contractor certifies that none of the facilities it uses to provide the Services are on the Environmental Protection State Entity (EPA) List of Violating Facilities. Contractor will immediately notify the State Entity of the receipt of any

communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

- 27. Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the State Entity if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.
- 28. Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.
- 29. Taxes.** The State Entity is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State Entity is exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the State Entity with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform Services, which verification is incorporated herein by reference.
- 30. Certification Regarding Sales and Use Tax.** By executing the Contract, the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the State Entity or its representative filing for damages for breach of contract.
- 31. Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract.
- 32. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Contract, Contractor's liability to the State for any claim of damages arising out of this Contract shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Contract.

No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor further agrees that equipment transported by Contractor personnel in a vehicle belonging to Contractor (including any vehicle rented or leased by Contractor or Contractor's personnel) shall be deemed to be in the sole care, custody, and control of Contractor's personnel while being transported. Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.

- 33. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.
- 34. Counterparts.** The State Entity and the Contractor agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 35. Further Assurances and Corrective Instruments.** The State Entity and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.
- 36. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to perform the Services for the State. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the Services to the State or to another contractor.

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

ATTACHMENT 3
Data Security and Access Attachment

1. General.

This Data Security and Access Attachment is hereby made between _____ (“Contractor”) and the Office of the Georgia Secretary of State (“GA SOS”) and is a written amendment agreed to by both parties and added to the initial contract between the parties.

For purpose of the Data Security provisions, the following shall also apply:

All “**Authorized Persons**” shall include Contractor’s employees who have a need to know or otherwise access personal information or Confidential Information (hereinafter defined) to enable Contractor to perform its obligations under this Agreement, including but not limited to employees, contractors, agents auditors and persons or parties who have a need to know or otherwise access to Confidential Information. All Authorized Persons of Contractor have been deemed by Contractor trustworthy and been properly vetted to come into contact with Confidential Information.

In addition to any other agreement between the parties addressing any confidential information, the “**Confidential Information**” shall include all information obtained through the course and in connection with the services provided pursuant to the agreements, and amendments or renewals thereto, between the parties, including but not limited to: (a) individual’s government-issued identification number (including social security number, driver’s license number or state-issued identified number); (b) financial account number, credit card number, debit card number, credit report information; (c) personal identification number or password, (d) biometric or health data; (e) all names, signatures, addresses, telephone numbers, e-mail addresses or contact information; (f) status of examination or application; (g) all information related to GA SOS IT systems or Contractor’s data, including drafts and test data, related to the configuration, creation, development or maintenance of GA SOS IT systems; and (h) all other GA SOS data or information with may be received by Contractor in the course of providing services pursuant to the Agreement between the parties.

A “**Security Breach**” shall include any and all acts or omissions of any nature that compromise either the security, confidentiality or integrity of Confidential Information or the physical, technical, administrative or organizational safeguards put in place that relate to the protection of the security, confidentiality or integrity of Confidential Information. Security Breach includes improper disposal, such as any action which may compromise the custody or security, of Confidential Information.

2. Standard of Care and Notification.

(a) Contractor acknowledges and agrees that, in the course of its engagement, it may receive or have access to Confidential Information. Contractor shall comply with the terms and conditions set forth in this Agreement in its collection, receipt, transmission, storage, disposal, use and disclosure of such Confidential Information and be responsible for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Confidential Information under its control or in its possession. Contractor shall be responsible for, and

remain liable to SOS for the actions and omissions of all Contractor's Authorized Persons as if they were Contractor's own actions and omissions.

(b) Contractor agrees and covenants that it shall:

(i) keep and maintain all Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure,

(ii) use and disclose Confidential Information solely and exclusively for the purposes for which the Confidential Information, or access to it, is provided pursuant to the terms and conditions of this Agreement, and not use, sell, rent, transfer, distribute, or otherwise directly or indirectly disclose or make available Confidential Information for Contractor's own purposes or for the benefit of anyone other than GA SOS, unless otherwise provided expressly by applicable law or expressly permitted by GA SOS,

(iii) in the event that Contractor must disclose Confidential Information as expressly required under applicable law, Contractor must

(a) immediately notify GA SOS of such disclosure,

(b) disclose only portions of Confidential Information as may be legally required and agreed-to by SOS,

(c) exercise the same level of care with respect to preserving Confidential Information at all times when handling such information.

3. Information Security.

Contractor represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information does and will comply with all applicable federal, state and local privacy and data protection laws, as well as all other applicable regulations and directives. Contractor shall implement administrative, physical and technical safeguards to protect Confidential Information that are no less rigorous than accepted industry practices and shall ensure that all such safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor procedures should include at least the following: identity and access management, infrastructure and operations security, vulnerability management, business-continuity planning, disaster-recovery planning and training. Upon GA SOS' request, Contractor shall provide GA SOS an access control and activities list of all user accounts that have authority and the scope of such authority to a requested dataset. Upon SOS' request, Contractor shall also provide GA SOS information of concerning Service security and network control devices, such as firewall, intrusion detection, network access and back-up information.

4. Obligation to Report a Breach

Contractor shall notify the GA SOS, within 3 business days of discovery, of any potential material breach of vendor networks, computer systems, storage systems, or other technology systems that contain or may impact GA SOS data, or have access to GA SOS technology systems or networks. This notification must be made regardless of final determination of the scope or severity of the breach. Notification shall be made to:

SOS CIO:

Merritt Beaver

Tel: 404-656-7744

Email: mbeaver@sos.ga.gov

SOS Information Security Officer:

James Oliver

Tel: 404-657-2474

Email: joliver@sos.ga.gov

A breach in this agreement is defined as any incident that results in unauthorized access to data, applications, services, networks and/or devices by bypassing their underlying security mechanisms or exploiting a vulnerability in software or controls. The unauthorized access may occur via an employee, contractor, vendor, external party, or a software application with automated access capabilities.

Discovery in this agreement is defined as any technical or personnel alert or notification that could credibly indicate unauthorized access of {Vendor} data, applications, services, networks and/or devices that could impact GA SOS data or networks. This includes credible reports from external entities, including news media, law enforcement, or other clients of {Vendor}.

5. Right to Audit

GA SOS and its authorized representatives shall have the right to audit or examine all technical and contract records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to, those kept by its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to: security logs; work and task orders; emails; project documentation; accounting records, written cyber security policies and procedures; subcontract files; change order files; supporting documentation; and related correspondence. Contractor shall, at all times during the term of this Agreement and for a period of two years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials.

Contractor shall at any time requested by the GA SOS, whether during or after completion of this Agreement, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the GA SOS. Such records shall be made available to the GA SOS during normal business hours at Contractor's office or place of business and subject to a five-business day written notice. If no such location is available, then the records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the GA SOS. Contractor shall ensure the GA SOS has these rights with Contractor's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to the GA SOS.

6. Return or Destruction of Confidential Information.

At any time during the term of this Agreement at the GA SOS's request or upon the determination or expiration of this Agreement for any reason, Contractor shall, and shall instruct all Authorized Persons to, promptly return to the GA SOS all copies, whether in

written, electronic or other form or media, of Confidential Information in its possession or the possession of such Authorized Persons, or securely dispose of all such copies, and certify in writing to the GA SOS that such Confidential Information has been returned to GA SOS or disposed of securely. Contractor shall comply with all reasonable directions provided by GA SOS with respect to the return or disposal of Confidential Information. In all instances, disposal of Confidential Information shall be securely managed so that all such information is properly destroyed or disposed of and that no Confidential Information shall be obtainable or able to be reproduced by any party, including Authorized Persons.

7. Indemnification.

Contractor shall indemnify and hold harmless GA SOS, its officers, directors, employees, from and against those liabilities, damages and costs that GA SOS incurs or is legally obligated to pay as a result of Contractor's security breach or failure to perform any duty under the Agreement, and any amendments thereto between the parties, to the extent caused by the willful misconduct, negligent act, error or omission of the Contractor or anyone for whom the Contractor is legally responsible.

-End of Attachment-