Participating Addendum Number 99999-SPD-G20251011-0001
for
PROFESSIONAL GRADE TOOLS & DIAGNOSTIC EQUIPMENT
between
State of Georgia
and
SNAP-ON INDUSTRIAL,
A DIVISION OF IDSC HOLDINGS LLC

This Participating Addendum is entered into by State of Georgia ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number OK-MA-818-900, executed by Contractor and the State of Oklahoma for Professional Grade Tools & Diagnostic Equipment ("Master Agreement"):

Snap-on Industrial, a Division of IDSC Holdings LLC ("Contractor")
2801 80th Street
Kenosha, WI 53143

Department of Administrative Services ("Participating Entity")
200 Piedmont Ave, SE #1804 W
Atlanta, GA, 30334

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Jeff Gaskill
Snap-on Industrial, a Division of IDSC Holdings LLC
IndContractAdmin@snapon.com
262-656-4762

Participating Entity's contact for this Participating Addendum is:

Donnie Treadway
Contract Manager
Donnie.treadway@doas.ga.gov
404-463-0824

II. TERM. This Participating Addendum is effective as of the date of the last signature below or July 1, 2024, whichever is later through October 11, 2025, with mutual option to renew for three (3) additional one (1) year-term, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

III. PARTICIPATION AND USAGE. This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

IV. GOVERNING LAW. The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities. In addition, this Participating Addendum covers the Professional Grade Tools and Diagnostic Equipment led by the State of Oklahoma for use by state agencies and other entities located in the State of Georgia authorized by Georgia's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

VI. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Pursuant to O.C.G.A. Section 50-5-51(10), DOAS has the authority to collect monies, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to O.C.G.A. Section 50-5-57. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new contracts, training, and technology. For this contract, DOAS requires each contractor to pay to DOAS an administrative fee on all sales pursuant to the resulting contract. The administrative fee amount for this contract is **one and twenty-five hundredths percent (1.25%)**. **EACH CONTRACTOR MUST SUBMIT PRICING IN ITS COST PROPOSAL WHICH INCLUDES THE IDENTIFIED PERCENT ADMINISTRATIVE FEE (HEREINAFTER, THE "FEE") BUILT INTO THE SUBMITTED PRICING.** All contractors must agree that the Fee will not be identified separately from the product and/or service pricing offered to Purchasing Entities wherever that pricing may appear (website, catalog, invoices, etc.). This Fee will be collected by the awarded Contractor" and remitted to DOAS in accordance with the following paragraphs. The prices established under the Master Agreement shall be subject to adjustment hereunder by the Contractor to account for the administrative fee.

a. Quarterly Payment and Sales Reporting Requirements. DOAS and Contractor agree that the collected Fees and the corresponding Quarterly Sales Report (report template available upon request), which identifies the total sales pursuant to this contract for the corresponding fiscal quarter, shall be submitted by Contractor to DOAS. The total sales reported in the Quarterly Sales Report should be limited to sales in which the Contractor has received payment from the Purchasing Entity. The Fees and the Quarterly Sales Report must be received by DOAS on or before the Contractor's Payment Due Date as defined in the table below.

The Quarterly Sales Report must be received by DOAS twenty (20) days after the end of the Fiscal Quarter through submission within the Supplier Portal of Team Georgia Marketplace™, and the Fees must be received as a response to an invoice generated by DOAS between the time of receipt of the invoice and forty-five (45) days after the end of the fiscal quarter as defined by the table below:

DOAS' Fiscal Quarters	*Months*	*Contractor's Quarterly Sales Report Due Date*	*Contractor's Payment Due Date (In Response to DOAS generated Invoice)*
Quarter 1	*July 1st – September 30th*	*October 20th*	*November 15th*
Quarter 2	*October 1st – December 31st*	*January 20th*	*February 15th*
Quarter 3	*January 1st – March 31st*	*April 20th*	*May 15th*
Quarter 4	*April 1st – June 30th*	*July 20th*	*August 15th*

			30 DAYS FOLLOWING TERMINATION OF SWC

No later than the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, Contractor shall remit payment to DOAS for the Fees. Administrative fees and/or rebates earned by the State collected by Contractors on behalf of DOAS must be promptly remitted through one of the following methods, citing the **Invoice Number:** 1) Electronic Funds Transfer (EFT) (**preferred method**); 2) Credit card; or 3) check (**least preferred method**). Contractors should utilize the Express Payment Acceptance System (ePAS) for payment of administrative fees. ePAS is an online solution DOAS offers as a more convenient, flexible, and secure way to make payments.

- **For EFT payments (preferred method):** the following is the account information Contractor will need to reference in order to submit payments to DOAS electronically:
  - Bank Name: J.P. Morgan Chase, N.A. // Routing Number – 044000037 // Account Number – 510933638
- **For Credit Card payments:** Contractor can utilize ePAS or contact the following individual to initiate processing:
  - Ms. Eligia Familia / DOAS Financial Operations / Phone: (404) 651-5035
- **For Check payments (least preferred method):** Contractor can utilize ePAS or remit the check to:
  - Department of Administrative Services // Fiscal Services Administration // 200 Piedmont Avenue, SE, Ste. 1820 – West Tower, Atlanta, GA 30334-9010

In the event no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating no sales have occurred. By submission of these reports and corresponding Contractor payments, Contractor is certifying their correctness.

Contractors doing work under multiple agreements are prohibited from sending in a single consolidated report encompassing multiple SWCs. If you are a Contractor doing work under more than one agreement, you must provide separate reports for each agreement and individually reference the appropriate SWC# on each report by entering your company name and corresponding SWC# in the template.

Contractors doing work under multiple agreements are prohibited from sending in a single consolidated payment encompassing multiple SWCs. If you are a Contractor doing work under more than one agreement, you must provide separate payments for each agreement and individually reference the appropriate SWC# associated with each payment.

b. Auditing and Contract Close Out. All sales reports and Fee payments shall be subject to audit by the State. Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees 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. 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. 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.

In no event shall Contractor retain any amount of money in excess of the compensation to which Contractor is entitled and all Fees owed DOAS shall be paid within thirty (30) calendar days of termination of the contract for any reason.

c. Modifying or Canceling the Fee. DOAS reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend the contract pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

d. Late Payment Fee. In the event DOAS does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree the Contractor must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

(Administrative Fee Amount Due) x (18%) = X

X / 365 (366 for leap years) = Y

Y x (Number of Days Payment is Late) = Interest Owed

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting DOAS in writing of the Contractor's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund or credit the overpayment amount to the Contractor no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment. DOAS will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.

e. Default. **THE CONTRACTOR'S RESPONSIBILITY TO COLLECT AND REMIT THE ADMINISTRATIVE FEE ON BEHALF OF DOAS IS A SERIOUS RESPONSIBILITY AS THE CONTRACTOR IS HANDLING STATE FUNDS.** Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring Contractor in default and recovering re-procurement costs from Contractor in addition to all outstanding Fees and interest.

VIII. FEDERAL FUNDING REQUIREMENTS. Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

IX. INFORMATION TECHNOLOGY SECURITY STANDARDS. State Security. Contractor agrees to comply with all provisions of the then-current State of Georgia IT Policies, Standards, and Procedures, including but NOT limited to those which may be found at https://gta.georgia.gov/psg/ or a successor URL(s), as are pertinent to Contractor's operation. Contractor further agrees to comply with all provisions of the relevant Purchasing Entity's then-current security procedures as are pertinent to Contractor's operation and which have been supplied to Contractor by such Purchasing Entity. For any individual Purchasing Entity location, security procedures may include but not be limited to: Background checks, records verification, photographing, and fingerprinting of Contractor's employees or agents. Contractor may, at any time, be required to execute and complete, for each individual Contractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Contractor's employees or agents acknowledging that all Purchasing Entity information with which such employees and agents come into contact while at the Purchasing Entity site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Contractor or an employee or agent of Contractor shall constitute a breach of its obligations under this Section and the Contract. Contractor shall immediately notify Participating Entity and applicable Purchasing Entity of any breach of unencrypted and unredacted personal information and other personally identifying information provided by Participating Entity or Purchasing Entity to Contractor. Contractor shall provide Participating Entity and applicable Purchasing Entity the opportunity to participate in the investigation of the breach.

X. ATTACHMENTS. This Participating Addendum includes the following attachments:

- **a.** Exhibit A: State of Georgia Participating Addendum Terms and Conditions (including Exhibit 1: Data Security, Confidentiality, and Ownership Term and Conditions)
- **b.** Exhibit B: State of Georgia Pricing
- **c.** Exhibit C: NASPO ValuePoint Master Agreement # OK-MA-818-900

XI. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:	For Participating Entity:
Jeff Gaskill Snap-on Industrial, a Division of IDSC Holdings LLC IndContract Admin@snapon.com 262-656-4762	Donnie Treadway Contract Manager Donnie.treadway@doas.ga.gov 404-463-0824

XII. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

Participating Addendum Number 99999-SPD-G20251011-0001 for
PROFESSIONAL GRADE TOOLS & DIAGNOSTIC EQUIPMENT

Between **State of Georgia** and
Snap-on Industrial, a Division of IDSC Holdings LLC

CONTRACTOR:

DocuSigned by:
EB6ED9D97EAF49B...

Signature

Andrew Lobo

Printed Name

President, Industrial Division
& Vice President, IDSC Holdings LLC

Title

6/18/2024

Date

PARTICIPATING ENTITY:

Jim Barnaby

Signature

Jim Barnaby

Printed Name

Deputy Commissioner for State Purchasing Division

Title

6/20/2024

Date

STATE OF GEORGIA
PARTICIPATING ADDENDUM TERMS AND CONDITIONS
Exhibit A

A. DEFINITIONS AND GENERAL INFORMATION

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

   (i) **“Agency” or “Participating Entity”** means the Department of Administrative Services (DOAS) of the State of Georgia.

   (ii) **“Contract”** means the agreement between Agency and Contractor as defined by the Participating Addendum 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.

   (iii) **“Contractor”** means the provider(s) of the goods and services under the Contract.

   (iv) **“Master Agreement”** means cooperatively procured contract (Master Agreement Number: OK-MA-818-900) for Professional Grade Tools and Diagnostic Equipment Oklahoma NASPO ValuePoint and Snap-on Industrial, A division of IDSC Holdings LLC, effective February 15, 2024, including any amendments thereto.

   (v) **“Purchase Instrument”** means the documentation issued by Agency or Purchasing Entity to Contractor for a purchase of goods and 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 goods and services to be purchased, the delivery date and location, the address where Contractor should submit the invoices, and any other requirements deemed necessary by Agency or Purchasing Entity.

   (vi) **“Purchasing Entity”** incorporates all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law.

   (vii) **“State”** means the State of Georgia, Agency, Purchasing Entities, and any other authorized state entities issuing Purchase Instruments against the 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 Contractor as a source of supply to the Purchasing Entities of the goods and services identified in this Contract. Orders shall be placed individually and from time to time by Purchasing Entities. The execution of this Contract only establishes Contractor 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 Contractor’s forms or invoices shall be null and void.

4. **Reporting Requirements.** Contractor shall provide all reports required by the Participating Addendum and Master Agreement. In addition, unless otherwise provided in the Participating Addendum and Master Agreement, Contractor shall keep a record of the purchases made

pursuant to the Participating Addendum and Master Agreement and shall submit a quarterly written report to the Agency.

B. DURATION OF CONTRACT

1. **Contract Term.** The Contract shall begin and end on the dates specified in the Participating Addendum and Master Agreement unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. §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 except as otherwise permitted by law.

C. DESCRIPTION OF GOODS AND SERVICES

1. **Specifications in Documents.** Contractor shall provide all goods, services, and other deliverables in compliance with the specifications contained in the contract and Master Agreement.

2. **Product Shipment and Delivery.** Shipping terms, risk of loss, and inspection shall align with Sections VIII (Shipping and Delivery) and IX (Inspection and Acceptance) of the Master Agreement.

3. **Non-Exclusive Rights.** The Contract is not exclusive. Agency reserves the right to select other Contractors to provide goods and services similar to goods and services described in the Contract during the term of the Contract or Master Agreement. Purchasing Entities may obtain similar goods and services from other Contractors. Where applicable, Purchasing 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. Contractor and its subcontractors, if any, will cooperate with Purchasing Entity and other contractors and will so provide the goods and services that other cooperating contractors 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 Contract does not guarantee any minimum level of purchases.

5. **Liability for Purchasing Entity Furnished Property.** Contractor assumes complete liability for any materials Purchasing Entity furnishes to Contractor in connection with the Contract and Contractor agrees to pay for any Purchasing Entity materials Contractor damages or otherwise is not able to account for to Purchasing Entity's satisfaction. Purchasing Entity furnishing to Contractor any materials in connection with the Contract will not be construed to vest title thereto in Contractor.

D. COMPENSATION

1. **Pricing and Payment.** Contractor shall be paid for the goods and services sold pursuant to the terms of the Contract. All prices are established under the Master Agreement, subject to adjustment to account for administrative fee charges. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. Purchasing Entities are solely and individually financially responsible for their respective purchases. Agency shall not be responsible for payment of any amounts owed by other Purchasing Entities.

2. **Billings.** If applicable, and unless the Contract provides otherwise, Contractor shall submit, on a

regular basis, an invoice for goods and services supplied to Purchasing Entities 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. Purchasing 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 Contractor, Contractor shall not be entitled to receive any other payment or compensation from Purchasing Entities for any goods or services provided by or on behalf of Contractor under the Contract. 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 Purchasing Entities in good faith determine that Contractor has failed to perform or deliver any service or product as required by the Contract, Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, Purchasing Entities may withhold that portion of Contractor's compensation which represents payment for services or products that were not performed or delivered.

E. TERMINATION

1. **Immediate Termination.** Pursuant to O.C.G.A. §50-5-64, any purchase made pursuant to this Contract will terminate immediately and absolutely if Purchasing Entity determines that adequate funds are not appropriated or granted or funds are de-appropriated such that Purchasing Entity cannot fulfill its obligations under the Contract, which determination is at Purchasing Entity's sole discretion and shall be conclusive. Further, Agency may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

   (i) In the event Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the 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 Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

   (iii) Contractor fails to comply with confidentiality laws or provisions; and/or

   (iv) 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 Agency to declare Contractor in default of its obligations under the Contract or Purchasing Entity to declare Contractor in default of its obligations under a Purchase Instrument:

   (i) Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to the satisfaction of Agency or Purchasing Entity, as applicable, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the warranties made by Contractor;

(ii) Agency or Purchasing Entity, as applicable, determines that satisfactory performance of the Contract or Purchase Instrument is substantially endangered or that a default is likely to occur;

(iii) Contractor fails to remain responsible during the term of the Contract;

(iv) Contractor fails to make substantial and timely progress toward performance of the Contract or Purchase Instrument;

(v) 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; Contractor terminates or suspends its business; or Agency reasonably believes that Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

(vi) 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;

(vii) Contractor has engaged in conduct that has or may expose the Agency, Purchasing Entity, or the State to liability, as determined in the sole discretion of the Agency or Purchasing Entity, as applicable; or

(viii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Agency, the State, or a third party.

3. **Notice of Default.** If there is a default event caused by Contractor, Agency or Purchasing Entity, as applicable, shall provide written notice to Contractor 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 Purchasing Entity may:

(i) Immediately terminate the Contract or Purchase Instrument; and/or

(ii) Procure substitute goods or services from another source; 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, Agency may terminate the Contract or Purchasing Entity may terminate a Purchase Instrument, in whole or in part, without the payment of any penalty or incurring any further obligation to Contractor. Following termination upon notice, Contractor shall be entitled to compensation from Purchasing Entity, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to Purchasing Entities up to and including the date of termination. Contractor may terminate the Contract/Participating Addendum upon 60 days written notice to Agency.

5. **Termination Due to Change in Law.** Agency shall have the right to terminate this Contract and Purchasing Entity shall have the right to terminate a Purchase Instrument without penalty by giving thirty (30) days' written notice to Contractor as a result of any of the following:

(i) Agency's or Purchasing Entity's authorization to operate is withdrawn or there is a material alteration in the programs administered by Agency or Purchasing Entity; and/or

(ii) Agency's or Purchasing 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 Agency or termination of a Purchase Instrument by Purchasing Entity, Purchasing Entities shall pay only those amounts, if any, due and owing to Contractor for goods and services actually rendered up to the date specified in the notice of termination for which Purchasing Entities are obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. This provision in no way limits the remedies available to the State under the Contract in the event of termination. The State shall not be liable for any costs incurred by 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. **Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of Agency or Purchasing Entity, as applicable, Contractor shall:

(i) Cease work under the 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 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 Contractor;

(iii) Comply with the State's instructions for the timely transfer of any active files and work product produced by Contractor under the Contract;

(iv) Cooperate in good faith with Agency, Purchasing Entities, and their employees, agents and Contractors during the transition period between the notification of termination and the substitution of any replacement Contractor; and

(v) Immediately return to Purchasing Entities any payments made by Purchasing Entities for goods and services that were not delivered or rendered by Contractor.

F. CONFIDENTIAL INFORMATION

1. **Access to Confidential Data.** Contractor's employees, agents and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out Contractor's responsibilities under the Contract. 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) Contractor shall provide to the State a written description of 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) Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by Contractor in connection with the performance of the Contract; and

(iv) 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 Agency and/or Purchasing Entities may require 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 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 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 Contractor shall be considered the property of the State. 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 Contractor for records containing confidential information, 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.** Contractor shall immediately report to the State any unauthorized disclosure of confidential information.

5. **Survives Termination.** Contractor's confidentiality obligation under the Contract shall survive termination of the Contract.

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** 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, arising from:

(i) Any material breach of the Contract;

(ii) Any negligent, intentional or wrongful act or omission of Contractor or any employee, agent or subcontractor utilized or employed by Contractor;

(iii) Any failure of goods or services to comply with applicable specifications, warranties, and certifications under the Contract;

(iv) The negligence or fault of Contractor in design, testing, development, manufacture, or otherwise with respect to the goods or any parts thereof provided under the Contract;

(v) Claims, demands, or lawsuits that allege product liability, strict product liability, or any variation thereof;

(vi) Any failure by Contractor to comply with the "Compliance with the Law" provision of the Contract;

(vii) Any failure by 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 Contractor to conduct business in the State of Georgia or the United States;

(viii) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

(ix) Any failure by 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"), 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, 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.** 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 software constitutes an infringement of any United States Letters Patent or copyright, provided the State gives 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, Agency shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

   In case any of the goods or services are 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 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.

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:

(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 Contractor;

(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 Contractor shall survive termination of the Contract or purchase thereunder.

H. INSURANCE

Within ten (10) business days of award and before commencing work on this Contract, Contractor must provide Agency with certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of Contractor 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 Contractor for Contractor's operations. These are solely minimums that have been established to protect the interests of the State. Contractor shall procure and maintain the insurance policies described below and shall furnish Agency two insurance certificates referencing the contract number. The certificates must include 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 Contractor includes contractual liability coverage (provided as broad as that which is provided by the Commercial General Liability coverage form) applicable to the 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. Contractor is required to maintain the following insurance coverage's during the term of the 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 Contractor qualifies to pay its own workers compensation claims.) In addition, Contractor shall require all subcontractors performing work under the 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

Personal & Advertising Injury Limit	$1,000,000
General Aggregate Limit	$2,000,000
Products/Completed Ops. Aggregate Limit	$2,000,000

C. Umbrella Liability $2,000,000

D. 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. Notice of cancellation will be in accordance with policy provisions. 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

Contractor shall provide all required bonds in accordance with the terms of the requirements of the Master Agreement and as stated in the Contract Form. Purchasing 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 Contractor and/or subcontractors in all provisions of the Contract and Contractor's Response, whether or not the Contract specifically denominates Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by Contractor'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 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 Contract. The provisions of this section apply during the term of the Contract and any extensions or renewals thereof.

2. **Warranty – Nonconforming Goods and Services.** All goods and services delivered by Contractorto Purchasing Entities shall be free from any defects in design, material, or workmanship. If any goods or services offered by Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, Contractor shall have the option of returning, repairing, or replacing the defective goods or services at Contractor's expense. Payment for goods or services shall not constitute acceptance. Acceptance by Purchasing Entities shall not relieve Contractor of its warranty or any other obligation under the Contract.

3. **Originality and Title to Concepts, Materials, Goods, and Services 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 Contractor or that Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. 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 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. 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.

4. **Conformity with Contractual Requirements.** Contractor represents and warrants that the goods and services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.

5. **Authority to Enter into Contract.** 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.

6. **Responsibility.** Contractor represents and warrants that it shall remain responsible at all times during the term of the Contract.

7. **Obligations Owed to Third Parties.** Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by Contractor pursuant to the Contract are or will be fully satisfied by Contractor so that the State will not have any obligations with respect thereto.

8. **Title to Property.** 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 Contractor until fully paid for by Purchasing Entities.

9. **Industry Standards.** Contractor 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 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 Agency as specified in the Participating Addendum and it incorporated documents. 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. **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.

12. **Web Accessibility Requirements.** As applicable to the goods and/or services being provided under the Contract, Contractor 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) Contractor 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 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, Contractor 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. Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that 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 Precedence.** In the case of any inconsistency or conflict among the specific provisions of the Contract Terms and Conditions (including any amendments accepted by both the Agency and the Contractor attached hereto and the Awarded Item Schedule, if any), the the Master Agreement and Participating Addendum, (including any subsequent addenda), and the Contractor's Response, and other documents incorporated into the Contract, any inconsistency or conflict shall be resolved as follows:

(i) First, by giving preference to the 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 Master Agreement in accordance with the order of preference provided therein.

(iii) Third, by giving preference to the specific provisions of Contractor's Response, except that objections or amendments by Contractor that have not been explicitly accepted by the Agency in writing shall not be included in this Contract and shall be given no weight or consideration.

(iv) Fourth, by giving preference to the other documents incorporated into the Contract.

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 Master Agreement, and the Contractor's Response and other documents, exhibits, and attachments incorporated into the Contract. The failure of the parties to make reference to the terms of the Master Agreement or the Contractor's Response shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the Participating Addendum, Master Agreement, and Contractor's Response. The contractual obligations of Agency and Purchasing Entity cannot be implied from 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. 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, Agency, and Purchasing Entity policies and standards in effect during the performance of the Contract, including but not limited to the Agency and Purchasing 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 Contract. If the value of this Contract is $100,000 or more and Contractor is a company that employs more than five persons, 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. Contractor agrees to provide Purchasing 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. Contractor agrees to provide Purchasing Entity (the contact listed on the PO) with written notification if Contractor 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 purchasing 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 Contractor 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, Contractor hereby certifies as follows:

a. Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this Contract; and

b. If Contractor has more than one employee, including Contractor, Contractor shall provide for such employee(s) a drug-free workplace, in accordance with the Georgia Drug-free Workplace Act as provided in O.C.G.A. §50-24-1 et seq., throughout the duration of this Contract; and

c. 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 O.C.G.A § 50-24-3."

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

d. Contractor has made false certification hereinabove; or

e. Contractor 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. Contractor 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 Contractor's failure to comply with such requirements. Purchasing Entities may include additional terms and conditions with their Purchase Instruments that incorporate language required by federal contracts, grants, or other awards.

6. **Equal Opportunity Affirmative Action.** Where applicable, Contractor will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Contractor will comply with 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: "This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status."

7. **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, contractors, 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 contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors 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 Contractors who are regularly on State premises or who regularly interact with State personnel must complete sexual harassment prevention training on an annual basis.

If Contractor, including its employees and subcontractors, violates the Policy, including but not limited to engaging in sexual harassment and/or retaliation, Contractor 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 Contractor is an individual who is regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:

a. Contractor has received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy located at Statewide Sexual Harassment Prevention Policy | Georgia Department of Administrative Services (ga.gov);

b. Contractor 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, Contractor will provide documentation substantiating the completion of sexual harassment training.

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

a. Contractor 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 Statewide Sexual Harassment Prevention Policy | Georgia Department of Administrative Services (ga.gov);

b. Contractor 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 Contractor 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, Contractor 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.

8. **State Security.** Contractor 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 Purchasing Entity's premises, computers, hardware, software, programs, and/or information technology infrastructure or operations. Purchasing Entity reserves the right to require additional background checks to be made on any of Contractor's Workers. Contractor shall review the results of the background investigation. If such background investigation reveals or at any time Contractor 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, Contractor 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 Contractor notifies Purchasing Entity and Purchasing Entity expressly consents to the access, in writing, prior to the access. Contractor shall immediately notify Purchasing Entity of any change in a Worker's criminal history. Purchasing Entity may, in its sole discretion, terminate a Worker's access to Purchasing Entity's facilities, computers, hardware, software, programs, and/or information technology infrastructure or operations. Contractor shall participate fully in the defense of, indemnify, and hold harmless Purchasing Entity for its failure to obtain appropriate background investigations and for the actions of its Workers.

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

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

11. **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 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 Contract or any informal negotiations which may occur between the State and 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 Contractor may elect to submit the matter for mediation. Either the State or 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.

    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 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 Contractor shall be considered an assignment.

14. **Use of Third Parties.** Except as may be expressly agreed to in writing by Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this 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 Contractor under the 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 Contract for good cause.

15. **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.

16. **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.

17. **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 goods and services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or Contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. 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.

18. **RESERVED.**

19. **Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between Agency and Contractor for the goods and services provided in connection with the 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 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 Contract on behalf of the party at the address identified in the Participating Addendum. 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 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 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 Agency and 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.

24. 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 goods and services to the State are responsive to the State's requirements and requests in all respects.

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

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

(ii) They have 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.

26. 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.

27. **Record Retention and Access.** Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the 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. Contractor should maintain separate accounts and records for Agency and Purchasing Entities. Records to be maintained include both financial records and service records. 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 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. 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 Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

28. **Solicitation.** 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.

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.** Contractor certifies that Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the Agency if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

31. **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.

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

33. **Certification Regarding Sales and Use Tax.** By executing the Contract 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. §48-8-2. Contractor also acknowledges that the State may declare the Contract void if the above certification is false. Contractor also understands that fraudulent certification may result in Agency or Purchasing 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 Purchasing Entity shall have the option of terminating a Purchase Instrument upon written notice to Contractor.

35. **Limitation of Contractor’s Liability to the State.** Liability limitations established in the Master Agreement are ratified herein and made applicable to any party utilizing this Participating Addendum.

36. **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 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. All provisions which by their nature should survive termination or expiration of this contract shall do so.

37. **Counterparts.** The Agency 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. 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 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.

39. **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.

    Further, in the event that the State has entered into or enters into agreements with other Contractor s 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.

40. **Business Review Meetings.** The Contractor must be prepared to participate in business review (**BR**) meetings at DOAS' request. During the BR meetings, the contractor will present a written and oral status to DOAS regarding all work orders/purchase orders (including date and value). The BR meeting will also focus on the status of service level agreements and key performance indicators agreed to by contractor and DOAS. The BR meeting may involve, but not be limited to, the following: review of the contractor's performance and submitted reports, identification of areas of improvement to be addressed, review of the previous quarter's sales statistics, development/monitoring of a contractor service "scorecard."

41. **Team Georgia Marketplace™ Virtual Catalog.** DOAS utilizes electronic catalog hosting and management services to enable state customers to access a central online website to view and/or shop the goods and services available from existing statewide contracts. The central online website is referred to as Team Georgia Marketplace™ and the catalog site is referred to as the Virtual Catalog.

(i) Contractor's Interface with the Virtual Catalog

To be eligible for contract award, the contractor must agree to cooperate with DOAS and its contractor, Jaggaer (formerly known as SciQuest), and any purchasing entity or successor entity to Jaggaer, <u>in the event DOAS selects this contract to be exhibited on the Virtual Catalog</u>. At a minimum, the contractor agrees to the following:

1. Contractor agrees, upon DOAS' written request, to deliver within thirty (30) days of such request either (1) a hosted catalog or (2) punch-out catalog or a combination of both. Contractor will cooperate with DOAS and Jaggaer to create a schedule to enable the integration of the contrator's contract offering into the Virtual Catalog within a reasonable time period as determined by DOAS.

2. If requested by DOAS, contractor will join the Jaggaer Supplier Network (JSN) and will have the option of using Jaggaer's Supplier Portal to extract the contractor's catalog and pricing, upload products, pricing and images into the Jaggaer system, and view reports on catalog spend and product/pricing freshness. The contractor can receive orders through electronic delivery or through low-tech options such as email and fax. More information about the JSN can be found at: www.jaggaer.com or call the Jaggaer Supplier Network Services team at 919-659-2152 or 800-233-1121.

3. Contractor will support use of the latest version of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC are owned by the United Nations Development Programme (UNDP) and are managed by GS1 US. Updates to the UNSPSC are conducted at a minimum of once a year. The State of Georgia reserves the right to migrate to future versions of the UNSPSC and the contractor will be required to support the migration effort. All line items, goods or services provided under the resulting contract must be associated to an appropriate UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity. More information about the UNSPSC is available at: http://www.unspsc.org and http://www.unspsc.org/faqs#How .

(ii) Virtual Catalog Structure

DOAS will decide which of the catalog structures (either Hosted, Punch Out, or both as further described below) will be provided by the contractor. **Regardless the type of catalog(s) selected, items displayed within the catalog must be strictly limited to the contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting statewide contract are not to be viewable by Purchasing Entities).**

1. Hosted Catalog. By providing a Hosted Catalog, the contrator is providing a list of its products/services, pricing, and images in an electronic data file in a format accepted by Jaggaer's System Integration, such as Tab Delimited Text files. In this scenario, the contractor must submit updated electronic data from time to time to DOAS to maintain the most up-to-date version of its product/service offering under the contract in the Virtual Catalog.

2. Punch-Out Catalog. By providing a Punch Out Catalog, the Contrator is providing its own online catalog, which must be capable of being integrated with the Virtual Catalog as follows: Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the contractor ensures its online catalog marketplace is up-to-date by periodically updating the offered products/services and pricing listed on its online catalog. Updates and changes made to the contractor's Online Catalog, as it relates to pricing and adding of items, must be approved by DOAS prior to enabling. If awarded multiple contracts, contractor agrees to maintain a single Punch Out site and be able to provide the appropriate contract ID on each item returned to Jaggaer. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality that is retrievable for purchase through the Integration to facilitate volume discounts. Contractor will need to be able to facilitate the delivery of Level II Punch Out within this Integration.

(iii) Additional Catalog Requirements

1. Minimum Requirements. Whether the contractor is providing a Hosted Catalog or a Punch Out Catalog, the Contractor agrees to meet the following requirements:
    a. Catalog must contain the most current pricing* and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the contract; and
    b. The accuracy of the catalog must be maintained by Contractor throughout the duration of the contract between the Contractor and DOAS; and
    c. The Catalog must include a State-specific contract identification number; and
    d. The catalog must include detailed product line item descriptions; and
    e. The catalog must include pictures or diagrams when possible;** and
    f. The catalog must include DOAS accepted Unit of Measure; and
    g. The catalog must include any additional DOAS content requirements.***

2. Revising Pricing and Product Offerings. Pricing and product offering changes shall be implemented under the procedures established under the Master Agreement and made applicable hereto.

3. Ordering. Contractor must be able to accept Purchase Orders via fax, email, cXML or EDIINT.
    a. For Punch Out catalogs, the contractor must accept Catalog generated orders via cXML or EDIINT. For orders consisting of items that are considered, non-catalog items, orders must be able to be received as stated above.
    b. For Purchase Orders received via email, the contractor must provide a dedicated email address (i.e. orders@company.com) that is monitored during normal business hours.
    c. The contractor is required to provide positive confirmation via phone or email within 24 hours of the contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the contractor must provide positive confirmation via phone or email on the next business day.

4. Contractor agrees that DOAS controls which contracts appear on the Virtual Catalog and that DOAS may elect at any time to remove any supplier's offering from the Virtual Catalog.

* Current pricing is to be inclusive of all administrative fees, delivery costs, production costs, third party pass through charges, or any markups or adjustments.

**Details regarding the submission of image files and catalog content will be discussed during the enablement process; however, the following represents key information regarding the submission of product image files:

- Provide URL links to the product images (preferred method) or actual image files (in gif, jpeg and other commonly used formats) for all of the items in the contractor's catalog that will be hosted by the Virtual Catalog. These images are displayed to the customer directly in search results as well as in the product details window.
- Provide the actual image files in a 'zip archive'. Please go to www.winzip.com to download the WinZip® application that is needed to create such an archive as well as additional details about using WinZip® application.
- Provide only one image per product.
- Color pictures are preferred; however, black and white pictures or drawings are acceptable if this is the current standard for the contractor's business marketing.
- Please note the Virtual Catalog prefers jpg format for image files (280X280 pixels) although images in many other formats are accepted.
    - When an image is in jpg format, it is resized to 280X280 pixels, if necessary, to maintain a consistent appearance for the Virtual Catalog.
    - When an image is in a format other than jpg, it will be converted to jpg and resized to 280X280 pixels to maintain a consistent appearance for the Virtual Catalog.
- As products change, updated image files must be submitted to update the Virtual Catalog.
- Provide a corporate logo image in the following sizes. Logo will be used for display on the Contractor/Contract profile.
    - 30 pixels (H) x 70 pixels (W)
    - 50 pixels (H) x 115 pixels (W)
    - 300 pixels (H) x 200 pixels (W)

In rare instances where an image is not available, Jaggaer and DOAS will work with the contractor to determine the best solution for advertising the contractor's offering.

*** Existing contractors in the JSN normally host one (1) general product catalog that is made available for all customers. This avoids duplication of effort for the contractor and brings improvements to the catalog to all customers at once. It is rare that individual customers have needs that are not also required by others. Jaggaer does not prohibit 'private' catalogs, but recommends review of requirements with the contractor enablement consultants and the contractors in question first. Although contractors in the JSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different Georgia agencies. For example, a contractor may have different pricing for state government agencies and Board of Regents institutions. Contractors have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the person viewing the catalog.

In the event DOAS selects this contract to be included on the Virtual Catalog, Jaggaer's technical documentation will be provided to the contractor after (1) the contractor has been formally invited by DOAS to join the Virtual Catalog and (2) the contractor has joined the Jaggaer Supplier Network and signed up for Jaggaer's Supplier Portal. These services will be provided by Jaggaer at no additional cost to the contractor. Contractor agrees that contractor's contract pricing includes any and all costs to the contractor in complying with these provisions.

The Board of Regents of the University System of Georgia and select colleges currently maintain separate instances of certain contracts through Jaggaer. In the event Board of Regents or one or more colleges elects to publish the resulting contract in the board/college's Jaggaer catalog, the awarded contractor agrees to work in good faith with the board/college to implement the catalog. DOAS does not anticipate that this will require additional efforts by the contractor; however, the contractor agrees to take commercially reasonable efforts to enable such separate Jaggaer catalogs or related integrations (i.e., electronic order submission, e-invoicing, etc.).

42. **State of Georgia Virtual Payables and Purchasing Card Program.** The state of Georgia provides for the use of several payment methods including Virtual Payables, Purchasing Card (P-Card), and Automated Clearing House (ACH) transfers. DOAS will determine the most advantageous method(s) of contractor's payment for the awarded contract. Contractors need to be prepared to accommodate all forms of payments.

    DOAS administers a program which provides a purchasing card (hereinafter, "State of Georgia P-Card") to be used by authorized government employees of certain governmental entities electing to participate in the program to purchase necessary supplies. DOAS has entered into a Contract with its P-Card provider, Bank of America, to also provide the Virtual Payables solution which will allow DOAS and Participating Entities to facilitate electronic payment by DOAS and Participating Entity to the contractor. The contractor agrees to accept payment via P-Card, Virtual Payables and any other method identified by DOAS and shall impose no fee on either DOAS or any Purchasing Entity for the use of Virtual Payables pursuant to this Contract.

    All purchases made by Participating Entities' representatives shall be exempt from State of Georgia sales tax. It is the responsibility of the Participating Entity representative to provide the Participating Entity's tax identification number as needed at the point of sale.

If selected for award, the contractor shall keep the State of Georgia P-Card and Virtual Payables numbers confidential and shall not disclose the State of Georgia P-Card or Virtual Payables numbers except as expressly authorized by DOAS. The Contractor represents that State of Georgia P-Card and Virtual Payables numbers will be processed, transmitted and stored in compliance with the Payment Card Industry Data Security Standard. Contractor shall provide immediate written notice to the current DOAS contract administrator in the event of (1) any unauthorized disclosure of State of Georgia P-Card or Virtual Payables Numbers or (2) contractor failure to maintain compliance with the Payment Card Industry Data Security Standard in the contractor’s contract performance. Contractor agrees to cooperate with DOAS, Participating Entity, and DOAS contractual partner(s) for P-Card and Virtual Payables in resolving any issues or disputes concerning the use of such payment methods pursuant to this contract.

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, Contractor 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 Contractor and its employees, subcontractors, or other agents to the extent necessary for such persons to access Sensitive State Data to enable Contractor 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, Contractor's hardware or exists in any system owned, maintained or otherwise controlled by the State or Contractor.

6. **"Security Incident"** means the 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 Contractor 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. Contractor 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 Contractor to provide the goods and services covered by this Agreement or 4) at the State's request. Contractor 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 Contractor 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, Contractor shall safeguard the confidentiality, integrity, and availability of Sensitive State Data and comply with the following conditions:

1. Contractor 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. Contractor 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 Contractor and in transit across public networks with controlled access. Unless otherwise provided in the Agreement, Contractor is responsible for encryption of the Sensitive State Data.

4. Unless otherwise provided in the Agreement Contractor 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. Contractor 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 contractor, copy, or retain Sensitive State Data except as provided for in the Participating Addendum and Master Agreement. Contractor 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. Contractor shall promote and maintain an awareness of the importance of securing Sensitive State Data among Contractor’s employees and agents.

C. Data Location. In providing goods and services to the State, contractor shall access, store, and process Sensitive State Data solely from location(s) or data centers in the U.S. and Contractor 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 Contractor shall notify State of such locations. Contractor 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. Contractor 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

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

A. Incident Response. Contractor 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 Contractor’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, Contractor 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, Contractor 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. Contractor 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. Contractor 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 Contractor 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, Contractor 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 Contractor, 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 Contractor 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, Contractor 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 Contractor.

V. SECURITY

A. Data Center Audit. If applicable in the provision of the goods and services covered by this Agreement, Contractor 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. Contractor 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 Contractor.

C. Encryption of Data at Rest. For data categorized as moderate or high in Federal Information Processing Standard 199, Contractor 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, Contractor shall:

1. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor 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 Contractor, the State shall promptly provide a copy to Contractor. Contractor 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, Contractor 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, Contractor shall securely destroy Sensitive State Data in its possession or control. Contractor 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. Contractor may retain a copy of Sensitive State Data if necessary to comply with law or its applicable professional standards.

VIII. COMPLIANCE

A. Contractor shall comply with all applicable laws and industry standards in providing goods and services under this agreement. Any Contractor 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 Contractor upon request.

B. Contractor 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, Contractor shall, upon written request, furnish proof of compliance with PCI-DSS within 10 business days of the Request.