STATE OF NEVADA COOPERATIVE CONTRACT

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| Nevada Contract Number: | **99SWC-NV-17722** |
| Master Agreement Number: | **AR2475** |
| Solicitation Number: | **CH161612 / 99SWC-S108** |
| Title: | **Cloud Solutions (NASPO ValuePoint – Utah)** |

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| Government Entity: | **State of Nevada, Department of Administration, Purchasing Division** | | |
| Address: | **515 E Musser St, Ste 300** | | |
| City, State, Zip Code: | **Carson City, NV 89701** | | |
| Contact: | **Ryan Vradenburg – Purchasing Officer III** | | |
| Phone: | **775-684-0197** | Email: | **rvradenburg@admin.nv.gov** |

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| Contractor: | **CGI Technologies and Solutions Inc. (“CGI”)** | | |
| Address: | **400 Capitol Mall, Suite 1500** | | |
| Contact: | **Greg Hussey** | | |
| Phone: | **916-300-6403** | Email: | **Greg.Hussey@cgi.com** |

1. **SCOPE.** The purpose of this contract is to provide Cloud Solutions for public entities authorized by Nevada statue to utilize State contracts with the prior approval of the Administrator for the Department of Administration, Purchasing Division. This State of Nevada cooperative contract serves as the Purchasing Addendum under the NASPO Valuepoint Master Agreement.

2. **TERM.** This contract shall become effective as of the date of the last signature below and shall terminate upon the expiration or termination of the Master Agreement, as amended, unless this contract is terminated sooner in accordance with the terms set forth herein.

3. **ATTACHMENTS**

3.1. The following documents are incorporated into and form a part of this contract in descending order of constructive precedence.

A. STATE OF NEVADA - STATEWIDE CONTRACT TERMS (Revised October 2022)
B. STATE OF NEVADA - CONTRACT FOR SERVICES (Revised October 2022)

3.2. The following documents are incorporated by reference but not attached.

A. The Master Agreement listed above
B. All other governmental laws, regulations, or actions applicable to the Contractor in the provision of the goods and/or services authorized by this contract.

4. **AUTHORITY.** Each person signing represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery and the performance of each party's obligations hereunder have been duly authorized, and this is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 2 above.

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| Government Entity: **State of Nevada** | Contractor: **CGI Technologies and Solutions Inc.** |
| Signature: | Signature: Greg Hussey |
| Name: **Gideon K. Davis** | Name: Greg Hussey |
| Title: **Administrator** | Title: Senior Vice President |
| Date: 08/16/2023 | Date: 8/16/2023 |

**1.** **PARTICIPATION.** The benefits of this contract shall be extended to the governmental entities in Nevada listed below. The State is not liable for the obligations of any non-executive branch government entity which joins or uses this or any contract resulting from this contract.

1.1. STATE EXECUTIVE BRANCH AGENCIES. All state "Using Agencies", as defined by NRS 333.020(10), are authorized users of the contract in accordance with NRS 333.150.

1.2. LEGISLATIVE, AND JUDICIAL DEPARTMENTS AND CIVIL AIR PATROL. Any agency, bureau, commission or officer of the Legislative Department or the Judicial Department of the Nevada State Government or the Nevada Wing of the Civil Air Patrol or any squadron thereof are authorized users of this contract in accordance with NRS 333.469.

1.3. NEVADA SYSTEM OF HIGHER EDUCATION, LOCAL GOVERNMENTS AND DISTRICTS. The Nevada System of Higher Education, local governments as defined in NRS 354.474, conservation districts and irrigation districts in the State of Nevada are authorized users of this contract in accordance with NRS 333.470.

**2.** **ADMINISTRATIVE FEE**

2.1. Contractor shall pay a quarterly administrative fee payable to "State of Nevada Purchasing Division." Administrative fee is one percent (1%) and applies to all sales and other revenue, less merchant and interchange fees and adjusted for credits or refunds, by Contractor and any resellers, distributors, partners, or agents under the contract during a quarter, beginning the date of execution of this contract.

2.2. All administrative fee payments shall include the contract number on required documents. If submitting an administrative fee payment for more than one contract, a separate payment and associated documents shall be submitted by Contractor for each contract.

2.3. The State will not issue an invoice for administrative fee owed to the State. Contractor is responsible for payment of administrative fee with no prompting from the State. Contractor shall pay quarterly administrative fee within forty-five (45) calendar days of quarter end in accordance with *Fee Payment and Report Schedule.*

2.4. STATEWIDE CONTRACT QUARTERLY ADMINISTRATIVE FEE REPORT

2.4.1 Contractor shall complete and submit a Statewide Contract Quarterly Administrative Fee Report. The report shall identify payments received by Contractor from authorized entities made pursuant to the contract in the reporting period.

2.4.2 The template for required Statewide Contract Quarterly Administrative Fee Report is available on the Purchasing Division website http://purchasing.nv.gov/vendors/DBINV/. Reports must be submitted via email to NVQtlyReport@admin.nv.gov in accordance with *Fee Payment and Report Schedule.*

2.5. STATEWIDE CONTRACT QUARTERLY USAGE REPORT

2.5.1 Contractor shall complete and submit a Statewide Contract Quarterly Usage Report, to include at a minimum itemized data elements listed below.

2.5.2 The template for required Statewide Contract Quarterly Usage Report is available via a link on the Statewide Contract Quarterly Administrative Fee Report which is available on the Purchasing Division website http://purchasing.nv.gov/vendors/DBINV/. Reports must be submitted via email to NVQtlyReport@admin.nv.gov in accordance with *Fee Payment and Report Schedule.*

2.5.3 Data Elements

A. Customer Name. Name of entity making the purchase—if customer has multiple locations, please use primary entity name.
B. Customer Type. Indicate type of entity making the purchase.

1. S=State Executive Branch Agency
2. E=University and Community College
3. P=Political Subdivision
4. O=Other Entity

C. Authorization Number. Purchase Order Number provided by customer to authorize a purchase. If purchase was made with a credit card enter "P-Card."
D. Purchase Description. Description of the product(s) or service(s) purchased.
E. Quantity. Quantities (excluding returns) of product(s) delivered—enter a quantity of one (1) for service(s).
F. Unit Price. Unit price charged (excluding credits) for product or service purchased.
G. Total Cost. Extended cost of purchase line—quantity delivered x unit price charged.

2.6. FEE PAYMENT AND REPORT SCHEDULE. Contractor shall pay administrative fee quarterly, if owed, and submit a Statewide Contract Quarterly Administrative Fee Report and Statewide Contract Quarterly Usage Report, even if no payments are made in a quarter, in accordance with the following schedule.

| **Period End** | **Report Due** |
|---|---|
| September 30 | November 14 |
| December 31 | February 14 |
| March 31 | May 15 |
| June 30 | August 14 |

2.7. REPORT MODIFICATIONS. The State reserves the right to modify requested format and contents of reports by providing thirty (30) calendar days written notice to Contractor. The State may unilaterally amend the contract, with (30) calendar days written notice to Contractor, to change timing for submission of reports. Contractor understands and agrees that if such an amendment is issued by the State, Contractor shall comply with all contract terms, as amended.

2.8. TIMELY REPORTS AND FEES. If administrative fee is not paid and quarterly reports are not received within forty-five (45) calendar days of quarter end, then Contractor will be in material breach of this contract.

**3.** **ORDER OF PRECEDENCE.** This contract shall be the primary document for all Orders. An Order, Quote, Service, Agreement, or Purchase Order can dictate an order of precedence, but cannot supersede this contract.

**4.** **ORDERS.** Any Order placed by a governmental entity for a Product and/or Service available from this contract shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the contract unless the parties to the Order agree in writing that another contract or agreement applies to such Order. The cooperative contract number and/or state contract number must appear on every Quote/Purchase Order placed under this contract.

**5.** **REQUISITIONS.** Orders for Nevada State executive branch agencies as defined in *Participation* will be processed by and through the Nevada Purchasing Division and a purchase order issued. Invoices and all correspondence related to an individual order will reflect the shipping address, billing address, and number on the purchase order issued by the State. Other entities as defined in *Participation* can purchase directly and be billed by vendor. Orders placed and paid via credit card do not require a PO.

**6.** **SERVICES.** All professional services, excluding warranty and break/fix support, requested by Nevada State executive branch agencies as defined in *Participation* will require the execution of a Service Agreement per NRS 333, NAC 333 and SAM 0300. Other entities as defined in *Participation* can purchase professional services directly and be billed by vendor. Pursuant to NRS 333.480(2), Services requiring a contractor's license issued pursuant to chapter 624 of NRS are not authorized under this agreement.

**7.** **SUBCONTRACTORS.** All contractors, dealers, resellers, distributors, and partners as shown on the dedicated Contractor cooperative contract website are approved to provide sales and service support to participants of this agreement. Contractor's dealer participation will be in accordance with the terms and conditions set forth in the contract.

**8.** **BUSINESS LICENSE.** Pursuant to NRS 353.007 any contractor, dealer, reseller, distributor, partner, or person performing work under this agreement must hold a State business license pursuant to chapter 76 of NRS unless exempted pursuant to NRS 76.100(7)(b).

**9.** **NEVADA LAW AND STATE INDEMNITY.** Pursuant to NRS 333.339 any contract that is entered into may not: (1) Require the filing of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state or nation; or (2) Require the State to indemnify another party against liability for damages.

**10.** **GOVERNING LAW.** This contract will be governed by the state laws of Nevada, without regard to conflicts of laws rules. Any litigation will be brought exclusively in a federal or state court located in Carson City, Nevada, and the Parties consent to the jurisdiction of the federal and state courts located therein, submit to the jurisdiction thereof and waive the right to change venue. The Parties further consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

**11.** **FEDERAL LAWS AND AUTHORITIES**

11.1. CERTIFICATION. Any person who requests or receives a Federal contract, grant, loan, or cooperative agreement shall file with the using agency a certification that the person making the declaration has not made, and shall not make, any payment prohibited by subsection (a) of 31 U.S.C. 1352.

11.2. COMPLIANCE. Federal laws and authorities with which the awarded vendor shall be required to comply, as applicable, are listed here but are not meant to be exhaustive. Awarded vendors are responsible for an awareness of, and compliance with, State and federal laws and regulations.

11.2.1 Archeological and Historic Preservation Act of 1974, PL 93-291
11.2.2 Clean Air Act, 42 U.S.C. 7506(c)
11.2.3 Endangered Species Act 16 U.S.C. 1531, ET seq.
11.2.4 Executive Order 11593, Protection and Enhancement of the Cultural Environment
11.2.5 Executive Order 11988, Floodplain Management
11.2.6 Executive Order 11990, Protection of Wetlands
11.2.7 Farmland Protection Policy Act, 7 U.S.C. 4201 ET seq.
11.2.8 Fish and Wildlife Coordination Act, PL 85-624, as amended.
11.2.9 National Historic Preservation Act of 1966, PL 89-665, as amended.
11.2.10 Safe Drinking Water Act, Section 1424(e), PL 92-523, as amended.
11.2.11 Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended.
11.2.12 Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants or Loans
11.2.13 Age Discrimination Act, PL 94-135
11.2.14 Civil Rights Act of 1964, PL 88-352
11.2.15 Section 13 of PL 92-500, Prohibition against sex discrimination under the Federal Water Pollution Control Act
11.2.16 Executive Order 11246, Equal Employment Opportunity
11.2.17 Executive Orders 11625 and 12138, Women's and Minority Business Enterprise
11.2.18 Rehabilitation Act of 1973, PL 93, 112
11.2.19 Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646
11.2.20 Executive Order 12549 – Debarment and Suspension
11.2.21 Davis-Bacon Act 40 U.S.C. 3141-3148
11.2.22 Contract Work Hours and Safety Standards Act 40 U.S.C. 3701-3708
11.2.23 Rights to Inventions Made Under a Contract or Agreement 37 CFR §401.2(a)
11.2.24 Byrd Anti-Lobbying Amendment 31 U.S.C. 1352
11.2.25 Americans With Disabilities Act of 1990, PL 101-336
11.2.26 Health Insurance Portability and Accountability Act of 1996, PL 104-191
11.2.27 Equal Pay Act of 1963, PL 88-38
11.2.28 Genetic Information Nondiscrimination Act, PL 110-233

**1.** DEFINITIONS [Edited]

1.1. "State" – means the State of Nevada and any State agency identified herein, its officers, employees and immune contractors as defined in NRS 41.0307.
1.2. "Contracting Agency" – means the State agency identified on the contract.
1.3. "Contractor" – means the person or entity identified on the contract that performs services and/or provides goods for the State under the terms and conditions set forth in this Contract.
1.4. "Fiscal Year" – means the period beginning July 1st and ending June 30th of the following year.
1.5. "Contract" – Defined in the Service Agreement document. Note: additional defined terms used herein are defined in the NASPO Master Agreement and its Exhibits.

**2.** **NOTICE**. All communications, including notices, required or permitted to be given under this Contract shall be in writing and directed to the parties at the addresses stated on the contract. Notices may be given: (i) by delivery in person; (ii) by a nationally recognized next day courier service, return receipt requested; or (iii) by certified mail, return receipt requested. If specifically requested by the party to be notified, valid notice may be given by facsimile transmission or electronic mail to the address(es) such party has specified in writing.

**3.** **ASSENT**. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

**4.** **BILLING SUBMISSION: TIMELINESS**. The parties agree that timeliness of billing is of the essence to the Contract and recognize that the State is on a Fiscal Year. All billings for dates of service prior to July 1 must be submitted to the state no later than the first Friday in August of the same calendar year. A billing submitted after the first Friday in August, which forces the State to process the billing as a stale claim pursuant to NRS 353.097, will subject Contractor to an administrative fee not to exceed one hundred dollars ($100.00). The parties hereby agree this is a reasonable estimate of the additional costs to the state of processing the billing as a stale claim and that this amount will be deducted from the stale claim payment due to Contractor.

**5.** INSPECTION & AUDIT [Edited]

5.1. BOOKS AND RECORDS. [Edited] Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS), full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes.

5.2. INSPECTION AND AUDIT.[Edited] Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to invoicing for the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the State Auditor, the relevant State agency or its contracted examiners, the department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the state Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this Section. The State will comply with the following restrictions when exercising its rights in this Section 5.2. i) State will provide fifteen (15) Business Days advance written notice of its intent to conduct an on-site audit of Contractor facilities; ii) State will provide five (5) Business Days advance written notice of its intent to conduct an audit of Contractor records; iii) State will conduct any audit during regular Business Hours on Business Days; iv) Any third party designated by the State to conduct an audit will be so designated in writing and provided to Contractor; and such third party will not be a competitor of Contractor in the enterprise resources management or managed services/cloud industries unless permitted by Contractor in writing; v). Any third party designated by the State will be subject to binding confidentiality obligations as required by Contractor; vi) Any State or third-party auditor will, while on Contractor premises, be accompanied by Contractor personnel and must comply with all Contractor security protocols and will not access shared facilities, rooms, documentation, data, unless expressly permitted in writing by Contractor; vii). Contractor may limit the State's or third-party auditor's access to documentation to either view - or read-only access in accordance with Contractor's internal security and confidentiality policies

5.3. PERIOD OF RETENTION. All books, records, reports, and statements relevant to this Contract must be retained a minimum three (3) years, and for five (5) years if any federal funds are used pursuant to the Contract. The retention period runs from the date of payment for the relevant goods or services by the state, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

**6.** CONTRACT TERMINATION [Edited]

6.1. TERMINATION WITHOUT CAUSE [Edited]. Regardless of any terms to the contrary, this Contract may be terminated upon written notice by mutual consent of both parties. The State unilaterally may terminate this contract without cause by giving not less than ninety (90) days' notice in the manner specified in Notice. Notwithstanding the preceding sentence, the State may only terminate Cloud Services for convenience with ninety (90) calendar days written notice to Contractor provided the State has paid in full the Cloud Services Fees for the then current annual Cloud Services Period; otherwise, the State may only elect to not continue Cloud Services with no less than ninety (90) calendar days written notice prior to the expiration of the then Cloud Services Period. If this Contract is unilaterally terminated by the State, Contractor shall use commercially reasonable efforts to minimize cost to the State and Contractor will not be paid for any cost that Contractor could have avoided.

6.2. STATE TERMINATION FOR NON-APPROPRIATION. The continuation of this Contract beyond the current biennium is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Contractor waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

6.3. TERMINATION WITH CAUSE FOR BREACH [Edited]. A breach may be declared with or without termination. If a party believes that the other party has committed a breach, then that party may provide written notice in accordance with the notice procedures herein, describing the alleged breach in reasonable detail and containing a reference to this Section 6.3. A breach shall be subject to the Time to Correct, if applicable, allowed under Time to Correct. This Contract may be terminated after the Time to Correct in accordance with the procedures identified herein by either party upon written notice of breach to the other party on the following grounds:

6.3.1. If Contractor materially fails to perform a fundamental obligation specified in and according to the terms of, this Contract; or

6.3.2. If any state, county, city, or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or

6.3.3. If the State breaches the Solution access restrictions specified in the Master Agreement or its nondisclosure obligations under the Master Agreement, Contractor will have the right, without affecting any other rights and remedies Contractor may have, to terminate the Contract immediately upon written notice to the State; or

6.3.4. If the State fails to make payment in accordance with the terms of the Contract, or materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or

6.3.5. If it is found by the State that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or

6.3.6. If it is found by the State that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

6.4. TIME TO CORRECT [Edited]. Termination upon declared breach may be exercised only after service of formal written notice as specified in Notice, and the subsequent failure of the breaching party within thirty (30) calendar days of receipt of that notice to provide evidence, reasonably satisfactory to the aggrieved party, showing that the declared breach has been corrected or, with respect to those defaults that cannot reasonably be cured within thirty (30) calendar days, development of a plan to cure the breach and diligently proceed according to the plan to cure. Prior to termination of an Order and associated Statement of Work for cause, the party receiving the initial Notice will be afforded an opportunity to discuss with a senior management representative of the non-breaching party to explain its position.

6.5. WINDING UP AFFAIRS UPON TERMINATION [Edited]. In the event of termination of this Contract for any reason, the parties agree that the provisions of Section 7.4 and 7.5 of Attachment E to the Master Agreement as amended shall apply and shall survive termination.

**7.** **REMEDIES [Edited]**. Except as otherwise provided for by law, the Master Agreement as amended, or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars ($150.00) per hour. The State may set off consideration against any unpaid obligation of Contractor to any State agency in accordance with NRS 353C.190. In the event that Contractor voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Contractor to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

**8.** **LIMITED LIABILITY [Edited]**. The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. In no event will either party be liable to the other, whether liability arises in contract, tort or otherwise, for any consequential, incidental, indirect, special, exemplary, multiple or punitive damages, regardless of whether it has been advised of the possibility of such damages, including but not limited to loss of revenue or profits, failure to realize expected savings, or any damages claimed by a third party.

8.1. The State will be solely responsible for reviewing the accuracy of any processing output provided by Contractor prior to making use of such output, including but not limited to responsibility for output reports, and for conclusions drawn from such use. If any such results are inaccurate due to the fault of Contractor, Contractor's sole obligation will be to reprocess the affected data at no additional charge to the State. If any such results are inaccurate due to the fault of the State, or any actions taken by Contractor at the State's direction, the State will provide corrected data and Contractor will be paid by the State on a time and materials basis to reprocess the corrected data. Contractor will not be responsible or liable in any other manner for any such results (whether foreseen or unforeseen). If the State has not notified Contractor in writing of any claimed errors in such results within ten (10) days after receiving them, such results will be deemed to have been accepted by the State.

8.2. If Content is lost, corrupted, or destroyed while in the possession or control of Contractor due to Contractor's fault or negligence, Contractor will use Commercially Reasonable Efforts to reconstruct such data at Contractor's expense provided any files, data, programs or other information that may be necessary to accomplish such reconstruction, but which are not in Contractor's possession or control are promptly furnished to Contractor by the State upon request. If Contractor is unable to satisfy its obligations under this Section 8.2, Contractor's liability to the State will nevertheless be limited in accordance with the provisions of Section 8.5 below. Except as otherwise required by applicable law, in no event will Contractor be liable for any damages or costs arising out of a Security Incident resulting from other than Contractor's breach of its obligations under this Master Agreement or the applicable Participating Addendum.

8.3. Contractor's aggregate liability for any and all claims, losses or liability arising out of, or connected with the Services provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Order for the Services, or parts thereof forming the basis of the State's claim (said amount not to exceed a total of twelve months (12) months charges under the applicable Order) or (ii) one million dollars ($1,000,000), whichever is greater. Damages for any State breach (aggregate liability) for any and all claims under this Contract shall in no case exceed direct damages in: (a) an amount equal to two (2) times the charges specified in the Order for the Services, or parts thereof forming the basis of the Contractor's claim (said amount not to exceed a total of twelve months (12) months charges under the applicable Order) or (ii) one million dollars ($1,000,000), whichever is greater.

8.4. Each party acknowledges and agrees that the limitations of liability set forth in this Section 9 are reasonable, that the pricing set forth in the Participating Addendum reflects this allocation of risk, and that the parties would not have entered into the Participating Addendum in the absence of such limitations of liability. The limitations of liability set forth in this Section 8 will survive notwithstanding the failure of any exclusive remedy under the Master Agreement or the Participating Addendum.

8.5. Contractor's tort liability shall not be limited for i) third party claims of death, personal injury, or damage to real or tangible property caused by Contractor's negligence or willful misconduct; or ii) Intellectual Property Claims under Section 13.A(b) of Attachment A to the Master Agreement as amended.
The parties agree that the foregoing limitations will not be read so as to limit any liability to an extent that would not be permitted under applicable law.

The parties agree that this section 8 replaces Section 13.B, Limitation of Liability and Remedies in Section 13.B of Attachment A to the Master Agreement as amended.

**9.** **FORCE MAJEURE [Edited]**. Neither party shall be liable for any delays or failure in performance or deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases. The parties agree that this Section 10 replaces Section 12 of Attachment A to the Master Agreement as amended.

**10.** INDEMNIFICATION AND DEFENSE [Edited]

10.1. Indemnity obligations related to intellectual property under this Contract are set forth in Section 13.A(b) of Attachment A to the Master Agreement as amended.

10.2. Additionally, to the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate at the State's expense, the State from and against all third party claims, actions, damages, losses, and expenses (including, without limitation, reasonable attorneys' fees) due to death, personal injury, or damage to real or tangible property to the extent arising directly or indirectly from the negligent or willful acts or omissions of Contractor, its officers, employees and agents. Contractor's obligation to indemnify the State as set forth in this Section 10 shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Contractor's duty to defend begins when the State requests defense of any claim for which Contractor has indemnification obligations under this Section 10. The parties agree that this Section 10.2 replaces Section 13A.a (Indemnification) of Attachment A to the Master Agreement as amended.

**11.** **REPRESENTATIONS REGARDING INDEPENDENT CONTRACTOR STATUS**. Contractor represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Contract or the work to be performed under this Contract. To the extent the State incurs any employment liability for the work under this Contract; Contractor will reimburse the State for that liability.

**12.** INSURANCE SCHEDULE [Edited]

12.1. Unless expressly waived in writing by the State, Contractor must carry policies of insurance and pay all taxes and fees incident hereunto. Policies shall meet the terms and conditions as specified within this Contract along with the additional limits and provisions as described in a separate Insurance Schedule Attachment, incorporated hereto by attachment. The State shall have no liability except as specifically provided in the Contract.

12.2. Contractor shall not commence work before Contractor has provided the required evidence of insurance to the Contracting Agency. The State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Contract. Any failure of the State to timely approve shall not constitute a waiver of the condition.

12.3. INSURANCE COVERAGE [Edited]

12.3.1. Contractor shall, at Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract insurance conforming to the minimum limits as specified in Insurance Schedule Attachment, incorporated hereto by attachment. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by Contractor and shall continue in force as appropriate until:

A. Final acceptance by the State of the completion of this Contract; or
B. Such time as the insurance is no longer required by the State under the terms of this Contract; whichever occurs later.

12.3.2. Any insurance or self-insurance available to the State shall be in excess of and non-contributing with, any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Contractor shall provide the State with renewal or replacement evidence of insurance within thirty (30) days of expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements.

12.4. GENERAL REQUIREMENTS

12.4.1. Additional Insured. By endorsement to the general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

12.4.2. Waiver of Subrogation. Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of Contractor.

12.4.3. Cross Liability. All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.

12.4.4. Deductibles and Self-Insured Retentions. Insurance maintained by Contractor may contain deductibles or self-insured retention.

12.4.5. Policy Cancellation. Except for ten (10) days' notice for non-payment of premiums, Contractor shall endeavor to provide thirty (30) days prior written notice to the State of Nevada, c/o Contracting Agency, if a policy is canceled, non-renewed or if coverage and/or limits are reduced or materially altered. Notices required by this Section shall be sent by certified mail to the address shown on page one (1) of this contract.

12.4.6. Approved Insurer. Each insurance policy shall be:

A. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
B. Currently rated by A.M. Best as "A-VII" or better.

12.5. EVIDENCE OF INSURANCE. Prior to the start of any work, Contractor must provide the following documents to the contracting State agency:

12.5.1. Certificate of Insurance. The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor. The certificate must name the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The State project/Contract number; description and Contract effective dates shall be noted on the certificate, and upon renewal of the policies listed, Contractor shall furnish the State with replacement certificates as described within *Insurance Coverage*.

A. Mail all required insurance documents to the State Contracting Agency identified on Page one of the Contract.

12.5.2. Additional Insured Endorsement. An Additional Insured Endorsement (CG 20 10 11 85 or CG 20 26 11 85), signed by an authorized insurance company representative, must be submitted to the State to evidence the endorsement of the State as an additional insured per *General Requirements*.

12.5.3. Schedule of Underlying Insurance Policies. If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.

12.5.4. Review and Approval. Documents specified above must be submitted for review and approval by the State prior to the commencement of work by Contractor. Neither approval by the State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its subcontractors, employees or agents to the State or others, and shall be in additional to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required certificate of insurance to assure compliance with these requirements.

**13. COMPLIANCE WITH LEGAL OBLIGATIONS.** Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor shall provide proof of its compliance upon request of the Contracting Agency. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

**14. WAIVER OF BREACH**. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

**15.** **SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**16.** **ASSIGNMENT/DELEGATION.** To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations nor duties under this Contract without the prior written consent of the State.

**17.** **STATE OWNERSHIP OF PROPRIETARY INFORMATION**. Any data or information provided by the State to Contractor and any documents or materials provided by the State to Contractor in the course of this Contract ("State Materials") shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Contractor upon completion, termination, or cancellation of this Contract.

**18.** **PUBLIC RECORDS**. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the State for honoring such a designation. The failure to so label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

**19.** **CONFIDENTIALITY [Edited]**. See section 8 of Attachment A to the Master Agreement as amended as well as Nevada Revised Statutes Chapter 239.

**20.** **FEDERAL FUNDING**. In the event federal funds are used for payment of all or part of this Contract, Contractor agrees to comply with all applicable federal laws, regulations and executive orders, including, without limitation the following:

20.1. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to Executive Orders 12549 and 12689 and Federal Acquisition Regulation subpart 9.4, and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

20.2. Contractor and its subcontracts shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder, including 28 C.F.R. Section 35, inclusive, and any relevant program-specific regulations.

20.3. Contractor and it subcontractors shall comply with the requirements of the Civil Rights Act of 1964 (P.L. 88-352), as amended, the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

**21.** **LOBBYING**. The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

21.1. Any federal, state, county or local agency, legislature, commission, council or board;

21.2. Any federal, state, county or local legislator, commission member, council member, board member, or other elected official; or

21.3. Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board.

**22.** **GENERAL WARRANTY**. **[Edited]** Section 30 of Attachment A and Schedule D to Attachment E to the Master Agreement as amended sets out the warranty provisions under this Contract.

**23.** **PROPER AUTHORITY**. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

**24.** **DISCLOSURES REGARDING CURRENT OR FORMER STATE EMPLOYEES**. For the purpose of State compliance with NRS 333.705, Contractor represents and warrants that if Contractor, or any employee of Contractor who will be performing services under this Contract, is a current employee of the State or was employed by the State within the preceding 24 months, Contractor has disclosed the identity of such persons, and the services that each such person will perform, to the Contracting Agency.

**25.** **ASSIGNMENT OF ANTITRUST CLAIMS**. Contractor irrevocably assigns to the State any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided under this Contract.

**26.** **GOVERNING LAW: JURISDICTION**. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.