



**MASTER SOLUTION PURCHASE AND SERVICES AGREEMENT**

**BY AND BETWEEN**

**DOMINION VOTING SYSTEMS, INC.  
as Contractor,**

**and**

**SECRETARY OF STATE OF THE STATE OF GEORGIA  
as State**

**Dated as of July 29, 2019**

**Contract No. [●]**

## **Master Solution Purchase and Services Agreement**

THIS MASTER SOLUTION PURCHASE AND SERVICES AGREEMENT (this "**Agreement**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 (the "**Effective Date**"), by and between the Secretary of State of the State of Georgia, with its principal executive offices at 2 Martin Luther King Jr. Drive, West Tower, Atlanta, Georgia 30334 ("**State**"), and Dominion Voting Systems, Inc., with an office at 1201 18<sup>th</sup> Street, Suite 210, Denver, Colorado 80202 ("**Contractor**"). All capitalized terms used in this Agreement are defined, or the location of such definitions indexed, in Section 18.

### **1. BACKGROUND AND SCOPE.**

1.1 **Background.** State desires to acquire, and enable other State Entities to acquire, from Contractor certain Services, Software, Equipment and/or any Licensed Programs or any combination of the foregoing (collectively, the "**Solution**") capable of providing a new Statewide Voting System (a "**SVS**") with a verifiable paper record which is sufficient to support all primaries and general elections, as more fully described in State's request for proposal for the Solution (event number 47800-SOS0000037) released March 15, 2019 and all documents attached thereto or links contained therein (as amended, the "**eRFP**"). Based on Contractor's experience, State has selected Contractor to supply such Solution and, if selected by State, to perform (through itself or one or more Contractor Solution Partners) Services to customize, install, implement and/or maintain a Solution, as further described herein.

1.2 **Guaranteed Functionality & Guaranteed Performance.** Before the selection of Contractor, State issued the eRFP whereby Contractor was required to make an initial, written response to such eRFP and to engage in meetings and discussions with State regarding the suitability of the Solution and Services for identified needs of the State Entities as set forth in the eRFP. As part of the eRFP process, State required Contractor to perform certain professional services and demonstrations to validate and confirm that the Solution and Services fulfill the needs of the State as described in the eRFP, including the delivery and implementation of a SVS that can be used by all State Entities throughout the State of Georgia for the 2020 Presidential Preference Primary on March 24, 2020 (the "**Presidential Preference Primary**"). Such requirements, together with Contractor's eRFP Response, Contractor's Request for Supplemental Technical Response dated June 24, 2019, shall be considered the "**Mandatory Requirements**" for purposes of this Agreement, which shall be incorporated in writing into this Agreement. Contractor expressly represents that the Solution will meet all Mandatory Requirements, and, when implemented, will accurately function in accordance with those requirements and this Agreement. State selected Contractor and the Solution and enters into this Agreement based on the features, functions and attributes of the Solution described in (a) the Documentation, (b) the Mandatory Requirements as being capable of enabling State and all other State Entities to accurately and securely administer elections throughout the State of Georgia in accordance with Applicable Laws of the State of Georgia (the "**Guaranteed Functionality**"), and (c) Contractor's guarantee that Contractor will have timely and completely implemented the Solution prior to the date of the Presidential Preference Primary (March 24, 2020), including delivery of all Equipment and training on the use of such Equipment in the registration of voters and administration of an election, such that the SVS is in place and the Solution fully operational and available for use by all State Entities in such Primary and in all subsequent primary and general elections throughout the Term (the "**Guaranteed Performance**").

1.3 **Solution Partners.** Contractor may provide certain of the Services and/or components of the Solution (including certain Third Party Licensed Programs) through one or more Contractor Affiliates, suppliers, resellers, or service providers (each, a "**Contractor Solution Partner**"), provided, each is expressly identified by Contractor to State and State agrees to its inclusion on Exhibit D hereto. As between Contractor and each Contractor Solution Partner on the one hand, and State on the other hand, Contractor shall be the prime contractor to State hereunder and in such capacity shall have full responsibility and liability for the performance of the Solution (including each of its Contractor Solution Partner components) and all Services hereunder (including all Services provided by Contractor Solution Partners). Unless the context otherwise requires, all references to "**Contractor**" throughout this Agreement shall refer to both Contractor and each Contractor Solution Partner. If any Services or any portion or component of the Solution is subject to a warranty claim or otherwise suffers a malfunction or defect and Contractor and a

Contractor Solution Partner dispute the cause of and/or fault for such malfunction or defect, then until such time as Contractor and the Contractor Solution Partner resolve their dispute, Contractor shall, without delay or cost to State continue to provide the Maintenance Services and complete all repairs, replacements or other applicable remedy obligations hereunder as necessary to full remedy the warranty claim.

1.4 Purchasing by State and other State Entities. State may use the Solution and/or Services purchased under this Agreement on its own behalf and for the benefit of all other State Entities, in accordance with the terms and conditions hereof. Contractor acknowledges and agrees that this Agreement is intended to be subject to an intergovernmental agreement between State and the other State Entities, and, therefore, that State or any other State Entity may purchase the Solution and/or any of the Services directly under this Agreement by issuing a valid purchase order and entering into a Solution Order or Services Order, as applicable. Any State Entity directly purchasing a Solution and/or Services under this Agreement (i) shall be solely responsible for payment of the Solution or Services purchased by such State Entity, (ii) shall be entitled to all of the rights and benefits afforded to State under this Agreement, and (iii) may enforce this Agreement in its own name with respect to such Solution and/or Services as if this Agreement, in its entirety, had been executed by Contractor and the applicable State Entity, and (iv) subject to Section 17.6.1, shall only be held responsible by Contractor for the performance of its obligations (including payment obligations) with respect to the specific Solution and/or Services purchased by such State Entity as set forth in the applicable Solution Order or Services Order.

1.5 Non-Exclusive Rights. This Agreement is not exclusive. State and each other State Entity reserve the right to select other contractors to provide the same or other products, licenses and services.

1.6 No Minimums Guaranteed. Except as provided in an executed Solution Order, this Agreement does not guarantee any minimum level of purchases.

## 2. SOLUTION AND DELIVERABLES.

2.1 Solution Order and Delivery. During the Term, and subject to all of the terms and conditions contained herein, Contractor agrees to deliver to State the Solutions ordered pursuant to a Solution Order, as hereinafter described.

2.1.1 Solution Order. For the ordering of a Solution from Contractor, any State Entity and Contractor will, subject to mutual agreement by both parties, execute a written order (each an "Solution Order"). Each Solution Order shall: (a) be substantially in the form of Exhibit B hereto; (b) be consecutively numbered with respect to all prior Solution Orders; and (c) include, where applicable and available at that time, the following information:

(i) the services described in this Agreement, including the Configuration Services, services required to complete Installation Events, Maintenance Services, Training Services and other services provided by Contractor under this Agreement (the "Services"), which are being purchased by the applicable State Entity;

(ii) licenses and/or sublicenses to the application software (the "Application Programs"), and to the custom programming application software (the "Special Programs") required in connection with the Services;

(iii) the software support services to be provided by Contractor for the Application Programs and the Special Programs (collectively, the "Support Services");

(iv) the hardware and equipment Deliverables to be provided by Contractor hereunder, including any computer systems, accessories, supplies, parts, related Documentation, and Revisions thereto to be provided by Contractor required for the operation of the Solution (the "Equipment") and the licenses and/or sublicenses to the operating software for such Equipment granted by Contractor (the "Operating Programs");

- (v) the maintenance services for the Equipment (collectively, the "Maintenance Services");
- (vi) the date by which the Solution must be fully delivered;
- (vii) the particular State Site to which such Solution must be delivered; and
- (viii) the price applicable to the items set forth on such Solution Order.

The terms "Application Programs," "Special Programs," and "Operating Programs" are collectively referred to as the "Software." In the event of a conflict between the terms of this Agreement and the terms of any Solution Order, except with respect to any provision of this Agreement which explicitly states that it may be modified or superseded by an analogous provision in a Solution Order, the terms of this Agreement shall control. The terms and conditions of each Solution Order will apply solely with respect to the Solution purchased under such Solution Order and shall not be deemed to modify this Agreement.

2.1.2 Implied Products and Services. Subject to Section 2.3.2 if any Services, Application Programs, customizations, Operating Programs, Support Services, Maintenance Services which are reasonably required for, and incidental to or inherent in, the proper delivery and use of the Solution or the performance and provision of the Services (regardless of whether they are specifically described in this Agreement), they will be deemed to be implied by and included within the scope of the Solution and Services to be provided by Contractor to the same extent and in the same manner as if specifically described in this Agreement.

2.1.3 Installation Plan. Attached as Attachment 4 to each Solution Order shall be an installation plan, developed by Contractor and approved by State (the "Installation Plan") which describes in detail with respect to such Solution Order: (i) each element of the delivery, installation, and training of State Personnel in the operation and use of, the Solution, each in a manner that meets the Mandatory Requirements (each a "Installation Event"); (ii) the specific dates set by which each of the Installation Events are to be completed (the "Installation Deadlines"); and (iii) the applicable Site Specifications, if any. Installation Plans may be replaced and superseded from time to time upon agreement of the parties in order to reflect mutually agreed changes in the Installation Events or Installation Deadlines by using the change control procedures set forth in Section 5.2. For the avoidance of doubt, State Entities will only be responsible for those fees related to Installation Events that are reflected in the applicable Solution Order.

2.1.4 Delivery. Contractor shall deliver the Solution ordered, including all Equipment and Documentation, to the State Site specified in the Solution Order, by the date(s) specified in the Installation Plan and otherwise in strict compliance with the terms and conditions of this Agreement and Installation Plan. Contractor shall not make any substitutions for the Solution of any other version, model, capacity or manufacturer without the prior written consent of State. Contractor represents and warrants that the Solution shall be new (not remanufactured or refurbished), free of defects, and in good operating condition at all times prior to the expiration of the Warranty Period. Solutions which consist solely of Licensed Programs may also be delivered electronically upon mutual agreement of the parties.

2.1.5 Shipment, Title and Risk of Loss. For each piece of Equipment or other Solution hardware component, Contractor shall pass title and ownership of such Solution component to State upon State's payment in full for such Solution component. Upon State's payment in full for each Solution, Contractor will deliver a bill of sale for each Solution component to State, as applicable. Contractor guarantees that State shall acquire good and clear title to the Equipment and other Solution hardware components being purchased hereunder, free and clear of all liens and encumbrances. Contractor shall arrange for shipment, at Contractor's expense, of Equipment by a mutually acceptable common carrier F.O.B. to the applicable State Site, or other delivery location specified in the Solution Order, at a mutually agreeable time. Risk of loss for such Equipment shall pass to State upon proper delivery at the designated destination. There shall be no additional charge to State for shipping, delivery or insurance beyond the prices set forth in the Solution Order. In the event of damage to any Equipment or hardware during transit or if Contractor or its designee delivers Equipment or hardware that does not pass Acceptance Testing, then Contractor will replace such

Equipment or hardware at Contractor's expense, including covering all shipping costs associated with returning such items to Contractor.

**2.1.6 Inspection.** In accordance with the Installation Plan and the requirements for the Acceptance Testing Plan, all Equipment shall be inspected as follows: (i) following arrival of the initial deliveries at the central warehouse designated by State and (ii) for the same deliveries, when forwarded to the State Site (or any subsequent delivery made directly to the State Site(s)). Prior payments shall not be considered as waiving any right of testing or inspection of the State Entities under this Agreement. Determination by a State Entity that Equipment or component has passed Acceptance Testing is without prejudice to any other rights or remedies that such State Entity may have with respect to any subsequently uncovered non-compliance, defect, or non-conformity. Any State Entity may return any Equipment or component of the Solution to Contractor that it determines not to have passed Initial Testing or Acceptance Testing for replacement, and such returns shall be at Contractor's expense including as relates to transportation charges. Any return made by a State Entity for failure of the Equipment or any component of the Solution to pass the Acceptance Testing shall not be affected by any determination by State that such Equipment or component passed Initial Acceptance Testing. If Contractor fails to repair or arrange shipment and pickup of such rejected Equipment by a mutually acceptable common carrier (F.O.B. the State Site from which such rejected items will be dispatched) and redeliver appropriate replacement Equipment or components sufficient to cure the defect prompting the rejection and otherwise fully functional in accordance with the requirements of this Agreement, within thirty (30) days of the applicable State Entity's notification of such rejection, the State Entity shall be entitled to, at its option: (a) rescind the applicable Solution Order as to the rejected Equipment; (b) accept the rejected Equipment or component at an equitable price reduction agreed by the parties; or (c) demand specific performance.

**2.1.7 Cancellation of Solution Order for Convenience.** A State Entity may cancel a Solution Order or any part thereof at any time without charge or cancellation fee. If State cancels any Solution Order, other than pursuant to Section 2.1.6, then the applicable State Entity will bear the cost of shipping any Equipment already delivered pursuant to such Solution Order back to location designated by Contractor (F.O.B. the State Site from which such rejected items will be dispatched). The remedy set forth in this Section 2.1.7 shall be Contractor's sole and exclusive remedy and State's entire liability for claims related to any such cancelled Solution Order. Where a Solution Order is terminated by a State Entity pursuant to this Section 2.1.7, State or the other State Entity, as applicable, shall pay to Contractor for the Equipment actually delivered and used by the applicable State Entity and the Services satisfactorily performed by Contractor, in each instance, prior to the date of such termination. If a State Entity has prepaid Contractor any amounts under a Solution Order terminated pursuant to this Section 2.1.7, Contractor will refund to the applicable State Entity that portion of such prepaid expense which is attributable to month(s) of and after the termination of the applicable Solution Order.

**2.2 Documentation.** Contractor shall deliver to State in such form as State shall request the number of copies requested by State of Documentation relating to the Solution and any updates thereto at no additional charge to State. State Entities may duplicate the Documentation provided that the State Entities reproduce the copyright that appears on such Documentation being duplicated. In no event will any provision of this Agreement, or any right or benefit of State or the other State Entities provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, charge or expense, including taxes) as a consequence of the terms of the Documentation.

**2.3 Revisions; Upgraded Solution.**

**2.3.1** If Contractor makes any revision, modification, enhancement, improvement or otherwise updates the Software, any component thereof, or code used therein to include any patches, upgrades, updates, new versions, substitutions, replacements, and other modifications, improvements and enhancements, including through the introduction of new products that have comparable purpose and functionality as the Software used by the State Entities (collectively the "Revisions"), such Revisions will be made available to the State Entities, and, if approved by State, provided by Contractor, on a no-charge basis (with a corresponding credit for the amortized cost of the component being replaced by the accepted Revision) and will be deemed to be part of the Solution. Contractor shall keep State informed of any

potential Revisions being considered by Contractor, Revisions which may be necessary to keep the Solution relevant, and any developments in the industry or election practices generally that could adversely affect the Solution or render it obsolete including by: (i) meeting with State quarterly throughout the twenty-four (24) months immediately following the Effective Date and then twice in each of the successive twelve (12) month period remaining during the Term to discuss the same and (ii) providing State with a detailed comparison of the Solution currently in use by the State Entities as of the date of the Proposed Revisions as would exist after any proposed Revisions (the "**Upgraded Solution**"). The Upgraded Solution and the Revisions contained therein shall be subject to State's prior review and approval and State may conduct such testing and evaluations of the same as it determines to be necessary. If State declines to use the Revisions or the Upgraded Solution, Contractor will remain obligated to support the existing version of the Solution during the Term. For the avoidance of doubt, except as otherwise specified in Section 2.3.2, Contractor shall provide all Revisions occurring at any time during the Term at no additional cost to, and without increases to any existing fees payable hereunder by, any State Entity.

2.3.2 If a State Entity requests that Contractor make Revisions to the Software that are major in nature and are required because of a change to Applicable Laws of the State of Georgia governing elections as in effect as of the date of this Agreement (e.g. a change to a ranked-choice voting system) ("**Major Revisions**") such Major Revisions may be accompanied by additional or increased fees as mutually agreed upon by the parties in accordance with the Change Request procedure described in Section 5.4. Notwithstanding the foregoing, Contractor acknowledges and agrees that any Revisions or other changes to the Solution that are required due to changes in federal law, regulation, or standard shall not be accompanied by an increased fee.

2.3.3 Throughout the Term and subject to any restrictions on implementing changes or adding services under this Agreement, Contractor will seek to improve the quality, efficiency and effectiveness of the Solution to keep pace with technological advances and support State's evolving needs as related to election administration. Without limiting the generality of the foregoing, Contractor will: (a) identify and apply 'best practice' techniques and methodologies in performing and delivering the Solution and Services consistent with then-current industry standards and Contractor's normal course of business; (b) train Contractor Personnel in new techniques and technologies used generally within the industry; and (c) maintain the currency of the Contractor's tools, infrastructure, software and other resources. Notwithstanding anything contained herein to the contrary, Contractor shall not, without the prior written consent of State, (i) make any Revision or otherwise add to or alter the Solution or any component part thereof in any way that could remove Guaranteed Functionality or materially degrade Guaranteed Performance (or any portion thereof) or (ii) fail to make any Revisions necessary to ensure the Solution used by the State Entities remains current and at the forefront of voting technology throughout the Term, provided that such Revisions have been certified under the applicable provisions of the election laws and regulations of the State of Georgia, to the extent such certification is required.

2.4 Additional Requirements and Dependencies. Items or services which are included in or required for a Solution but not provided directly by Contractor must be identified as such in the Schedule for the corresponding Solution. Items or services which are required but are not available without further development or engineering must be identified as such in the Schedule for the corresponding Solution. If for any Solution Contractor sells or licenses to State Contractor's own or a Contractor Solution Partner's software, hardware, network communications, or interfaces, including project tools that Contractor regards as proprietary, Contractor will provide State, in addition to descriptions contained in a Schedule, a separate purchase order, contract, or license agreement describing the terms of such transaction. State will not be subject to extraneous royalties or other extended payment terms or usage restrictions of any kind arising from the purchase or license of such items unless shown in such purchase order, contract, or license agreement and unless such purchase order, contract, or license agreement is approved in writing by an authorized representative of State.

2.5 Within industry standards, State reserves the right to select the features, tools, accessories and companion applications to be used with the Solution to the extent reasonably necessary for the administration of elections. Contractor agrees to work with the other contractors who offer such products

and solutions. State reserves the right to approve system configuration, architecture, or functionality that affects the choice or use of the third-party products.

### **3. LICENSE AND AUTHORIZED USE.**

#### **3.1 Grant of License.**

**3.1.1 Grant of License.** Except as provided elsewhere in this Agreement or an applicable Solution Order, Contractor hereby grants to State a non-exclusive, irrevocable (during the Term), and worldwide license for State and other State Entities to use, install, execute, store, and display the object version of all Contractor Licensed Programs in connection with State's use, operation, or support of the Solution and in accordance with all the terms and conditions of this Agreement. In addition, State, the other State Entities, and/or State Contractors, subject to the restrictions and processes set forth herein, shall be permitted, in connection with the use, operation, or support of the Solution, to: (a) use the Contractor Licensed Programs at any State Site; (b) make and use copies of the Contractor Licensed Programs at each State Site; (c) use the Contractor Licensed Programs for to fulfill the Mandatory Requirements including by providing access at all applicable State Sites to the Contractor Licensed Programs, other than by remote connection; and (d) use and/or copy of the Contractor Licensed Programs for the purpose of creating and using training materials relating to the Contractor Licensed Programs for internal purposes, which training materials may include flow diagrams, system operation schematics, or screen prints from operation of the Contractor Licensed Programs.

**3.1.2 License to Source Code Version.** The License also includes the right to receive from Contractor and use the source code version of the Contractor Licensed Programs to the extent so provided in Section 3.1.4 and Section 3.2.

**3.1.3 Deactivation at State's Request.** From time to time, a State Entity may elect to uninstall one or more Contractor Licensed Programs for some period of time. If a State Entity elects to uninstall any Contractor Licensed Program such State Entity shall not be responsible for payment of any further fee applicable to such uninstalled Contractor Licensed Program(s). If a State Entity elects to reinstall any such Contractor Licensed Program(s) (i) the Extended Warranty applicable to such Contractor Licensed Program(s) will recommence as of the date such Contractor Licensed Program(s) is reinstalled and (ii) any such reinstallation by a State Entity will be at no cost to any State Entity other than as provided above.

**3.1.4 Rights Upon Contractor Insolvency.** All rights and licenses granted under or pursuant to this Agreement by Contractor to State and any State Entities are, and shall otherwise be deemed to be, for purposes of Section 365 (n) of the United States Bankruptcy Code ("**Bankruptcy Code**"), licenses to rights to "intellectual property" as defined under the Bankruptcy Code. Contractor acknowledges that if it, as a debtor in possession or a trustee in bankruptcy in a case under the Bankruptcy Code, rejects this Agreement, then State or a State Entity may elect to retain its rights under this Agreement as provided in Section 365(n) of the Bankruptcy Code. The parties further agree that, in the event of the commencement of any bankruptcy proceeding by or against Contractor under the Bankruptcy Code, State and each State Entity shall be entitled to retain all of such rights under this Agreement. Contractor agrees and acknowledges that enforcement by State or any State Entity of any rights under Section 365(n) of the Bankruptcy Code in connection with this Agreement shall not violate the automatic stay of Section 362 of the Bankruptcy Code and waives any right to object on such basis. Upon rejection of this Agreement by Contractor or the bankruptcy trustee in a bankruptcy case under the Bankruptcy Code and written request of State or a State Entity to Contractor or the bankruptcy trustee pursuant to Section 365(n) of the Bankruptcy Code, Contractor or such bankruptcy trustee shall: (a) provide State or such State Entity the materials that are the subject of the rights and licenses described in this Section 3.1.4 and any Intellectual Property Rights otherwise required to be provided to State or such State Entity under this Agreement, or any agreement supplementary to this Agreement, held by Contractor or such bankruptcy trustee; and (b) not interfere with the rights of State or such State Entity provided in this Agreement or any other agreement supplementary to this Agreement, to the materials that are the subject of the rights and licenses described in this Section 3.1.4, and any Intellectual Property Rights provided under such agreements, including any

right to obtain the materials that are the subject of the rights and licenses described in this Section 3.1.4 and any such Intellectual Property Rights from another party.

**3.2 Delivery and Use of Source Code.** No later than thirty calendar days from State of Georgia certification, Contractor shall, at its sole expense, (i) place in escrow with NCC Group, Inc., a Virginia corporation (the "**Escrow Agent**"), pursuant to the NCC Group Sourceone Escrow Agreement (Agreement# 46286) by and between Escrow Agent and Contractor dated November 4, 2010 (the "**Escrow Agreement**"), a copy of the Source Code incorporated within the Solution provided to the State Entities under this Agreement and (ii) cause the State to be enrolled as a "Licensee" under the Escrow Agreement. Delivery of such Contractor Licensed Programs under this Agreement will be deemed to include and require delivery of a copy of the Source Code to the Escrow Agent under the Escrow Agreement, together with any updates thereto. State shall be entitled to receive a copy of such Source Code and to use such Source Code to support and maintain the State Entities' authorized use of the Contractor Licensed Programs, upon the occurrence of a "Release Event" set forth in the Escrow Agreement. If Contractor makes any update to any escrowed Contractor Licensed Program, Contractor shall furnish the Escrow Agent with a corrected or revised copy of the Source Code for such Contractor Licensed Program within the timeframe required by Section 1.2 of the Escrow Agreement.

**3.3 Third Party Source Code.** Contractor shall identify to State in writing prior to the Effective Date and from time to time thereafter as often as required, any source code for Third Party Licensed Programs that Contractor is not authorized to deliver as part of the Source Code hereunder and for all such source code.

#### **4. Services.**

##### **4.1 Configuration Services.**

**4.1.1 State Solution and Functional Requirements.** Contractor acknowledges that State has relied, and will rely on, Contractor's experience and expertise in installing, implementing, and servicing the Solution purchased under this Agreement. The Solution will, when installed and implemented, meet State's technology and business requirements including all Functional Requirements. For purposes of this Agreement "**Functional Requirements**" means the technical requirements of State including, where applicable: (a) an identification of all software applications to be run on such Solution (including Licensed Programs provided by Contractor under this Agreement) (collectively, the "**Designated Licensed Programs**"); (b) any performance requirements of the Solution, as applicable (the "**Performance Requirements**"); (c) the anticipated number of users of the Solution and/or Designated Licensed Programs; and (d) details relating to any State systems with which the Solution and Designated Licensed Programs are to interface. Any Functional Requirements described in the Installation Plan, Solution Order, or Services Order shall be incorporated herein.

**4.1.2 Contractor System Proposal.** If State provides Contractor with Functional Requirements, Contractor shall, at no additional cost to State, analyze such Functional Requirements to determine the minimal amount and type of Solution that Contractor believes State needs to purchase in order to meet the Functional Requirements. Within ten (10) business days of its receipt of the Functional Requirements, Contractor shall deliver to State a written proposal (each a "**Contractor System Proposal**") which shall thereupon become part of the Guaranteed Functionality and be attached to the applicable Solution Order. The Contractor System Proposal shall detail at a minimum (as applicable): (a) the Solution components required to meet the applicable Functional Requirements; (b) the minimal operating system, network, and third-party software necessary to run the Designated Licensed Programs in conformity with the Functional Requirements; and (c) the estimated cost for such Solution determined in accordance with this Agreement. Nothing contained in the Contractor System Proposal shall obligate State to purchase any Solution or portion thereof.

**4.1.3 Attachments to Solution.** Subject to the other terms of this Section, in the event State provides Contractor with Functional Requirements for a certain Solution (and obtains confirmation of approval thereof as required below), State shall be entitled to install any attachment, feature, or device to, or install any Licensed Programs, on such Solution without affecting Contractor's representations and

warranties hereunder, if within a reasonable period of time not to exceed thirty (30) business days after receipt from State of notice of its intent to do so (such notice to be addressed to the Contractor Relationship Manager and delivered via return receipt mail), Contractor provides written notice to State either confirming compatibility with the Solution of the such items or stating reasonable grounds upon which it concludes such attachment, feature, device, modification, change, enhancement, upgrade, or addition will adversely affect its obligations, including any warranty or representation hereunder. Contractor shall use reasonable efforts to respond to any such request. Any request for such confirmation from State as provided under this Section that is not responded to by Contractor shall be deemed an acceptance by Contractor of the compatibility of such items with the Solution. If after receipt of the Contractor notice advising State of Contractor's conclusion that such attachments, features, or devices will adversely affect its obligations State employs such attachment, feature, device, modification, change, enhancement, upgrade, or addition, Contractor shall not be liable for those representations and warranties that it notified State it reasonably concluded would be adversely affected as identified in the detailed notice.

**4.2 Extended Warranty.** Contractor shall provide from the Effective Date until December 31, 2021 and thereafter for so long as requested by each State Entity, a "total care solution" for the Solution, which, in addition to basic commitments contained in this Agreement, will include service guarantees sufficient to keep the Solution in good operating order in accordance with the Mandatory Requirements at all times (the "Extended Warranty"). The Extended Warranty will include all Maintenance Services, telephone and online support, installation assistance, troubleshooting, "break-and-fix," replacement or repair of Equipment and components. Contractor will, at its own expense, upon receipt of written notice from a State Entity of an Extended Warranty claim make all adjustments and modifications necessary to cure any defect or nonconformity affecting the Solution such that it is fully functional in conformity with the specifications and requirement set forth herein. Contractor shall immediately commence correction of all Extended Warranty claims made pursuant to this Section 4.2. For the avoidance of doubt, the parties acknowledge and agree that no fees, charge, or other costs associated with maintenance, repair, modification, adjustment, replacement, or other remediation of the Solution will be owed by any State Entity in connection with the Extended Warranty. The Extended Warranty shall be "all inclusive." If the parties agree that State or any of its personnel shall perform any services relating to an Extended Warranty claim on behalf of Contractor, State shall receive a credit against the next Milestone Payment to the extent of the services so performed by State. Notwithstanding the administration of any services by a State Entity on behalf of Contractor in connection with the maintenance or support of the Solution, Contractor shall at all times be responsible the integrity and quality of all Services and the Solution. Without limiting the foregoing, the following conditions apply to the Extended Warranty:

**4.2.1** State Entity shall bear the shipping costs to return the malfunctioning item of Hardware to Contractor, and Contractor shall bear the costs for ground shipping the repaired or replaced item of hardware to State Entity. Shipping costs are based on ground service rates. If faster shipping service is required, the shipping cost shall be at the State Entity's expense.

**4.2.2** Repairs will be conducted and parts replaced at the Contractor repair depot, followed by an inspection.

**4.2.3** The following services are among those not covered by this Warranty, but will be made available to the State Entities at Contractor's time and material rates specified on the Fee Schedule:

- (a) Replacement of the following consumable items required for operation of the Equipment: batteries, paper rolls, ribbons, seals, smart cards, and removable memory devices and disks;
- (b) Replacement of Equipment that has been irreparably damaged by abuse by acts of the State or its employees;
- (c) Replacement of Equipment that is lost due to theft;
- (d) Repair or replacement of hardware damaged by of accident, disaster, theft, vandalism, neglect, or abuse;

(e) Repair or replacement of hardware Equipment that has modified by any Person other than those expressly authorized in writing by Contractor; and

(f) Repair or replacement of Equipment from which the serial numbers have been removed.

4.3 Training Services. Contractor shall provide training services ("**Training Services**"), for the fees set forth in the Solution Order, on such dates and locations mutually agreed upon, and shall make available any additional training requested by State which will be for the fees set forth in an additional Services Order Attachment (defined below). In addition and at no cost to State, upon request by State, Contractor shall (a) prior to the date of the Presidential Preference Primary provide (March 24, 2020) up to ten (10) business days (consecutive but for intervening weekend) of training to up to four (4) State designated personnel covering basic level 1 support issues relating to the maintenance of such initial Solution, and (b) up to three (3) business days (consecutive) of training for to up to four (4) State designated personnel on similar issues during each subsequent period. All such training shall occur at the Contractor designated Contractor location within Georgia, and State shall be responsible for all travel, living and other out-of-pocket expenses incurred by such State designated personnel to attend such training. State shall have the right, at its expense, to copy and distribute any and all training materials within State and its other State Entities, and to distribute such materials to train its personnel in the use of the Solution without additional charge by Contractor, provided all proprietary notices of Contractor are duplicated and no modifications to such materials are made without Contractor's prior written consent. Contractor represents that the Training Services described in the Training Plan attached to the Solution Order as Attachment 6 are designed to enable State personnel to productively use and operate the Solution. All Training Services shall be conducted by qualified instructors.

4.4 Other Services. In the event State wishes Contractor to provide software development or software customization, and/or consulting services, such Services shall be provided pursuant to written Services Orders detailing the Services to be performed. Each such Services Order shall have attached to and incorporated into it all delivery, Milestone Schedules, Specifications, Performance Levels (or other Service Level Agreements), disaster recovery plans or other mutually agreed project requirements or documents related to the Services to be provided (each a "**Services Order Attachment**"). All Services Orders and Services Order Attachments shall be mutually agreed by the parties and executed by their authorized representatives but shall take substantially the form contained in Exhibit C to this Agreement. All Services Orders require a validly issued State purchase order. Notwithstanding anything contained in this Agreement to the contrary, all Services ordered by a State Entity, and provided by Contractor, pursuant to a Services Order shall be included with the annual License Fee set forth on the Fee Schedule payable by the State Entities, except where such Services are required because of a Major Revision, in which case additional fees may be agreed upon by State and the Contractor in accordance with Section 2.3.2.

## 5. CHANGE CONTROL.

5.1 No Deviation. Contractor shall not deviate from the terms and conditions of a Solution Order or Services Order by substitution, deletion, or additions to the Solution, Services or other Deliverables without prior written approval or consent to waiver signed by a duly authorized representative of State or the applicable State Entity. Either party may request or recommend changes by following the change control procedures set forth in this Section 5.

5.2 Change Order. Either party may request or recommend changes to the Solution, Services or the scope or nature of Deliverables being developed, by having its Project Manager provide the other party with a written request or recommendation for changes in writing, signed by such requesting party (each a "**Change Request**"). The party receiving the Change Request shall provide a written response to the Change Request, signed by such receiving party, on the same form (a "**Change Response**") in the manner specified below. Each Change Request and associated Change Response (if any) expressly accepted by the non-requesting party as evidenced by its signature on the applicable Change Control Form shall be deemed a "**Change Order**," unless the non-requesting party has proposed changes to the original Change Request from the requesting party that require the non-requesting party's acceptance by execution of the revised Change Request, which, upon execution by the initially requesting party without change, shall be

deemed a "Change Order." Change Requests, Change Responses and all resulting Change Orders shall be in the form attached to this Agreement as Exhibit E (the "Change Control Form"). Any Change Request that is not responded to by the receiving party shall be deemed rejected. Any Change Request not responded to by the non-requesting party as provided below shall be deemed rejected.

5.3 Contractor Requested Change. If the Change Request is submitted by Contractor to State, the Change Request shall, to the extent known at the time of the request, indicate schedule changes and any other items Contractor believes the Change Request is likely to impact (each an "Impact Analysis"). If a complete and final Impact Analysis cannot be specified, or if aspects of the Impact Analysis cannot be determined at the time of the request, Contractor shall so indicate on the applicable Change Control Form, including a detailed explanation of the basis of such inability of Contractor to so determine. State shall indicate its acceptance or rejection of the Change Request and/or provide a counter-proposal to the Impact Analysis stated thereon via a Change Response. In no event shall any Contractor-submitted Change Request include any additional charges or purport to increase any of the fees set forth on the Fee Schedule payable by a State Entity hereunder. A Contractor submitted Change Request shall not become a Change Order unless such Change Request (and its related Impact Analysis) are expressly accepted by State as evidenced by its signature on the applicable Change Control Form.

5.4 State Requested Change. If the Change Request is submitted by State to Contractor, then Contractor shall provide an initial response to the Change Request within three (3) business days of the receipt of the Change Request or such other time specified by State that is reasonable and appropriate to the scope of such requested change. Contractor shall provide in its initial Change Response a detailed Impact Analysis, or a date by which such detailed Impact Analysis will be provided in a later Change Response. If a complete and final Impact Analysis cannot be specified, or if aspects of the Impact Analysis cannot be determined, at the time of the Change Response, Contractor shall so indicate in its Change Response, including a detailed explanation of the basis of such inability of Contractor to so determine. In no event shall any State-submitted Change Response become a Change Order unless such Change Response (and its related Impact Analysis) are expressly accepted by Contractor as evidenced by its signature on the applicable Change Control Form.

5.5 Limits on Discretion. Notwithstanding any contrary term in this Section, Contractor may not decline to accept any Change Request that: (a) State reasonably believes would reduce the cost of performance, provided that an equitable adjustment in compensation is made for the reasonable out-of-pocket costs of any performance or preparation already undertaken for the original, pre-change Solution, Services, or other Deliverables; or (b) increases Contractor's internal cost or magnitude of required performance, provided that the requested changes are reasonable in scope and the parties agree upon a commensurate increase in compensation to the extent otherwise permitted by this Agreement.

5.6 Status of Change Orders. Each Change Order shall become a part of the Solution Order or Services Order to which it relates as if initially entered into as part of that Services Order, and, together with such Solution Order or Services Order, shall be governed by this Agreement. The parties may mutually agree to supersede, modify, or amend these change control procedures in writing under a Solution Order or Services Order, provided they make express reference to this Section or portion thereof being superseded, modified or amended. If there are conflicts between (or ambiguities within) any Solution Order or Services Order and a subsequent Change Order proposing the delivery of specific Solution, Services, or other Deliverables, the Change Order shall control. If there are conflicts between Change Orders, the most recent Change Order shall control.

## 6. PERSONNEL.

6.1 Relationship Manager. Contractor shall appoint a qualified member of its staff to act as a dedicated manager of Contractor's relationship with State (the "Contractor Relationship Manager"), whose duties shall be to act as primary liaison between Contractor and State for all matters relating to Contractor's performance, and the performance of all Contractor Solution Partners, under this Agreement, who shall have sufficient authority to grant or communicate the granting of all necessary approvals and who shall: (a) have overall managerial responsibility for the responsibilities of Contractor and all Contractor Solution

Partners under this Agreement; (b) have direct access to the key decision makers of Contractor and all Contractor Solution Partners; and (c) be able to call upon the experience, expertise and resources of Contractor and each Contractor Solution Partner as needed to properly, efficiently and timely perform their duties under this Agreement. The Contractor Relationship Manager shall be a resource in addition to any Project Manager or project management established under any Solution Order or Services Order. State may, at its option, designate one or more individuals who shall use reasonable efforts to facilitate Contractor in carrying out an efficient delivery of Services ("**State Relationship Managers**"). Both parties shall notify the other party of a change in the identity of their respective Relationship Managers.

**6.2 Contractor Personnel.** The individuals who perform Services, whether employees or independent contractors of Contractor (or of a Contractor Solution Partner) are hereinafter referred to as "**Contractor Personnel**" and at all times meet the requirements set forth below. If Services are to be performed outside of the United States all Contractor Personnel shall meet these requirements to the maximum extent applicable, and shall further meet, to the maximum extent applicable, equivalent requirements under local law. The Contractor Personnel assignment requirements are as follows:

(a) Unless specifically agreed otherwise by State in each instance, Contractor shall only assign as Contractor Personnel employees of Contractor and those limited non-employees of Contractor who qualify as "independent contractors" or "temp employees" by meeting the following respective criteria: (i) they are consultants who provide services to Contractor or its entities in the ordinary course of business under independent contractor relationships of a type commonly referred to in the United States as "1099" relationships, or (ii) they are individuals who provide services to Contractor or its entities on a leased employee or so-called staffed- or temp-employee basis pursuant to contracts between Contractor and the third-party staff augmentation companies or staffing companies, and (iii) they are, in all cases, subject, in their individual capacities, to written duties of confidentiality and obligations to protect State's Intellectual Property Rights that are at least as protective of State as those contained in this Agreement;

(b) Prior to assigning any individual to perform the Services in the United States (which may have been completed at the time of hire), Contractor shall perform a background check, such check shall include the (i) United States Department of Motor Vehicles; (ii) credit check; (iii) national criminal check; (iv) government excluded parties list; (v) the United States Department of Health excluded parties list; (vi) a determination that the individual's employment complies with relevant immigration law; and (vii) Contractor shall obtain finger prints for all Contractor Personnel reasonably expected to have access to Confidential Information of any State Entity in connection with such individuals performance of Services hereunder. All information obtained by Contractor pursuant to this Section shall remain in Contractor's possession and Contractor shall not be obligated to disclose such information to State; and

(c) Contractor shall not assign any person to perform Services who (i) refuses to submit to such checks; (ii) has in the last seven (7) years been convicted of a financial-related crime or a felony (excluding motor vehicle-related offenses); (iii) does not meet the requirements under immigration law to be employed. Contractor shall not be responsible for information not disclosed pursuant to the foregoing background check requirements.

**6.3 State Review and Acceptance.** If any Contractor Personnel performing Services is found to be unacceptable to State for cause, including demonstration that he or she is not qualified to perform the Services assigned, State shall notify Contractor of such fact and Contractor shall immediately remove said Contractor Personnel and, if requested by State, provide a qualified replacement. If any Contractor Personnel is found to be unacceptable to State for any other reason, State shall notify Contractor of such fact in writing, and Contractor shall promptly take reasonable and appropriate action.

**6.4 Project Managers.** Contractor shall designate a project manager ("**Project Manager**") who shall be principally responsible for owning and ensuring timely delivery of the Solution or provision of the Services, as applicable.

**6.5 Continuity.** If Contractor reassigns any Contractor Personnel, Contractor shall promptly provide a qualified replacement acceptable to State, and State shall not be charged for any training or transition time

for such replacement. Without limiting the generality of the foregoing, because the progress of a project specified in a Solution Order or Services Order may be dependent on such continuity, certain individual Contractor Personnel may be identified in a Solution Order or Services Order as key personnel ("Key Personnel"). Except as directed by State under Section 6.3 or for the reasons provided in this Section 6.5, Contractor shall not remove or reassign any Key Personnel at any time for any reason during the term of such individual's obligations of performance of Services under the applicable Solution Order or Services Order without State's prior written consent, such consent not to be unreasonably withheld. Contractor shall have the right to re-assign any Key Personnel in case of: (a) death, (b) disability, (c) bona fide termination of employment, (d) changes in Applicable Law, (e) changes in immigration status not caused by the negligence of Contractor or the applicable individual and which could not have otherwise been reasonably foreseen, or (f) upon the occurrence of events having a significant personal impact on the affected Key Personnel (such as death of next of kin). Any re-assignment shall be so permitted only to the limited extent and for such limited duration as required to reasonably accommodate the circumstances of the adversely affected Contractor Personnel.

**6.6 Resource Prioritization.** If there is any conflict in the resource demands between State and the other State Entities (or among the other State Entities), Contractor shall escalate such conflict to the Contractor Relationship Manager and State Relationship Manager immediately upon becoming aware of its existence, and the respective Relationship Managers shall work with the applicable Project Managers to determine appropriate prioritization and allocation of Contractor Personnel.

**6.7 Subcontractors; Ineligible Status.** The unique abilities, knowledge, and skills of Contractor and Contractor Personnel constitute a material inducement for State entering into this Agreement. Contractor agrees that it shall not employ any agent or subcontractor in connection with the performance of any Services without the prior written consent of State, which consent may not be unreasonably withheld. If State does consent, Contractor shall provide State with written evidence (acceptable to State) of said agent's or subcontractor's compliance with the confidentiality and intellectual property provisions of this Agreement prior to the disclosure of any State Confidential Information to, or the performance by, any such agent or subcontractor in connection with or pursuant to this Agreement. Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify State if Contractor is debarred by State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity. Contractor's use of any subcontractors does not relieve Contractor of its representations, warranties or obligations under this Agreement. Without limiting the foregoing, Contractor will: (i) be responsible and liable for the acts and omissions of each of its subcontractors (including Contractor Personnel and Contractor Solution Partners) to the same extent as if such acts or omissions were by Contractor or its employees; and (ii) be responsible for all fees and expenses payable to, by or on behalf of each subcontractor in connection with this Agreement, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

**6.8 Site Visits.** Upon the giving of at least five (5) business days' notice to Contractor, State Entity personnel shall have the right to visit the offices of Contractor and/or the Contractor Solution Partners in order to observe the performance of any Services at the sole cost of the applicable State Entity. The State Entities shall cooperate with Contractor to ensure that such site visits do not unreasonably interfere with Contractor's normal business operations.

**6.9 Timely and Quality Performance.** The Contractor Personnel shall perform the Services with promptness and diligence, and in all events by the times specified therefor in the applicable Solution Order or Services Order, if any. At all times during the Term Contractor shall retain sufficient number of Contractor Personnel, with the required skills, to meet the ongoing needs of State and ensure that Contractor achieves the timely implementation of the Solution, including the Guaranteed Functionality and Guaranteed Performance. Contractor shall be responsible for the management of all Contractor Personnel in the performance of Services, the integrity and quality of all Services and Deliverables, and the required periodic reporting of the status of all Services and Deliverables to State. In response to any feedback or

performance assessment provided by State to Contractor Personnel, Contractor shall provide State written acknowledgement within three (3) business days of receipt of the assessment and a comprehensive response including a formal mitigation action plan within ten (10) business days of receipt of the assessment addressing each of the identified areas requiring Contractor improvement.

## **7. COMPLIANCE.**

**7.1 State Policies and Directives.** Contractor shall ensure that all Contractor Personnel, while at a State Site, will abide by all reasonable policies and directives issued by State, including those relating to its Code of Business Conduct, all on-site rules of behavior, work schedules, security procedures, and other standards and procedures as may be established by State from time to time, provided such policies or directives are published (or otherwise made known) to Contractor prior to such visit and are limited to administrative and security-based issues. Accordingly, Contractor hereby agrees that prior to sending any Contractor Personnel to work at any State facility, Contractor will provide such Contractor Personnel with a copy of all written State policies and procedures provided by State to Contractor and will have Contractor Personnel review and acknowledge same. In addition, Contractor will cause all Contractor Personnel to comply, when at a State Site, with such standard safety policies applicable to such site and such additional policies as State may, from time to time, communicate to Contractor or Contractor Personnel.

## **7.2 Cyber Security Audits and Reporting.**

**7.2.1** Contractor has an established information security program containing appropriate administrative, technical and physical measures to prevent data (including Regulated Information (as defined in Section 11.5 below) that Contractor may have access to or be processed by the Solution) against accidental, unauthorized, or unlawful loss, destruction, alteration, disclosure or access consistent with applicable laws. Contractor, on at least an annual basis, shall, at Contractor's expense, participate in a risk assessment relating to Contractor's controls that ensure data security and reduce cybersecurity threats from being realized conducted by an independent third-party agreed upon by State. During the Term Contractor will promptly provide to State a summary of each such assessment that is performed by or on behalf of Contractor, which summary may be redacted to exclude information unrelated to the Solution or Services provided under this Agreement. More specifically, Contractor or its auditor will provide to State at least one (1) hard copy and one (1) electronic copy of the summary from each such assessment at no charge. Contractor, at its own expense, will undertake such actions, and implement such changes, as reasonably necessary to remedy any material deficiencies, concerns or recommendations identified through any audits, examinations, or tests described in this Section 7.2.1 and ensure Contractor's continued compliance with Contractor's obligations as relate data security under this Agreement.

**7.2.2** Contractor further agrees that it shall:

(a) Provide the State Entity with the name and contact information for the Contractor's primary information security contact.

(b) Notify the State Entity's primary security contact of an actual or security breach or the suspicion of the occurrence of a security breach (hereinafter a "**Breach Incident**") as soon as practical but no later than forty-eight hours after Contractor becomes aware of a Breach Incident by contacting the primary business and security contact at the State Entity by both telephone and email as agreed upon.

(c) Upon the State Entity's written request and no less than 10 business days following such written request, Contractor shall permit State Entity's information security office to conduct or oversee an audit of the Contractor's facilities and/or practices to confirm compliance with this Agreement as well as any applicable laws. Contractor is not required to permit the State Entity to conduct or oversee more than one audit per calendar year unless the process, technology, or services change prior to the next audit or there has been a Breach Incident. All costs associated with such audits shall be the responsibility of the State Entity.

(d) At any time during the term of this Agreement at the State Entity's written request, or upon termination of the expiration of this Agreement for any reason, Contractor shall instruct all authorized persons to promptly and securely return or destroy any and all State Entity data, whether in written, electronic, or other form of media.

7.3 Applicable Law – Contractor. Contractor shall obey and abide by all Applicable Laws, regulations, ordinances and other rules of the United States of America, and any other jurisdiction where Services are, or may likely be, performed in connection with this Agreement (including respective states, territories or subdivisions thereof or any other duly constituted public authority in any such jurisdiction). Without limiting the generality of the foregoing:

7.3.1 Contractor will ensure that no labor will be used in the performance of this Agreement that violates the child labor laws of any country in which State or any State Entity is located or any country in which Contractor is located or performs Services hereunder. If State believes that Contractor is using such labor, then State may immediately terminate this Agreement in which event State shall have no liability whatsoever to pay compensation to Contractor, including for Services already performed.

7.3.2 Contractor represents and warrants that: (i) Contractor, Contractor Affiliates, and any and all of their respective parents, subsidiaries, officers, directors, employees (including all Contractor Personnel), and all of their agents and business partners (collectively, "Contractor Parties") are in compliance with, in good standing under, and have not violated, any United States laws or the laws of any other country or countries relating to the transfer of technology, including the Export Administration Regulations, the International Traffic in Arms Regulations and the regulations administered by the Office of Foreign Assets Control of the United States Department of the Treasury or other similar laws or any foreign country (collectively, the "Transfer Control Laws"); (ii) Contractor Parties are not, and never have been, named as a "debarred" party, "denied person or entity", "embargoed entity" or otherwise sanctioned under, or prohibited from engaging in activities subject to, the Transfer Control Laws; and (iii) Contractor will immediately notify State in the event that any of the Contractor Parties are named as a "debarred" party, "denied person or entity," or "embargoed entity," or otherwise sanctioned under, or prohibited from engaging in activities subject to, the Transfer Control Laws; and (iv) Contractor Parties will comply with all applicable Transfer Control Laws.

7.3.3 Contractor acknowledges and understands that improper use of material non-public information may be a violation of the law, including the laws concerning insider trading, and may subject it and its employees to prosecution, civil liability, fines and criminal penalties, and, where applicable, may also be grounds for termination of this Agreement.

7.3.4 The Contractor Parties shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under this Agreement, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors.

7.3.5 Certain equipment, software, and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations, including: (i) local license or permit requirements, (ii) export, import, and customs laws and regulations, which may apply to certain equipment, software, and technical data provided hereunder; and (iii) all applicable foreign corrupt practices acts.

7.3.6 The Contractor Parties shall comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work performed under this Agreement. The Contractor Parties shall also comply with all policies and standards of the State Entities in effect during the performance of this Agreement, including but not limited to the State Entity's policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Agreement.

7.3.7 Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain, all approvals, permissions, permits, licenses, and other documentation required to comply with all Applicable Laws, rules, or regulations. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Agreement not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this section may be treated by the State Entity as a material breach of this Agreement by the Contractor.

7.3.8 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 Agreement.

(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. Section 50-24-1 et seq. throughout the duration of this Agreement.

(c) Contractor will secure from any subcontractor hired to work on any job assigned under this Agreement 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 Agreement pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

7.3.9 Contractor may be suspended, terminated, or debarred if it is determined that any of Contractor's certifications in Section 7.3.8 is false or Contractor has violated any such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).

7.4 Permits and Licenses. Contractor acknowledges and agrees that it is solely responsible for procuring and maintaining all necessary permits and licenses required in connection with Contractor's performance, and the performance of all Contractor Solution Partners, under this Agreement, including obtaining all necessary shipping and/or delivery permits and processing and procuring all necessary visas and passport documents for all Contractor Personnel in advance of their assignment in connection with Services. Contractor will obtain, at Contractor's sole cost and expense, all such permits, licenses and visas in a timely manner to avoid any unnecessary delay.

## **8. PERFORMANCE STANDARDS, MONITORING AND MEASUREMENT.**

8.1 Performance Levels. Contractor shall provide the Solution and perform the Services with promptness and diligence, and in all events by the times specified therefor in the applicable project documentation, Solutions Order, or Services Order as applicable. Contractor shall be responsible for the management of all Contractor Personnel in the performance of Services, the integrity and quality of all Services and all applications and Deliverables, and the required periodic reporting of the status of all Services and such applications and Deliverables to State. In fulfilling its obligations under this Agreement, Contractor shall perform, and shall cause each Contractor Solution Partner to perform, all Services and all Deliverables to perform, in accordance with the response, resolution, and other support standards and timelines and such other systems availability and processing requirements as are set forth in the applicable Services Order (the "**Performance Levels**"). If State management, including the State Relationship Manager or Project Manager, provides feedback or performance assessments that identify areas requiring Contractor improvements, Contractor shall provide State written acknowledgement within three (3) business days of receipt of the assessment and a comprehensive response, including a formal mitigation action plan, within ten (10) business days of receipt of the assessment addressing each of the identified areas requiring Contractor improvement.

### **8.2 Non-Conformance.**

8.2.1 Generally. If Contractor or any Contractor Solution Partner fails to meet any Performance Level or fails to perform its other obligations hereunder, Contractor shall immediately: (a) investigate and report to State on the causes of the failure; (b) prepare an action plan for State's approval to correct the failure; (c) advise State, as and to the extent requested by State, of the status of remedial efforts being undertaken with respect to such failure; (d) correct the failure and begin meeting the Performance Levels; and (e) take appropriate preventive measures so that the failure does not recur. In addition, failures to meet a Performance Level shall entitle State to receive liquidated damages and/or credits (as applicable) from Contractor, as provided in the applicable Services Order.

8.2.2 Reserved.

8.3 Measurement Tools. Contractor shall utilize, and shall cause the Contractor Solution Partners to utilize, the necessary measurement and monitoring tools and procedures required to measure and report its performance against all Performance Levels. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Performance Levels. Contractor shall provide State with information and access to such tools and procedures, upon request, for purposes of verification. State also shall monitor and measure certain Performance Levels, and any discrepancy between Contractor and State measurements of the Performance Levels shall be resolved by reference to State's measurement and monitoring tools and procedures.

8.4 Proactive Monitoring. Contractor acknowledges and agrees that the performance of Services in accordance with this Agreement is critical to State's business and that State requires metrics to monitor such performance. Accordingly, at no cost to State, Contractor shall, and, if requested by State shall cause each Contractor Solution Partner to: (a) provide to State, on a quarterly basis, data (or metrics) regarding its progress in improving the quality and productivity of Contractor Personnel providing services pursuant to or in connection with this Agreement, including data on the number of Contractor Personnel, average experience, and turnover (on a project basis); (b) provide to State, on a quarterly basis, data on each project covering such matters as productivity, quality and timeliness, new development productivity measures (function points per person/day, error rates per function point, etc.) and maintenance project measures (requests serviced weekly etc.); and (c) provide to State a log reflecting State open issues that is to be updated on a monthly basis. In addition to the periodic delivery described above, Contractor agrees to provide State with the foregoing information within fifteen (15) days of a request made by State for the same.

8.5 Coding Standards. If Contractor or a Contractor Solution Partner will be performing development, programming or other coding services under a Services Order and the Deliverables thereunder will be owned exclusively by State (pursuant to Section 12 below), Contractor or the applicable Contractor Solution Partner shall, with respect to such Services Order, be responsible for such specific coding and naming standards and conventions as may be provided by State in connection with certain of its and/or its third-party licensors' requirements, as well as such quality performance and productivity provisions and documentation requirements, if any, set forth in the applicable Services Order. Contractor shall, in addition, be responsible for imposing the applicable quality assurance requirements on Contractor Personnel. State shall have the right to conduct quality audits and to perform or witness inspections or tests of the Deliverables furnished hereunder at Contractor's facility, at sole cost of State, at any time during development and prior to delivery. Notwithstanding anything contained in this Agreement to the contrary, State for itself, and on behalf of the other State Entities, acknowledges and agrees that the Solution shall not constitute "works made for hire", and shall remain the exclusive property of Contractor.

8.6 Quality Assurance. State may, at its option, employ consultants, including quality assurance consultants, for periodic review of any work or project, including evaluation of Change Orders and monitoring of compliance with Service Level Agreements and Performance Levels. References to State in this Agreement shall include such consultant to the extent State so indicates for that purpose. If so requested by State, State shall have the right to receive and review quality assurance reports produced by Contractor. Contractor shall accommodate reasonable State requests to expand or modify Contractor's quality assurance procedures for Projects in progress.

8.7 **Material Defects.** Contractor shall give State prompt notice if Contractor becomes aware of a material defect in any Deliverables or the performance of any Services or any issue that may affect Contractor's ability to implement the Solution, including all Guaranteed Functionality and Guaranteed Performance, in accordance with the timeline required by this Agreement.

## 9. **DELIVERY AND ACCEPTANCE.**

Each delivery and implementation of the Solution and Services or any additional applications at a State Site shall be subject to acceptance by State in accordance with acceptance testing procedures, as provided in the Solutions Order. An "Acceptance Testing Plan" for the Solution and Services shall be prepared by Contractor and submitted to State prior to execution of this Agreement, which agreement, as approved by State shall be incorporated into this Agreement. The Acceptance Testing Plan shall be based on full implementation of the Solution and Services and shall include testing procedures sufficient to demonstrate that (a) all functionality has been provided and performs in the applicable State Entity's environment, in all material respects, in accordance with the Guaranteed Functionality; (b) the applications and deliverables meet the warranty requirements specified in this Agreement and the applicable Solution Order; (c) the applications and Deliverables will perform at acceptable levels required to support State's implementation of the SVS and the operation of general and primary elections using such SVS; and (d) the applications and Deliverables will successfully complete an "election voting and processing" simulation. Testing procedures will include testing before, at, and after "go-live" as appropriate before the Solution "goes-live", but the testing will continue after "go-live" as appropriate to verify that the applications and services meet applicable requirements in a full production mode. State representatives will have the right to be present during the Acceptance Test and review all test results. When the applications and Deliverables meet the requirements of the Acceptance Test, State will provide a written sign-off that Acceptance has occurred. If the applications and Deliverables fail to meet all material requirements of the Acceptance Test, Contractor will, at its sole expense, correct the deficiencies and the Acceptance Test will then be repeated. Acceptance will not relieve Contractor of responsibility for its warranties, support and maintenance obligations, or achieving the Performance Levels.

## 10. **CHARGES, PAYMENT, AND TAXES.**

10.1 **Payments.** As further provided in Contractor's fee proposal delivered by Contractor, accepted by State prior to execution of this Agreement, and attached hereto as Exhibit G (the "**Fee Schedule**"), and subject to the other terms and conditions of this Agreement, in consideration of Contractor's agreement to provide the Solution to State, deliver necessary documentation, train State Personnel, and render related services in accordance with this Agreement, Contractor shall be entitled to be paid as follows (each a "**Milestone Payment**" unless otherwise noted):

- 10.1.1 \$44,967,752.40 on the Effective Date, inclusive of initial implementation/training and initial Equipment costs.
- 10.1.2 \$1,500,000.00 for training and implementation upon Certification of the November 2019 Election.
- 10.1.3 \$4,386,020.40 for remaining costs for training and implementation upon Certification of the March 2020 Presidential Preference Primary Election.
- 10.1.4 \$1,500,000.00 for final training and implementation and hold back upon Certification of the November 2020 Election.
- 10.1.5 \$834,673.35 upon Final Acceptance of election management system hardware and software to the State.
- 10.1.6 \$816,768.00 upon Final Acceptance of ImageCast Precinct scanners (without ballot box) and ImageCast Central scanners hardware and software for absentee/mail ballot voting.

10.1.7 The following items will be invoiced on a monthly basis upon unit Final Acceptance by the State:

- (a) Electronic Pollbook hardware and software at a \$708.93/unit for a total cost of \$5,671,440.00.
- (b) ImageCast Precinct scanners hardware and software at \$2,330.36/unit for a total cost of \$8,156,260.00.
- (c) ImageCast X BMD hardware and software at the remaining unit cost\* of \$753.53 for a total cost of \$22,102,676.50.

\* Remaining Cost reflects an overall reduction resulting from the initial milestone payment equaling \$44,967,752.40 for initial implementation and ImageCast X BMD costs.

10.1.8 Equipment Charges. The price for the Equipment ordered by a State Entity, as contemplated by the Fee Schedule, shall be set out in each applicable Solution Order (the "Equipment Charges"). Contractor shall deliver an invoice for the relevant Equipment Charges to the applicable State Entity in accordance with the following: (a) fifty percent (50%) of the Equipment Charges following State's completion of initial Acceptance Testing and (b) the remaining fifty percent (50%) of the Equipment charged upon the applicable State Entity's confirmation that testing of the same has been satisfactorily completed at the State Site at which such Solution is to be implemented and administered as designated by the applicable State Entity. Notwithstanding anything contained herein to the contrary the parties acknowledge and agree (i) that purchases of new models of Equipment released by Contractor shall be made available to the State Entities at the same price as the Equipment purchased as part of the Solution Order dated as of even date herewith, provided, if the State Entities shall not be obligated to upgrade to such new models and if any State Entities do not elect to purchase such new models, Contractor shall continue to support the version of the Equipment then in use by the State Entities, including ensuring that such Equipment is supported by the Software.

10.1.9 T&M Rates. Except as otherwise set forth in the Fee Schedule, this Agreement does not contemplate, and Contractor shall not be entitled to, payment for any of its work, overhead, or expenses on a time and materials basis.

10.2 Events Affecting Critical Milestones - Liquidated Damages. By entering into this Agreement, Contractor acknowledges and agrees that in the event that State determines in good faith that Contractor has not meet a Critical Milestone by the applicable Milestone Deadline, the State will suffer actual damages that will be impractical or extremely difficult to determine and the State shall be entitled to recover agreed upon liquidated damages in an amount equal to \$1,000 for each calendar day after the applicable Milestone Deadline until the Critical Milestone in question has been satisfactorily completed by Contractor. Contractor further acknowledges and agrees that the amounts to which State may become entitled under this Section 10.1 are not penalties but a fair and reasonable estimate of the anticipated harm that may be caused to the State Entities by delays that result in Contractor failing to meet the Milestone Deadlines for Critical Milestones provided that such liquidated damages be deemed to be constitute State's sole remedy, exclusive or otherwise, for any damages caused by such a failure and shall be in addition to any other monetary and non-monetary remedies available to State under this Agreement, at law or in equity. Notwithstanding anything contained in this Agreement to the contrary, in the event that the State becomes entitled to any amount under this Section 10.1, State may, in its sole discretion, set off the sum owed it against any sum owed to Contractor under this Agreement or any other contract between the State and Contractor.

10.3 Invoices. Contractor shall submit invoices to the applicable State Entity (a) thirty (30) days prior to the anticipated completion of the applicable Installation Event to which a Milestone Payment relates; and (b) with respect to Equipment Charges, in accordance with Section 10.1.8. The applicable State Entity shall pay all undisputed correct invoices, which are timely submitted to it, within thirty (30) days of receipt.

**10.4 Disputed Charges.** In the event State reasonably believes that any invoice submitted by Contractor contains any discrepancies or errors, State shall notify Contractor of such discrepancy(ies) or error(s). The parties agree to cooperate in good faith to resolve any dispute in a timely manner. Upon receipt of State's notification of dispute, Contractor will investigate such dispute and will either (a) correct such invoice if a correction is so required and provide a corrected invoice or other such notice in writing, or (b) if no correction is required, send State written notice that Contractor has investigated such dispute and that Contractor considers the amounts due and payable and no longer in dispute. State shall not be required to make payment on any disputed portion of an invoice until such time as the dispute has been finally resolved by the parties. For the avoidance of doubt, a dispute regarding an invoice and State withholding payment of disputed charges as permitted under this Agreement will not permit Contractor to suspend or cease performance of the Services and Contractor shall continue to provide such Services.

**10.5 Currency; Settlement Method.** State shall settle payments with Contractor by wire transfer or such other payment method as mutually agreed by the parties.

**10.6 State Status as Most Favored Customer.** During the Term, Contractor shall offer to State and the other State Entities the Solution and any other Services which Contractor offers on a general basis to its other customers, at prices at least as favorable as Contractor offers or provides to any Person that orders similar products and quantities as ordered by State pursuant to Solution Order No. 1. In comparing the prices offered by Contractor to other customers with the prices offered to State under this Agreement the fees paid by State hereunder for the applicable Solution shall be reduced by an appropriate amount to compensate for any installation, training, migration and other services provided by Contractor hereunder at no charge and to account for any credits provided by Contractor to State hereunder. The Contractor shall give prompt written notice to the State of each such instance in which more favorable fees as described above are extended to another State. On each anniversary of the Effective Date and at such other time as the State may request (based on the State's reasonable belief that the Contractor has an obligation under this Section), the Contractor shall deliver to the State a certificate duly executed by an appropriate executive of the Contractor, certifying that, as of the date of such certificate, and at all times since the date of the last certification pursuant to this Section (or since the Effective Date if there has been no prior certification), stating that the Contractor is and has been in compliance with this Section. If the Parties are unable to agree as to the Contractor's compliance with the requirements of this Section or, as to the appropriate means to effectuate this Section, then such issue shall be determined pursuant to Section 17.5.

**10.7 No Other Charges; Expenses.** Contractor acknowledges and agrees that the charges and fees described in this Section 10 shall be "all-inclusive" and represent the total cost for the Solution including all costs associated with all goods, software, and services to be provided Contractor pursuant to this Agreement, including (i) the SVS components described on each Solution Order, (ii) all Equipment described in the applicable Solution Order, (iii) the Training Services described in such Solution Order, and (iv) the Extended Warranty and all maintenance, support, and remedial action thereunder required to ensure the Solution and all components thereof are available to the ordering State Entity and function in accordance with the requirements of this Agreement. In no event shall State be liable for any amounts not described in this Section 10 or any other charges, fees, expenses, or costs incurred by Contractor, which Contractor failed to consider in its eRFP Response. Accordingly, no such expenses of any Contractor Party will be separately reimbursable by any State Entity.

**10.8 Taxes.**

**10.8.1** State is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. State is exempt from state and local sales and use taxes on the Services. Tax exemption certificates will be furnished upon request. Contractor or an authorized subcontractor has provided State with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform Services required in this Agreement, which verification is incorporated herein by reference.

**10.8.2** By executing this Agreement the Contractor certifies it is either (a) registered with State Department of Revenue and collects and remits State sales and use taxes as required by Georgia law,

including Chapter 8 of Title 48 of the O.C.G.A. or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that State may declare this Agreement void if the above certification is false. The Contractor also understands that fraudulent certification may result in State or its representative filing for damages for breach of contract.

#### **10.9 Books and Records.**

**10.9.1 GAAP Standards; Record Retention.** Contractor shall maintain books and records in accordance with Generally Accepted Accounting Principles to substantiate Contractor's prices and other charges billed to State under this Agreement and each Solution Order and Services Order. Contractor will maintain such books and records for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.

**10.9.2 Information Regarding Billing Questions.** Contractor shall answer billing questions and provide State with such documentation as State may request pertaining to billing. Once per year and at the sole cost of State, Contractor shall provide State and State's representatives with reasonable access to such books and records for purposes of auditing the fees under this Agreement and/or any Schedule or Services Order.

**10.10 Audit.** The Contractor shall permit the Auditor of State of Georgia or any authorized representative of 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 audit Contractor to achieve one or more of the following additional objectives: (a) verify the security and integrity of State's and each other State Entity's data and examine the systems that process, store, support, and transmit that data or (b) examine Contractor's performance of, and conformance to the terms of, this Agreement, including, to the extent applicable to the applications and services provided by Contractor and to the charges therefor, performing audits of (i) Contractor's practices and procedures, including its conformance with State policies with which it is obligated to comply under this Agreement and otherwise as reasonably necessary to enable State to confirm that Contractor is meeting applicable regulatory and other legal requirements for which it is obligated to comply under this Agreement; (ii) supporting information and calculations regarding compliance with Performance Levels, security standards for which Contractor is responsible hereunder or other required standards or levels of performance; and (iii) Contractor's disaster recovery and back-up procedures. State agrees to the following conditions in connection with such audits: (i) State will not unreasonably interfere with Contractor's normal business operations, (ii) Contractor is not entitled to review or see and other Confidential Information of other Contractor States except in an anonymized or redacted format, (iii) all information disclosed during such site visit shall be considered Contractor's Confidential Information (unless the information Contractor possesses is already Confidential Information of State or State Data), and (iv) State will comply with Contractor's reasonable security policies and procedures delivered in writing to State in advance of the applicable audit. If as a result of any such audit State determines that Contractor has overcharged State, State will notify Contractor of the amount of such overcharge and provide Contractor with a report setting forth the determination of such overcharge. Upon such notice, Contractor shall promptly pay to State the amount of such overcharge, together with interest thereon at the Interest Rate calculated from the date of such overcharge until the date Contractor reimburses State. In addition, if such audit reveals an overcharge to State in any fee, cost, or charge billed by Contractor, Contractor shall reimburse State for the actual costs of such audit. In the case of a performance-related audit, Contractor and State shall meet to review each audit report promptly after the issuance thereof and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report. State and Contractor agree to develop operating procedures for the sharing of audit and regulatory findings and reports related to Contractor's operating practices and procedures produced by auditors or regulators of either party. Evidence of criminal conduct uncovered by State during an audit will be turned over to the proper authorities.

**10.11 Delay of Payment Due to Contractor's Failure.** If the State Entity in good faith determines that the Contractor has failed to perform or deliver any component of the Solution for which the State Entity is charged as required by the Agreement, the Contractor shall not be entitled to the compensation under this

Agreement corresponding to such components until such components are delivered and/or conform to the requirements of this Agreement. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the State Entity to incur costs, the State Entity may deduct the amount of such incurred costs from any amounts payable to Contractor. State's right to deduct such incurred costs shall not in any way affect State's right to terminate this Agreement or any Solution Order or Services Order.

**10.12 Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the State Entity and/or the State any sum under the terms of this Agreement, pursuant to any judgment, or pursuant to any law, the State Entity and/or the State may set off the sum owed to the State Entity and/or the State against any sum owed by the State Entity and/or the State to the Contractor in the State Entity's sole discretion.

## **11. CONFIDENTIALITY, PRIVACY, AND DATA SECURITY.**

**11.1 Disclosure of Confidential Information.** Contractor and State acknowledge that, in the course of performance under this Agreement, one party (the "**Disclosing Party**") may intentionally or inadvertently disclose, deliver, or permit access by the other party (the "**Receiving Party**") to information, data, or materials which are, to the Disclosing Party, secret, proprietary, and/or confidential, including as may be so designated by statute, regulation, or common law, including, among others, by the form of the Uniform Trade Secrets Act adopted under Applicable Law (if any) and various applicable privacy laws. All of the foregoing information, data, and materials are referred to collectively in this Agreement as the "**Confidential Information**" as that term is further defined and described in Section 11.2.

**11.2 Confidential Information.** Without in any way limiting the generality of the definition of Confidential Information contained in Section 11.1, the term Confidential Information shall also expressly include all data, information, materials, and subject matter, works of authorship, methods, processes, techniques, systems, and know-how containing, recording, expressing, or embodying the Disclosing Party's (a) products, both existing and under development during the Term, and all related documentation algorithms, source code, object code, workflows, models, formulae, structures, schematics, designs, drawings, specifications, and flow charts containing, comprised by or embodied in such products and (b) current or prospective businesses, business plans, states, finances, contracts, contractual arrangements, employees, contractors, partners, investors and suppliers. All of the foregoing shall be Confidential Information hereunder irrespective of its field of use and whether it is (i) owned by the Disclosing Party, leased or licensed from third parties or held for the benefit of or in connection with its clients, states, business partners, or investors; (ii) intangible or tangible, but if tangible, regardless of form, medium or physical format including paper documents or graphic or machine readable media; and (iii) actually disclosed to a party, but if actually disclosed, whether in whole or in part or orally or in writing. Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that where Contractor is the Disclosing Party, "Confidential Information" shall include only such information that Contractor has marked as "confidential", "proprietary", "trade secret", or otherwise redacted in accordance with eRFP Section 2.1.12.2.1 et seq. the terms of which are incorporated herein by reference, provided, however State reserves the right to determine if such information has been properly designated as such and whether it may or may not be disclosed by State.

**11.3 Non-Disclosure and Non-Use.** Except as otherwise permitted by eRFP, the Receiving Party shall hold all Confidential Information actually received in strictest confidence and shall not disclose or provide the Confidential Information to any individual or entity without the express written consent of the Disclosing Party in each instance, except to the Authorized Recipients. In all events the Receiving Party shall handle, store, and maintain all Confidential Information actually received with a degree of care that is reasonable for the circumstances of disclosure and the nature of each component of Confidential Information. The Receiving Party shall not make any use of the Confidential Information whatsoever except such limited uses as are required under the Agreement. To the limited extent reasonably necessary for such permitted purposes, the foregoing right of use shall include the right to make a reasonable number of copies of the Confidential Information each of which shall be subject to Section 11.8. The use rights hereunder do not permit, and the Receiving Party is expressly prohibited from (a) performing any benchmarking or other comparative or competitive analysis of any Confidential Information for any purpose other than as required

under this Agreement and (b) using, distributing, delivering, or disclosing the Confidential Information or any portion to any Person in violation of U.S. export regulations.

**11.4 Confidentiality Exclusions.** The Receiving Party shall have no obligation under Section 11.3 with respect to any Confidential Information which the Receiving Party can demonstrate by reasonable written evidence contemporaneous with the event of the exclusion sought to be used hereunder: (a) was already known to it at the time of its receipt hereunder; (b) is or becomes generally available to the public other than by means of breach of this Agreement; (c) is independently obtained from a third party (other than any Authorized Recipient) whose disclosure to the Receiving Party does not violate a duty of confidentiality; or (d) is independently developed by or on behalf of the Receiving Party without use of, reference to, or reliance on any Confidential Information. Furthermore State, as Receiving Party shall have no obligation under Section 11.3 with respect to any information that State determines is required to be disclosed by Applicable Law including the provisions of the Georgia Procurement Manual, State Purchasing Act, or Georgia Open Records Act as provided in O.C.G.A. Section 50-18-70 et seq. If the Receiving Party is required by a court or other body of competent jurisdiction to disclose the Confidential Information, the Receiving Party may disclose only so much Confidential Information as is legally required, provided that the Receiving Party has given notice of such compelled disclosure to the Disclosing Party and has given the Disclosing Party a reasonable opportunity to object to such disclosure and has provided reasonable assistance, at the cost of the Disclosing Party, in obtaining and enforcing a protective order or other appropriate means of safeguarding any Confidential Information so required to be disclosed.

**11.5 Privacy Regulations and Guidelines.** This Agreement, the Solutions Orders, Services Orders, and the parties hereunder, may be governed by one or more privacy laws, regulations or guidelines including O.C.G.A. 21-2-379.24(g) and such others as may be designated by State from time to time (collectively, the "Privacy Regulations"). If so governed, then to the extent not captured already by the definition of Confidential Information hereunder, or required already by the Receiving Party's obligations under Section 11.3: (a) the term "Confidential Information" shall further include all Nonpublic Personal Information, Personal Information, material nonpublic information and Personal Data as each of those terms is defined in or by application of each respective Privacy Regulation (collectively, the "Regulated Information"); and (b) the Receiving Party shall comply with all requirements of the Privacy Regulations reasonably known to be applicable to the Regulated Information portions of the Confidential Information actually received by the Receiving Party including all reporting, audit, access, third-party disclosure and onward transfer obligations and restrictions therefor, if any are so applicable. If a Privacy Regulation applicable to the Receiving Party under this Agreement is amended, and/or if any other state or federal law, regulation or treaty is effected such that a more restrictive standard of confidentiality or obligation of privacy or security is imposed with respect to an applicable component of the Regulated Information portions of the Confidential Information, then such more restrictive standard shall prevail over the provisions of this Agreement with respect to those portions. By signing below the Receiving Party acknowledges that the Privacy Regulations may prohibit or render ineffective some or all of the exclusions otherwise available under Section 11.3. Notwithstanding anything to the contrary contained in this Agreement, Contractor agrees (i) it shall maintain, and shall require all Authorized Recipients to maintain, effective information security measures to protect Regulated Information from unauthorized disclosure or use, and (ii) it shall provide with information regarding such security measures upon the reasonable request of State and promptly provide State with information regarding any failure of such security measures or any security breach related to Regulated Information.

**11.6 No Transfer of Rights.** Nothing in this Agreement is, nor shall be deemed to be, any transfer, conveyance, assignment or waiver (by express license, implied license or otherwise) by the Disclosing Party of any Intellectual Property Rights it has or claims to have in the Confidential Information.

**11.7 Data and Network Security.**

**11.7.1** Contractor is responsible for providing network security and security for such of its facilities where its servers or other network equipment are located. Contractor shall also comply with its own then-current security policies and procedures, and its security policies and procedures shall comply with laws and regulations applicable to Contractor.

11.7.2 If, during the course of this Agreement, Contractor is creating, hosting, maintaining, processing or transmitting any State Confidential Information on or through any Contractor computer networks, data centers, labs, supporting environments, Web servers or other information technology resources (collectively "**Contractor Computer Systems**"), or is otherwise using any Contractor Computer Systems in connection with this Agreement, then with respect to all such Contractor Computer Systems, Contractor will, in accordance with industry best practices or higher standards that are in all cases no less than reasonable:

(a) Limit physical and electronic access to Contractor's employees and essential third-party contractors, on a need-to-access basis, who have signed a written agreement that is at least as protective of the confidentiality and security of State Confidential Information as those provided in this Agreement;

(b) Implement and maintain technical access controls that, at a minimum, require unique identification and authentication of all users, restrict access to all data, software, or other file-system objects exclusively to those users who need such access to perform their job responsibilities, and limit administrator-level control to only authorized IT personnel;

(c) Implement and maintain transmission controls that, at a minimum, allow only the data protocols required for the function and management of each solution to be used or transmitted and insure the confidentiality, availability, and integrity of all transmissions;

(d) Implement and maintain firewall technology and intrusion detection software configured to minimize or eliminate hacking and other threats;

(e) Implement and maintain protection against viruses, worms, Trojan horses, spyware, and other malicious code;

(f) Perform routine reviews of logs files and system records for suspicious activity;

(g) Perform regular reviews of relevant security notifications and alerts (e.g., notifications of bugs, attacks, and patches), and apply such patches and fixes as appropriate;

(h) Implement and maintain disaster recovery, backup, and other contingency plans; and

(i) Conduct regular security audits, reviews, and tests and systematically retain log files, system records, test plans, and other security documentation.

11.7.3 Contractor shall notify State immediately upon discovery or notification of any actual, potential or threatened Security Breach. Contractor agrees to take action immediately, at its own expense, to identify and eradicate (or to equip State to identify and eradicate) any further Security Breach and carry out any recovery necessary to remedy any impact of such Security Breach. Contractor's actions will include at a minimum:

(a) Confirming the attack;

(b) Denying access from the source of the attack;

(c) Investigating and evaluating the extent of the damage, if any;

(d) Backing-up the affected systems and those suspected to be affected;

(e) Strengthening defenses everywhere, not just the suspected path that the attacker used, if possible;

(f) Contacting Contractor's internet service provider and, subject to State's prior written approval, any law enforcement agency to work with Contractor's security team; and

(g) Producing an incident report within twenty-four (24) hours detailing Contractor's findings and distributing the report to State.

11.8 Disaster Recovery – Requirements and Audit Procedure. Contractor shall provide a disaster recovery plan and data backup procedures (the "Disaster Recovery Plan") attached hereto as Exhibit J.

11.9 Loss of Information; Equitable Relief. The remedy at law for any breach or threatened breach of this Section 11 shall be inadequate, and in addition to any other remedy available at law, in equity, or under this Agreement, the non-breaching party shall be entitled to seek to obtain injunctive relief without proof of irreparable injury and without posting bond. If there is any unauthorized disclosure or loss of, or inability to account for, any Confidential Information of the Disclosing Party, the Receiving Party shall promptly: (a) notify the Disclosing Party upon becoming aware thereof; (b) take such actions as may be necessary or reasonably requested by the Disclosing Party to minimize the disclosure, losses or violation; and (c) cooperate in all reasonable respects with the Disclosing Party to minimize the violation and any damage resulting therefrom.

11.10 Compliance by Contractor Solution Partners. Without limiting Contractor's obligations above, Contractor shall cause each Contractor Solution Partner to comply with the provisions of this Section 11 to the same extent that Contractor is required to comply with such provisions.

## **12. OWNERSHIP OF CONTRACTOR PRODUCTS; STATE DATA; THIRD-PARTY PRODUCTS.**

12.1 Ownership of Contractor Products. State acknowledges that the Software, the Contractor data bases which are part of the Services, and all copyrights, patents, trade secrets, and other intellectual and proprietary rights therein and thereto (collectively the "Contractor Products") are and shall remain the exclusive and confidential property of Contractor or the third parties for whom Contractor is acting as agent or from whom Contractor has obtained the right to use the Contractor Products. For this purpose, the Contractor Products do not include the State Data, including any extract, database, output, reports or derivative works that include or are based on the State Data, or any business or transaction information produced by or for State using the Services or Software (the "Output").

12.2 State's Rights in Output. State may use the Output in conjunction with any services, software or equipment that State or State may choose. State or any contractor chosen by State may copy, use, and modify such data as Contractor provides State and the Output for purposes of meeting its internal business requirements. State may make an appropriate number of copies of the Contractor Products provided to State at its premises for back-up purposes only.

12.3 Confidentiality of State Data; File Security. Contractor acknowledges and agrees that any file or other information provided by any State Entity to Contractor, including any extract, database, output, reports or derivative works that include or are based on the State data, or any business or transaction information produced by or for a State Entity using the Services or Software (collectively the "State Data") shall be and remain the exclusive and confidential property of State. Except to the limited extent set forth in Section 12.4 below, Contractor shall treat as confidential and will not disclose or otherwise make available any State Data to any person other than employees of Contractor with a need-to-know. Contractor will instruct its employees who have access to the State Data to keep the same confidential by using the same care and discretion that Contractor uses with respect to its own confidential property and trade secrets. Contractor will provide reasonable security provisions to ensure that access to the State Data is available only to State. Contractor will hold and process the State Data of State and State's other vendors in systems that are physically and logically separated from other data of other States.

12.4 Contractor Use of State Data. Notwithstanding the foregoing, but subject to State's consent on a case-by-case basis, State will consider Contractor's request that Contractor be given the right to use such

State Data as it ordinarily receives, and to distribute such State Data to third parties, in an anonymized and cleansed statistical and/or compilation forms in connection with other Contractor services. If so approved by State in writing on a case-by-case basis, State acknowledges that such statistics and/or compilations (which are not identifiable to State or State's location and do not include information otherwise subject to privacy or confidentiality requirements) may be used or resold by Contractor outside the scope of this Agreement.

**12.5 Turnover of State Data.** If so requested by State at any time before or after termination of this Agreement, Contractor shall provide copies of the State Data in Contractor's possession to State in such form as State may reasonably request together with such tables and instructions as State may require to extract or convert the information. Unless otherwise approved by State or necessary to carry out the transition/termination provisions of this Agreement, Contractor may not retain copies of the State Data following termination of this Agreement.

**12.6 Unlimited Use of State Data and Output by State.** State and its designees are free to extract, aggregate, use, store, modify, compile, retransmit, and distribute the State Data, including all Output, in any manner and for any purpose that State may desire, without being subject to any restriction on doing so that may be associated with the Contractor applications or any other Contractor Products. State may install and use its own or third-party providers' equipment and software to do so, and State and State may create and install its own or third-party providers' APIs to access and collect any of the State Data or applicable files at State's premises in such manner as State or State chooses.

**12.7 Deliverables.** The deliverables that Contractor actually provides to the State Entities under this Agreement may take the form of any Solution, the Services themselves or individual items of State-Specific Enhancements, Third Party Materials or Derivative Works & Improvements, or one or more of them. More likely, however, such deliverables, shall be composed of some combination of such Solution, State-Specific Enhancements, Contractor Products, Third Party Materials or Derivative Works & Improvements, or one or more of them created by linking, embedding, bundling or incorporating them with or into one-another. Such combination shall be referred to as "**Deliverables**." Each party shall retain at all times its respective ownership rights of the Intellectual Property Rights in and to such party's respective Proprietary Materials components of the Deliverables under the terms of this Section 12 and neither party shall own the Intellectual Property Rights in and to the Deliverables as a whole. Notwithstanding anything contained in this Agreement to the contrary, State for itself, and on behalf of the other State Entities, acknowledges and agrees that the Solution shall not constitute "works made for hire", and shall remain the exclusive property of Contractor.

**12.8 Third Party Materials.** Neither Contractor nor any Contractor Personnel shall use any Third Party Materials in the performance of the Services nor introduce, embed, bundle, link, or incorporate Third Party Materials into or with any State Data or Output unless: (a) expressly requested by State or (b) disclosed to State by Contractor in writing in the applicable Solution Order or Services Order in connection with which Contractor desires to use them. If use of Third Party Materials is so permitted, Contractor shall supply them by either providing State: (i) with the applicable shrink-wrap license agreement governing the use of such Third Party Materials or (ii) with the applicable license agreement submitted by the owner or provider of such Third Party Materials generally to its states; or (iii) with all necessary use and/or license rights via pass-through or assignment to State, as well as all warranties and maintenance and support rights (if any) as provided by either the manufacturer of the applicable provider of such Third Party Materials or by Contractor on such manufacturers' behalf pursuant to a reseller or similar agreement therefor.

**12.9 Open Source Software.** The Solution may contain Third Party Materials subject to or governed by an open source license. Use by State, as part of the Solution, in accordance with this Agreement and normal operating instructions, of such open source license (in object code) procured by Contractor under a license commonly referred to as "open source," "free software," "copyleft," or "community source code license," including, without limitation, the GNU General Public License or Lesser General Public License (collectively, "**OSS**") is and will be in compliance with the terms of such OSS licenses. The use by State of the System in accordance with this Agreement does not require that the OSS included by Contractor in the System will be combined or merged with any proprietary software provided or separately operated by State.

12.10 **Residuals.** Subject to Section 11 (Confidentiality, Privacy and Data Security), Contractor, State or the applicable State Entities shall have the right to use for any purpose Residuals arising from this Agreement. For the avoidance of doubt, the foregoing shall not be deemed to grant to the receiving party a license to use the other party's copyright, patents, trademarks, source code, or other Intellectual Property.

**13. BONDS & INSURANCE.**

13.1 **Bonds.** Within ten (10) days of the Effective Date, Contractor shall obtain all bonds required by the eRFP and described on Exhibit H attached hereto and deliver a true, correct, and complete copy of the same to State.

13.2 **Required Coverage.** Contractor, at its sole expense, shall obtain and keep in force at all times during the Term insurance coverage for the benefit of Contractor and State, issued by insurance carriers licensed to do business in the State of Georgia with a minimum A.M. Best rating of A- as set forth in Exhibit H as that Exhibit may be updated and modified from time to time by State (provided Contractor is given a reasonable amount of time to review and meet such updated and modified insurance requirements).

13.3 **Primary Policies.** All insurance maintained by Contractor in compliance with this Agreement, shall be primary to any other insurance owned, secured, or placed on behalf of State, which insurance shall not be called upon by Contractor's insurer to contribute in any way. Contractor shall secure endorsements to this effect from all insurers of such policies.

13.4 **Certificates.** Within ten (10) days of the Effective Date, Contractor shall furnish State with certificates of insurance and necessary endorsements affecting coverage required by this Section 13. To the maximum extent permitted for each coverage type, the certificates and endorsements shall identify the contract number of this Agreement (as shown on the cover page), the State of Georgia, State, and the other State Entities as additional insureds and shall be signed by a person authorized by that insurer to bind coverage on its behalf. State reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.5 **No Cancellation.** All policies herein shall expressly provide that such policies shall not be cancelled, allowed to lapse, terminated or materially altered (resulting in failure to comply with requirements set forth herein) without at least thirty (30) days prior written notice to State.

13.6 **Waiver.** To the extent permitted by its respective policies of insurance, Contractor hereby waives any right of recovery against State for any loss or damage that is covered by any insurance policy maintained or required to be maintained with respect to this Agreement. The parties do not intend to shift all risk of loss to insurance. The Contractor's obligation to maintain insurance coverage in specified amounts will not act as a limitation on any other liability or obligation which the Contractor may otherwise have under this Agreement. Similarly, the inclusion of the State of Georgia and the State Entities as additional insured is not intended to be a limitation of the Contractor's liability under this Agreement and will in no event be deemed to, or serve to, limit the Contractor's liability to the State or any State Entity to required insurance coverage, nor to limit State's rights to exercise any and all remedies available to the State Entities under this Agreement, at law or in equity.

**14. REPRESENTATIONS AND WARRANTIES.**

14.1 **Warranties.** Contractor hereby expressly represents, warrants, and covenants to State that:

14.1.1 **Organization.** It is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, and it is duly qualified to conduct business, and is in good standing, in the State of Georgia and every other jurisdiction in which the nature of its assets or its business would require it to so qualify.

14.1.2 Authority. (a) It has full power and authority to enter into this Agreement, to grant the rights granted hereunder and to perform its obligations under this Agreement; (b) execution and performance of this Agreement shall not violate any law or breach any other agreement known to Contractor; and (c) Contractor will not assume any obligation or restriction that does or would in any way interfere or conflict with, or would prevent, limit, or impair in any way the performance by Contractor of any of the terms of this Agreement or of the Services.

14.1.3 Liens and Encumbrances. Contractor has good and valid title to the Solution and all Equipment or hardware components provided to the State Entities pursuant to the terms of this Agreement free and clear of any and all liens and encumbrances. All such items will be delivered, and title will transfer, to the applicable State Entity pursuant to Section 2.1.5 free and clear of all liens and encumbrances and State will be entitled to use the Solution and all other Deliverables in accordance with the terms of this Agreement without disturbance.

14.1.4 eRFP Bring Down. Each of the representations, warranties, guarantees, certifications, and similar assurances contained in Contractor's eRFP Response were true and correct in all respects as of the date of submission of Contractor's eRFP Response and shall be true and correct in all respects on and as of the Effective Date with the same force and effect as if made at and as of the Effective Date.

14.1.5 Non-Infringement. As of the Effective Date and throughout the Term:

(a) None of the Solution, Services, or other Deliverables, nor any portion or component thereof, nor State's use or possession of any of the foregoing as permitted under this Agreement, shall infringe or violate any right, title, or interest (including any Intellectual Property Right) of any third party.

(b) Contractor and/or all Contractor Personnel shall be the sole authors of the Solution and any Revisions thereto and Contractor has and shall have full and sufficient right, title and interest (including all Intellectual Property Rights) in and to the Solution.

(c) No claim of infringement has been threatened or asserted, or is pending against Contractor (or insofar as Contractor is aware, against any entity from which Contractor has obtained such rights) (the warranties set forth in clauses "(a)", "(b)", and "(c)" collectively the **"Non-Infringement Warranty"**).

14.1.6 Disabling Procedures. The Solution, State-Specific Enhancements and other Deliverables and each module or component and function thereof, and to the maximum extent applicable, the Services performed hereunder, do not contain any "back door," "time bomb," "Trojan horse," "drop dead device," or other similar software routines or components designed to permit access or use of any State Entities' computer systems by Contractor or a third party or to disable or delete any Solution or any data, computer hardware, or software operated or maintained by any State Entity;

14.1.7 Viruses. The Licensed Programs, State-Specific Enhancements and other Deliverables and each module or component and function thereof, and to the maximum extent applicable, the Services performed hereunder, do not contain any Virus and prior to delivery to the State Entities, Contractor shall have used up-to-date, industry-accepted, corporate-enterprise, quality virus detection products to scan for and ensure the absence of Viruses. Contractor shall take all commercially reasonable steps to ensure that no Viruses are coded or introduced into any other State Entities' systems or into the systems used to provide the Services or operate the Solution;

14.1.8 EAC Certification. All relevant components of the Solution, any Upgraded Solution, and all Software, Equipment, and other components forming a part thereof for which certification by the U.S. Election Assistance Commission ("EAC") is available have been certified by the EAC as of delivery of the Solution to the State. Without limiting the foregoing, if at any time during the Term, the Solution or any component (including Software and Equipment) forming a part thereof for which EAC certification is available ceases to be certified by the EAC, Contractor shall immediately notify State and, if Contractor has, or has made available a non-infringing, EAC certified, version of the offending component to its

customers generally, then Contractor will make that version of the Solution available to the State under the same or better economic terms as it offers to its other customers. If no EAC certified version of the offending component is available, the parties will cooperate in good faith to attempt to resolve the issue.

**14.1.9 Documentation.** The Documentation meets industry standards, accurately reflects the operations features and functioning of the Solution, Services and Deliverables and shall in all events be written in the English language as well as such other languages as are required under the applicable Solution Order or Services Order.

**14.1.10 Services.** Contractor has all of the resources (financial or otherwise), personnel, experience, and know-how necessary for the successful and timely implementation of the Solution and performance of its obligations under this Agreement. All Services performed by Contractor (or its permitted subcontractors, if any) shall be so performed in accordance with all Applicable Laws and in a professional and workmanlike manner by adequate staff having the skills training and background requisite to perform them in accordance with the highest prevailing standards and best practices in the industry.

**14.1.11 Operations Conducted Lawfully.** Contractor has conducted, and at all times during Term will conduct, its business in compliance with all Applicable Laws including with the provisions of O.C.G.A. Title 21, as amended and the State of Georgia Election Board and Secretary of State Rules contained in Sections 183 and Sections 590 of the Georgia Administrative Code respectively. Contractor has not been charged with, nor is Contractor in receipt of any notice or warning of, or to the knowledge of Contractor, under investigation with respect to, any failure or alleged failure to comply with any provision of any Applicable Law with respect to its business, the Solution, or the Services to be provided pursuant to this Agreement. Contractor has all licenses, permits, approvals, authorizations, registrations, certificates, variances or similar rights issued by any governmental authority required with respect to the operation of its business and the delivery of the Solution and the Services. All such permits are in full force and effect and Contractor is in compliance with the same.

**14.1.12 Solution and other Deliverables.** During the Term the Solution and all Deliverables and each module or component and function thereof, and to the maximum extent applicable, all Services performed hereunder, shall:

(a) be free from defects in material and workmanship and under normal use shall remain in good working order;

(b) function in all material respects in accordance with the specifications and criteria stated in the applicable Solution Order or Services Order, including the Functional Requirements, and in accordance with all other warranties set forth herein and in the applicable Solution Order or Services Order (the "Specifications Warranty"); and

(c) perform the Guaranteed Functionality in accordance with the Guaranteed Performance,

**14.1.13 Compliance with Regulations.** The Guaranteed Functionality and Guaranteed Performance of the Solution, either by itself or in conjunction with such Third Party Materials as may be identified by Contractor, contain features and functionality that permit State, or the applicable State Entity, to comply either through use of the Solution as delivered or via no more than *de minimis* parameterization and/or configuration, with those industry and/or governmental regulations (and the data formats, records, reporting or communications standards required to be utilized to comply with such regulations) affecting State at each State Site as of the Effective Date ("Regulation Compliant").

**14.1.14 Third Party Materials.** If the warranties to Third Party Materials passed-through and assigned to State under Sections 12.7 and 14.2 are not substantially similar to the warranties received by State from Contractor hereunder with respect to the Solution and other Deliverables, or if Contractor is not permitted to pass-through and assign such warranties, then Contractor shall obtain comparable warranties from the owner, licensor, or other providers of the applicable Third Party Materials or Contractor shall take

appropriate action to ensure that such Third Party Materials are otherwise compliant with the warranties in this Section 14.1 including that they are free of Viruses, preventative routines, and disabling procedures.

**14.1.15 Independent Contractors.** Contractor represents and warrants that it has complied with, and covenants that during the Term, it shall continue to comply with all laws, rules, and regulations required by appropriate government authorities of independent contractors, including the appropriate withholding, reporting, and payment of all required taxes.

**14.1.16 Conflicts of Interest.** Contractor has not violated, and shall not violate during the Term, the provisions of O.C.G.A. Section 45-10-20 et seq. Without limiting the foregoing, neither Contractor nor any of its Affiliates or any of their respective Representatives has made any bribe, rebate, payoff, influence payment, kickback or other payment unlawful under any Applicable Law.

**14.2 Construction of Warranties; Disclaimer.** Contractor shall assign and pass through to the State Entities all applicable Software publishers' warranties, covenants and indemnification provisions. The representations, warranties, and covenant of Section 14.1 apply at all times during the Term. EXCEPT FOR THE WARRANTIES SPECIFICALLY PROVIDED IN THIS AGREEMENT (INCLUDING ALL EXHIBITS, SCHEDULES, APPENDICES, EXECUTED SOLUTION ORDERS AND SERVICES ORDERS, AND ANY ATTACHMENTS THERETO) AND AS OTHERWISE SET FORTH ABOVE, CONTRACTOR DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY BASED ON A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

#### **14.3 Remedies.**

**14.3.1 Remedies.** In the event that any of the Software is found by the Contractor, State, any other State Entity or governmental agency, or any court having jurisdiction to to breach the warranties set forth in this Agreement, or not to be otherwise in compliance with any standard or requirement so as to require or make advisable that such Software be reworked or recalled, the Contractor will promptly communicate all relevant facts to the State Entity and undertake all corrective actions authorized by the State, including those required to meet all obligations imposed by laws, regulations, or orders, provided that nothing contained in this section shall preclude State from taking such action as may be required of it under any such law or regulation. If the Contractor is the Software publisher, the Contractor shall perform all necessary repairs or modifications at its sole expense, provided the State determines the performance of such repairs and modifications is in the State's best interest. Payment for the Software shall not constitute acceptance. Acceptance by a State Entity shall not relieve the Contractor of its warranty or any other obligation under this Agreement.

**14.3.2** In the event State or any other State Entity asserts any claim, demand, dispute relating to the subject of this Agreement Contractor shall continue to perform its obligations hereunder, and any such dispute, whether as to a claim for breach of any representation, warranty, or covenant contained in this Agreement, shall not affect Contractor's obligation to fulfill its remedy obligations to the State Entities hereunder. If any such dispute is finally resolved in State's favor, State shall be reimbursed for the cost of all reasonable remediation services performed by Contractor, subject to State substantiating the same.

**14.3.3 Disabling Procedures, Preventative Routines and Viruses.** In addition to all other remedies at law and under this Agreement, Contractor agrees to notify State immediately upon discovery of any actual, potential or threatened breach of the warranties in Sections 14.1.6 or 14.1.7, and, if State discovers or reasonably suspects any Viruses to be present in any component of any Solution, State-Specific Enhancements or other Deliverables, Contractor agrees to take action immediately, at its own expense, to identify and eradicate (or to equip State to identify and eradicate) such Viruses and carry out any recovery necessary to remedy any impact of such Viruses.

**14.3.4 Interference with Services.** Contractor is under no obligation or restriction, nor will it assume any such obligation or restriction that does or would in any way interfere or conflict with, or would

prevent, limit, or impair in any way the performance by Contractor of any of the terms of this Agreement or of the Services.

**15. INDEMNIFICATION.**

**15.1 Contractor Indemnification.** Contractor agrees to defend, indemnify, and hold harmless State, the other State Entities, and all parties making authorized use of the Deliverables, and each of their respective directors, officers, employees, and representatives (the "**Indemnified Parties**") from and against any and all liabilities, claims, damages, suits, judgments, losses, costs, and expenses (including reasonable attorneys' fees) to the extent incurred in connection with or arising out of: (a) any inaccuracy or breach of a representation or warranty of Contractor set forth in this Agreement or any agreement, instrument, or certificate, or document delivered in connection herewith (including Contractor's eRFP Response); (b) any breach or failure to comply with any covenant or agreement made by Contractor in this Agreement or any agreement or instrument delivered in connection herewith; (c) any negligent, intentional or wrongful act or omission of the Contractor or any Contractor Personnel; (d) any breach of contract; (e) any third-party claims of infringement or other violations of Intellectual Property Rights; (f) any failure of the Solution or the Services to comply with applicable specifications, warranties, and certifications under this Agreement or Contractor's eRFP Response; (g) any failure by Contractor or Contractor Personnel to comply with Applicable Law; or (h) any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States. Contractor acknowledges and agrees that no delay in notifying Contractor shall relieve Contractor of its obligations under this Section 15.1. Contractor may not agree to any settlement that could have an adverse impact on any State Entity, as applicable, without State's prior written consent. Notwithstanding the foregoing State, and not Contractor, will be responsible and therefore solely liable for its own acts and omissions constituting gross negligence, willful misconduct or fraud.

**15.2 Assumption of Defense.** State shall be entitled to participate in the defense of any such action, with its counsel and at its own expense. If Contractor does not promptly commence fulfillment of its defense obligations for any indemnified claim or litigation resulting therefrom, State may defend against such claim or litigation in such manner as it may deem appropriate, including settling such claim or litigation, after giving notice of the same to Contractor, on such terms as State may deem appropriate but after prior written consent from Contractor signed by the designated person signing this Agreement, and no action taken by State in accordance with such defense and settlement shall relieve Contractor of its indemnification obligations herein with respect to any loss, liability, or damages resulting therefrom.

**15.3 Infringement Related Remedies.** In addition to and without in any way limiting or excluding Contractor's indemnification obligations, if any party makes any claim or allegation of infringement against State or State Entity based on State's or a State Entity's use of a Deliverable in accordance with the terms of this Agreement and State or any State Entity is actually enjoined from using any Deliverables (or, if Contractor earlier believes that such claim may arise), Contractor shall, at its own cost and expense, and at its option: (a) procure for State a license to continue using the allegedly or potentially infringing materials of nature and scope identical to that contained in this Agreement and without loss, diminution or degradation in the manner of performance or functionality or (b) modify the allegedly or potentially infringing materials so as to make them non-infringing without loss, diminution or degradation in the manner of performance or functionality. If Contractor cannot complete "(a)" or "(b)" above after good faith efforts undertaken for a reasonable period of time, then Contractor shall, at its own cost and expense: (c) procure for State and the State Entities a license to a third-party product (including, if required, engaging a third-party to develop such product on commercially reasonable terms) that will serve as a replacement for the allegedly or potentially infringing materials without loss, diminution or degradation in the manner of performance or functionality. If Contractor cannot complete "(a)," "(b)" or "(c)" above after good faith efforts undertaken for a reasonable period of time, on commercially reasonable terms, Contractor promptly shall refund to State all amounts paid by State under the Services Order (including any expenses and fees for Third Party Materials) pursuant to which the applicable materials were created.

15.4 Duty to Reimburse State Tort Claims Fund. To the extent any damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to fully reimburse the Fund. To the full extent permitted by the Constitution and the laws of State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.

15.5 Limitation of Liability.

15.5.1 EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES UNDER OR IN CONNECTION WITH THIS AGREEMENT, HOWSOEVER ARISING, INCLUDING WITHOUT LIMITATION, LOSS, DAMAGE, COSTS OR EXPENSES CAUSED BY BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY OR ANY OTHER DUTY SHALL IN NO CIRCUMSTANCES EXCEED THE TOTAL DOLLAR AMOUNT OF THE AGREEMENT, INCLUDING ALL SOLUTION ORDERS AND SERVICES ORDERS IN EFFECT AS OF THE DATE OF THE APPLICABLE CLAIM.

15.5.2 NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR ANY OTHER INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, HOWSOEVER ARISING, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORT, EVEN IF THE PARTIES OR THEIR REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.5.3 Notwithstanding anything contained in this Agreement to the contrary the limitations and exclusions in Sections 15.5.1 and 15.5.2 shall not apply to (1) Contractor's obligation to pay any liquidated damages pursuant to Section 10.1, (2) Contractor's failure to honor any pricing commitments made in this Agreement, (3) claims arising out of the willful misconduct or gross negligence of a Party or any of their respective employees, agents, contractors or subcontractors, (4) claims and losses that are the subject of indemnification under this Agreement, including pursuant to Section 15, (5) damages and costs associated with the Contractor's breach of its data security or data privacy obligations hereunder; (6) damages attributable to a Party's breach of its obligations with respect to Confidential Information of the other Party; or (7) damages attributable to the abandonment of this Agreement by the Contractor, including Termination Assistance, where "abandonment" has the meaning provided in Section 16.8 below.

16. TERM AND TERMINATION.

16.1 Term. This initial term of this Agreement shall commence upon the Effective Date and shall remain in effect for a period of ten (10) years (the "Initial Term"). State shall have the option to extend this Agreement for a period of up to ten (10) successive periods of one (1) year each (each a "Renewal Period") under the same terms and conditions of this Agreement as in effect during the Initial Term, which options may be exercised by the issuance of a "Notice of Award Amendment" by State no later than thirty (30) days prior to the end of the Initial Term or then-current Renewal Period. As used throughout this Agreement, all references to the "Term" shall be construed to include the Initial Term, all Renewal Periods, and any Transition Assistance Period.

16.2 Immediate Termination. Pursuant to O.C.G.A. Section 50-5-64, this Agreement will terminate immediately and absolutely if State determines that adequate funds are de-appropriated such that State cannot fulfill its obligations under the Agreement, which determination is at the State's sole discretion and shall be conclusive.

16.3 Termination for Cause. Subject to Section 16.3.133.13, the State may terminate any Solution Order, Services Order or this Agreement, in each instance in whole or in part, if State reasonably determines that any one or more of the following events has occurred:

16.3.1 The actions, or failure to act, of the Contractor, its agents, employees, or subcontractors have caused, or reasonably could cause, life, health, or safety to be jeopardized;

16.3.2 Contractor fails to comply with confidentiality laws or provisions, including the Privacy Regulations;

16.3.3 Contractor furnished any statement, representation, or certification in connection with this Agreement or the bidding process which is materially false, deceptive, incorrect, or incomplete;

16.3.4 Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to State's satisfaction, any material requirement of this Agreement, individually, in each case in whole or in part or is in violation of a material provision of this Agreement, including, but without limitation, the express warranties made by the Contractor;

16.3.5 Satisfactory performance of this Agreement is substantially endangered or that a default is likely to occur, including in connection with Contractor's inability or unwillingness to meet the milestones or timelines described in any Solution Order or Services Order;

16.3.6 Contractor fails to make substantial and timely progress toward performance of this Agreement;

16.3.7 Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or State reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

16.3.8 Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations, and orders when performing within the scope of this Agreement;

16.3.9 Contractor has engaged in conduct that has or may expose the State or any State Entity to liability, as determined in State's sole discretion;

16.3.10 Contractor endangers the value, integrity, or security of any State Site or the data or personnel of any State Entity;

16.3.11 Contractor breaches any of its material duties or obligations under this Contractor, including but not limited to obtaining and maintaining, throughout the Term, federal and State voting system certification; or

16.3.12 Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right of State, a State Entity, or any other Person.

16.3.13 Notice of Default. Contractor shall be afforded thirty (30) calendar days to cure any breach that could give rise to a termination for cause by State pursuant to Section 16.3, with such thirty (30) day period commencing as of the date Contractor receives written notice of such breach from the State. If the breach or noncompliance is not remedied within such thirty (30) day period, State may (i) immediately terminate this Agreement without additional written notice; and/or, (ii) procure substitute Software, Licensed Programs or Services from another source and charge the difference between this Agreement and the substitute contract to the defaulting Contractor; and/or (iii) enforce the terms and conditions of this Agreement and seek any legal or equitable remedies. For the avoidance of doubt the parties acknowledge and agree that the items listed in Section 16.3 shall each constitute a material breach, provided, however any reference to specific breaches being material breaches within this Agreement will not be construed to mean that other breaches are not material. If termination occurs prior to the date of Final Acceptance or the Presidential Preference Primary, whichever is later, and such termination is for cause pursuant to Section

16.3, then State may elect to terminate this Agreement and Contractor shall immediately refund all applicable Milestone Payments paid by State.

16.4 Convenience. State may at any time for any reason or no reason, terminate this Agreement or any Solution Order or Services Order individually, in each case in whole or in part, for its sole convenience for any reason whatsoever.

16.5 Effect. Termination of a Solution Order, a Services Order or this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief. Subject to Section 16.6 and Section 16.7 upon termination or expiration of this Agreement and request of the State Entity, the Contractor shall:

16.5.1 Cease work under this Agreement or the applicable Solution Order or Services Order 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 this Agreement, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters State may require;

16.5.2 Immediately cease using and return to the State Entity any personal property or materials, whether tangible or intangible, provided by the State Entity to the Contractor;

16.5.3 Comply with State's instructions for the timely transfer of any active files and work product produced by the Contractor under this Agreement;

16.5.4 Cooperate in good faith with the State Entity, its employees, agents, and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and

16.5.5 Immediately return to the State Entity any payments made by the State Entity for goods and services that were not delivered or rendered by the Contractor.

16.5.6 Payment Limitation in Event of Termination. In the event of termination of this Agreement, a Solution Order, or any Service Order, for any reason by State, State shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually delivered and satisfactorily performed up to and including the date of such termination. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State Entity under the Agreement in the event of termination. State shall not be liable for any costs incurred by the Contractor in its performance of this Agreement, including, but not limited to, startup costs, overhead, or other costs associated with the performance of this Agreement or the bidding process.

16.5.7 In such case, State shall pay for all Services Orders and Solution Orders and Deliverables to the extent delivered and satisfactorily performed by Contractor until the date of such termination. If this Agreement is terminated, Contractor will complete all Services in process under all then-outstanding Solution Orders and Services Orders and adhere to all terms and conditions outlined in this Agreement, including all credits and discounts set forth on the applicable Solution Order or Service Order.

16.6 Transition and Termination Assistance. If State decides to discontinue use of any applications or services, Contractor will, at State's option, provided that State agrees to pay Contractor's reasonable fees and expenses, assist to cause the orderly transition and migration with regard to State's requirements so that State or third-party contractors contractor(s) selected by State are properly equipped to meet those requirements (the "**Termination Assistance**"). As part of the Termination Assistance, (a) Contractor and State will work together to develop a transition plan (the "**Transition Plan**") setting forth the respective tasks to be accomplished by each party in connection with the orderly transition and a schedule pursuant to which the tasks are to be completed and (b) Contractor will provide State with tables and instructions for extraction of data and reports and conducting testing procedures incident to such migration.

16.7 **Continuance of Services.** Notwithstanding anything contained in this Agreement to the contrary, upon any termination or expiration of this Agreement or any Schedule relating to the provision of applications or services by Contractor, Contractor shall, if requested by State, continue to provide the applications or services and accept additional Solutions Orders and/or Services Orders for up to two (2) years or such longer period as the parties may mutually agree (the "Transition Assistance Period") in the manner described herein and in the applicable Schedule and provide such additional assistance as mutually agreed upon between the parties and as reasonably necessary for State to effect an orderly transition of operational responsibilities for the terminated applications or services. Such termination assistance may include: (a) providing reasonable assistance to State in establishing or transferring all processes; (b) assisting State with the execution of parallel processing and testing; (c) doing all things and providing all information reasonably necessary for an orderly transition with reasonable continuity of operations; and (d) carrying out such other activities as the parties may agree is necessary.

16.8 **No Abandonment.** Contractor represents, warrants and covenants that, during the Term, it shall not "Abandon" this Agreement (or any Schedule) or application or service obtained by State thereunder. For purposes hereof, "Abandon" or "Abandonment" means the threatened or actual intentional refusal by Contractor to provide or support any of the solutions or perform any of the services in breach of its obligations under this Agreement (or any Schedule). If Contractor breaches or threatens to breach this Section, Contractor agrees that State will be irreparably harmed, and, without any additional findings of irreparable injury or harm or other considerations of public policy, State shall be entitled to apply to a court or tribunal of competent jurisdiction for and, provided State follows the appropriate procedural requirements (e.g., notice), Contractor shall not oppose the granting of an injunction compelling specific performance by Contractor of its obligations under the Agreement without the necessity of posting any bond or other security. Contractor further agrees not to oppose any such application for injunctive relief by State except to require that State establish that Contractor has committed an Abandonment.

**17. MISCELLANEOUS.**

17.1 **Notice.** All notices to be given to the parties hereunder shall be in writing and shall be deemed to have been given and be effective when delivered personally or if sent by certified mail, return receipt requested, postage prepaid addressed to the parties at the addresses set forth below.

**If to State:**

with copies to:

Georgia Secretary of State  
2 Martin Luther King Jr. Drive,  
West Tower, Atlanta, Georgia 30334  
Attention: Chief Operating Officer

Attention: General Counsel

**If to Contractor:**

Dominion Voting Systems, Inc.  
1201 18<sup>th</sup> Street, Suite 210  
Denver, CO 80220

Attention: General Counsel

17.2 **No Exclusivity.** Unless expressly provide in a Solutions or Services Order, State has the right, at any time and without any notice or duty to account to Contractor, to have services performed by State's own employees or those of other State Entities or, subject to the terms and conditions of this Agreement, to purchase any equipment or services from any other individual or entity, subject at all times to its compliance with this Agreement. Nothing contained in this Agreement shall constitute a minimum purchase commitment by State, and Contractor has not relied on any representation, verbal or written, to the contrary.

17.3 Language. The headings as to the contents of particular sections of this Agreement are inserted for convenience of reference only and shall in no way define, limit, expand, or otherwise affect the construction or interpretation of any provision of this Agreement. The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either of the parties. Those terms, acronyms, and phrases used but not otherwise defined in this Agreement, which are utilized in the information technology outsourcing industry or in State's contracting processes will be interpreted in accordance with their generally understood meaning in such industry or context.

17.4 Governing Law. This Agreement shall be interpreted and construed under the laws of the State of Georgia, USA, without regard to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement or any services or products provided hereunder. Any judicial action or proceeding between the parties relating to this Agreement must be brought in the courts of Fulton County, Georgia or the United States District Court for the Northern District of Georgia. Each party consents to the jurisdiction of such courts, agrees to accept service of process by mail to the addresses outlined in Section 17.1 (Notice) above, and hereby waives all jurisdictional and venue defenses otherwise available to it.

17.5 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 Agreement or any informal negotiations which may occur between State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Agreement may be commenced without first giving fourteen (14) calendar days written notice to State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however, that the cost to State shall not exceed five thousand dollars (\$5,000.00). All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator or employees of any mediation service, are inadmissible for any purpose (including but not limited to impeachment) in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Inadmissibility notwithstanding, all written documents shall nevertheless be subject to the Georgia Open Records Act O.C.G.A. Section 50-18-70 et seq. No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

17.6 Assignment.

17.6.1 This Agreement shall not be assignable by either party without the prior written consent of the other party. Notwithstanding anything contained herein to the contrary, State may assign to any other State Entity, in whole or in part, State's right, title, interest and obligations under this Agreement or any Solutions Order or Services Order which relate to items purchased by State on behalf of such State Entity, without Contractor's consent. State's assignment pursuant to this Section 17.6.1 of any payment obligations to another State Entity shall be limited to the extent of that State Entity's interest or use of the subject matter hereof and shall constitute a full and complete novation of State's liabilities and obligations with respect thereto and Contractor shall recognize the State Entity to which such obligations were assigned as State's successor-in-interest with respect to such obligations and will exclusively look to such State Entity for the discharge of all such liabilities and obligations, provided, however State will continue to be Contractor's sole point of contact with respect to this Agreement in accordance with Section 17.234.

17.6.2 This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective permitted successors and assigns, provided that no assignment, except as described in Section 17.6.1, shall relieve any party of such party's obligations hereunder without the consent of the other party hereto.

17.7 Covenant Against Pledging. Contractor agrees that, without the prior written consent of State, it will not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from any State Entity under this Agreement for any reason whatsoever. To the extent State permits Contractor to assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from State under this Agreement, Contractor will continue to be State's sole point of contact with respect to this Agreement, including with respect to payment. The Person to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered will not be considered a third party beneficiary under this Agreement and will not have any rights or causes of action against any State Entity.

17.8 No Liens. Contractor will not file, or by its action or inaction permit, any liens to be filed on or against property or realty of State or any other State Entity. In the event that any such liens arise as a result of the Contractor's action or inaction, Contractor will obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) Business Days. If Contractor fails to do so, State may, in its sole discretion, pay the amount of such lien, or deduct such amounts from payments due to Contractor.

17.9 Non-Delegation. Nothing herein will be deemed or construed as delegating the discretionary powers or authority of State or any of the other State Entities to Contractor. Further, nothing herein will be deemed or construed as delegating the discretionary powers or authority of the other State Entities to State or the discretionary powers or authority of State to the other State Entities.

17.10 No Waiver. The failure of either party at any time or times to enforce or require performance of any provision contained in this Agreement shall in no way operate as a waiver or affect the right of such party at a later time to enforce such provision.

17.11 Entire Agreement. This Agreement (together with its Exhibits, all executed Solution Orders and Services Orders, and all attachments thereto) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement supersedes all prior written agreements and contemporaneous oral agreements with respect to the subject matter hereof; provided, if the parties have entered into a Confidentiality and Non-Disclosure Agreement, the terms of such agreement shall survive and govern the parties' obligations as set forth in such agreement between the execution date thereof and the Effective Date. Although State may utilize its own purchase order or confirmation form for its own convenience, the provisions of this Agreement shall control as to all issues relating to the subject matter hereof. Typewritten or handwritten additions, initialed by both parties, shall supersede any pre-printed provisions of this Agreement. Subject to the foregoing, each Solution Orders and Services Orders hereto, whether executed concurrently herewith or subsequent hereto, shall be deemed to be incorporated herein and shall be governed by the terms of this Agreement.

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

17.13 Severability. Each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses of the Agreement. Moreover, if any provision contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity, subject, or otherwise unenforceable, such provision shall be construed by the appropriate judicial body by limiting or reducing it or them so as to be enforceable to the maximum extent compatible with the Applicable Law.

17.14 Time is of the Essence. Time is of the essence with respect to Contractor's performance of the terms of this Agreement. Contractor shall ensure that all personnel providing Software, Licenses and Services to State are responsive to State's requirements and requests in all respects.

17.15 Independent Contractor. Contractor and all Contractor Personnel are independent contractors and neither Contractor nor any Contractor Personnel shall be deemed an employee of State. Contractor is and shall remain the employer of all Contractor Personnel and shall be solely responsible for the employment, training, and payment of salaries, wages, bonuses, benefits (including health insurance, retirement and other similar benefits, if any) and other compensation, of all Contractor Personnel. Contractor shall be responsible for the payment of all federal, state, and local withholding taxes and workers compensation, and, at the reasonable request of State, Contractor shall provide to State evidence that all of such payments have been made. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Neither Contractor nor any Contractor Personnel shall have the right to bind State to any contract, agreement, or obligation.

17.16 Joint/Several Liability. If the Contractor is a joint entity, consisting of more than one Person, all such Persons shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default of activities and obligations. Contractor acknowledges and agrees that the liability of each State Entity shall be several and not joint.

17.17 No Third-Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give any person other than Contractor and State any rights or remedies under or by reason of this Agreement.

17.18 Survival. All provisions of this Agreement that, by their terms, are intended to survive shall expressly survive any termination or expiration of this Agreement, including Section 3, Section 11, Section 12, Section 14 and Section 15.

17.19 Publicity. The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law. Notwithstanding the foregoing, the Contractor Parties each agree that no acknowledgment or other information concerning the Agreement or the Services and/or Deliverables provided hereunder will be made public by the Contractor Parties without the prior written agreement of State. Further, the Contractor Parties shall not use State's, any other State Entities' name, photographs, logo, trademark, or other identifying characteristics without the applicable State Entity's prior written approval.

17.20 Solicitation. The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage or contingency.

17.21 Interpretation; Intent of References to Bid Documents. Whenever any provision of this Agreement uses the term "including" (or "includes"), such term shall be deemed to mean "including without limitation" and "including but not limited to" (or "includes without limitations" and "includes but is not limited to") regardless of whether the words "without limitation" or "but not limited to" actually follow the term "including" (or "includes"). The words "herein," "hereby," "hereunder," "hereof," and other equivalent words shall refer to this Agreement in its entirety and not solely to the particular portion of this Agreement in which any such word is used. All definitions set forth herein shall be deemed applicable whether the words defined are used herein in the singular or the plural. Wherever used herein, any pronoun or pronouns shall be deemed to include both the singular and plural and to cover all genders. The references to the parties' obligations, which are contained in this Agreement, are intended to supplement or clarify the obligations as stated in the eRFP and Contractor's eRFP Response. The failure of the parties to make reference to the terms of the eRFP or Contractor's eRFP Response in this Agreement shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the eRFP and the

Contractor's eRFP Response. The contractual obligations of any State Entity cannot be implied from Contractor's eRFP Response.

**17.22 Force Majeure.** Neither party shall be liable for, or be in breach of this Agreement because of, any delay or failure to perform its obligations under this Agreement or thereunder resulting from any acts of God, war, insurrection, terrorism or the public enemy (collectively, "FM Events"). A party that experiences a FM Event shall give the other party prompt written notice of the FM Event. The affected party shall use reasonable efforts to work around or to overcome the FM Event and to resume full performance under this Agreement as soon as practicable. Occurrence of FM Events will not excuse the backup and disaster recovery obligations of Contractor. Contractor will follow normal procedures for classification, resolution, resolution and escalation of incidents, even if the incident is caused by an FM Event. If an FM Event causes a material failure or delay in the performance of any applications or services for more than five (5) consecutive days, State may, at its option, and in addition to any other rights State may have, procure such applications or services from an alternate source until Contractor is again able to provide them, and Contractor shall be liable for all payments made and costs incurred by State required to obtain such applications and services from such alternate source during such period. If an FM Event causes a material failure or delay in the performance of any application or services for more than thirty (30) consecutive days, State may, at its option, and in addition to any other rights they may have, immediately terminate each affected Schedule and Services Order without liability to Contractor. State shall not be required to pay the fees that may have otherwise been payable for any period of time in which any substantial part of the Solution and Services are not provided as a result of an FM Event.

**17.23 Counterparts.** This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one Agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**17.24 State Entity Representative.** Notwithstanding anything contained in this Agreement to the contrary, each of the State Entities other than State hereby appoint State to serve as their representative and State accepts such appointment, to act for and on behalf of such State Entities with respect to this Agreement. Each of the State Entities acknowledges and agrees that any decision, act, consent, or instruction taken or given by State pursuant to this Agreement shall be and constitute a decision, act, consent or instruction of all State Entities and shall be final, binding, and conclusive upon the State Entities, and Contractor and its Affiliates may rely upon any such decision, act, consent or instruction of State on behalf of the other State Entities. The State Entities hereby agree to release State from and waive any and all claims and liabilities based on any claim that an action authorized hereunder to be taken by the State on behalf of the other State Entities is not binding on, or enforceable against, any such State Entity.

**17.25 Order of Precedence.** In the case of any inconsistency or conflict among the specific provisions of this Agreement (as amended), the Exhibits attached hereto, the eRFP (including any subsequent addenda), Contractor's eRFP Response, and the Documentation, the order of precedence shall be, notwithstanding any terms that may be contained in the eRFP, Contractor's eRFP Response, or the Documentation (including any statement that purports to change the order of precedence described herein, incorporate additional or inconsistent terms, or amend documents having precedence), as follows:

17.25.1 First, by giving precedence to the specific provisions of this Agreement.

17.25.2 Second, by giving precedence to the specific provisions of the Exhibits attached hereto.

17.25.3 Third, by giving precedence to the specific provisions of the eRFP.

17.25.4 Fourth, by giving precedence to the specific provisions of the Contractor's eRFP Response, except that objections or amendments by a Contractor contained in Contractor's eRFP Response that have not been expressly accepted by State in writing shall not be included in this Agreement and shall be given no weight or consideration.

## **18. DEFINITIONS AND INDEX OF PREVIOUSLY DEFINED TERMS.**

This Section 18 provides definitions for capitalized terms used but not previously defined in this Agreement and indexes capitalized terms used and previously defined in the Section in which they first appear as indicated by bold type. The definitions in this Section apply to such capitalized terms in both their singular and plural forms. This Section 18 does not apply to those terms capitalized only to comply with grammatical conventions.

18.1 **"Abandon"** and **"Abandonment"** have the meanings set forth in Section 16.8.

18.2 **"Acceptance Test"** is defined in Section 9.

18.3 **"Acceptance Test Plan"** is defined in Section 9.

18.4 **"Agreement"** is defined in the Initial Paragraph of this Agreement.

18.5 **"Applicable Law"** means all applicable provisions of any constitution, statute, common law, ordinance, code, rule, regulation, decision, order, decree, judgment, release, license, permit, stipulation or other official pronouncement enacted or issued by any Governmental Authority or arbitrator or arbitration panel.

18.6 **"Application Programs"** is defined in Section 2.1.1(ii).

18.7 **"Authorized Recipients"** means those employees, consultants or agents of the Receiving Party to whom disclosure is required to carry out this Agreement and any Order hereunder and who have executed a confidentiality agreement or are otherwise bound to duties of non-disclosure and restrictions on use of the Confidential Information at least as restrictive as those set forth in this Agreement (including, but not limited to an undertaking to implement and maintain appropriate administrative, technical and physical safeguards to protect the confidentiality, integrity and availability of Regulated Information) but shall expressly exclude such individuals or entities as may, at the election of the parties, be identified on a list bearing the signatures of the parties and attached to and incorporated into this Agreement.

18.8 **"Bankruptcy Code"** is defined in Section 3.1.4.

18.9 **"Breach Incident"** is defined in Section 7.2.2(b).

18.10 **"Change Control Form"** is defined in Section 5.2.

18.11 **"Change Order"** is defined in Section 5.2.

18.12 **"Change Request"** is defined in Section 5.2.

18.13 **"Change Response"** is defined in Section 5.2.

18.14 **"Confidential Information"** is defined in Section 11.1.

18.15 **"Configuration Services"** means the services described in Section 4.1.

18.16 **"Contractor"** is defined in the initial paragraph of this Agreement.

18.17 **"Contractor Affiliates"** means those entities that are: (a) directly or indirectly, through one or more intermediaries, controlled by Contractor, whether such control is effective by ownership of equity interests, contract or otherwise; and (b) expressly identified by Contractor to State and State agrees to their inclusion on Exhibit D.

18.18 **"Contractor Computer Systems"** is defined in Section 11.7.1.

18.19 **"Contractor's eRFP Response"** means Contractor's submission in response to the eRFP including all materials submitted in connection therewith and, for the avoidance of doubt, all responses to the Mandatory Response Worksheet, questionnaires, and other attachments or links released with the eRFP, a copy of which is attached hereto as Exhibit A.

18.20 **"Contractor Licensed Programs"** means those Licensed Programs identified on the applicable Solution Order as being licensed by Contractor.

18.21 **"Contractor Parties"** is defined in Section 7.3.2.

18.22 **"Contractor Personnel"** is defined in Section 6.2.

18.23 **"Contractor Products"** is defined in Section 12.1.

18.24 **"Contractor Relationship Manager"** is defined in Section 6.1.

18.25 **"Contractor Solution Partner"** is defined in Section 1.3.

18.26 **"Contractor System Proposal"** is defined in Section 4.1.2.

18.27 **"County"** means the 159 counties of the State of Georgia.

18.28 **"Crisis"** means an extraordinary event affecting Contractor that requires emergency response measures to be taken, including any event that may result in the Solution or Services and any additional applications provided by Contractor to State becoming unavailable for a significant amount of time

18.29 **"Critical Milestone"** means those critical delivery and implementation milestones specifically identified in Table A of Appendix A to Attachment 4 of Solution Order No. 1 (Milestones).

18.30 **"Deliverables"** is defined in Section 12.7.

18.31 **"Delivery & Acceptance Notice"** means a written notice substantially in the form of Exhibit I.

18.32 **"Derivative Works & Improvements"** has, collectively, the meaning ascribed to the term "derivative work" in Title 17 U.S.C., and "improvement" in Title 35 U.S.C., but in all events shall apply to additions, changes, or other statutorily specified new material appearing for the first time in the applicable item or work hereunder.

18.33 **"Designated Licensed Programs"** is defined in Section 4.1.1.

18.34 **"Disabling Procedures"** means any program routine, device, code or instructions (including any code or instructions provided by third parties) or other undisclosed feature, including a time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse, bug, error, defect or trap door, that is capable of accessing, modifying, deleting, damaging, disabling, deactivating, interfering with, or otherwise harming the Services and Deliverables, any hardware, data or other electronically stored information, or computer programs or systems.

18.35 **"Disaster Recovery Plan"** is defined in Section 11.8.

18.36 **"Disclosing Party"** is defined in Section 11.1.

18.37 **"Discounts"** shall mean the discounts set forth in the Fee Schedule.

18.38 **"Documentation"** means all written materials related to any Services or Deliverables (including any component of any Solution) that are supplied by Contractor to State hereunder, including any and all installer's, operator's and user's manuals, training materials, guides, functional and/or technical specifications, commentary, listings and other materials, (including all materials describing interoperability with other hardware or software), in any or all media, for use in conjunction with the applicable Services or Deliverables (including any component of any Solution), in all cases in sufficient form and content to allow for first and frontline personnel comprehension thereof. If such Deliverables are discrete computer software applications, Documentation shall include such reasonable descriptions as would allow a third party of reasonable skill and experience in information technology to operate, maintain, customize and parameterize such Deliverables and their related Source Code.

18.39 **"Effective Date"** is defined in the initial paragraph of this Agreement.

18.40 **"Equipment"** is defined in Section 2.1.1(iv).

18.41 **"Equipment Charge"** is defined in Section 10.1.8.

18.42 **"Extended Warranty"** is defined in Section 4.2.

18.43 **"eRFP"** is defined in Section 1.1.

18.44 **"Fee Schedule"** is defined in Section 10.1.

18.45 **"Final Acceptance"** means the receipt by Contractor of written notification from State that all Services and Deliverables under a given Services Order have been reviewed and tested by State as a whole and found to: (a) substantially conform to the Specifications and descriptions set forth in such Services Order and any exhibits thereto, as such Specifications and descriptions may be specifically amended by subsequent mutual written agreements between the parties; and (b) conform to Contractor's representations and warranties in this Agreement.

18.46 **"FM Events"** is defined in Section 17.22.

18.47 **"Functional Requirements"** is defined in Section 4.1.1.

18.48 **"Fund"** is defined in Section 15.3.

18.49 **"Generally Accepted Accounting Principles"** means United States generally accepted accounting principles.

18.50 **"Governmental Authority"** means any federal, state, local or foreign legislative, executive, judicial, quasi-judicial or other public authority, agency, department, bureau, division, unit, court or other public body.

18.51 **"Guaranteed Functionality"** is defined in Section 1.2.

18.52 **"Guaranteed Performance"** is defined in Section 1.2.

18.53 **"Impact Analysis"** is defined in Section 5.3.

18.54 **"Indemnified Parties"** is defined in Section 15.1.

18.55 **"Initial Acceptance"** means the receipt by Contractor of written notification from State that any particular Services or Deliverables under a given Services Order have been reviewed and/or tested by State and found to: (i) substantially conform to the Specifications and descriptions set forth in such Services Order and any exhibits thereto, as such Specifications and descriptions may be specifically amended by

subsequent mutual written agreements between the parties and (ii) conform to Contractor's representations and warranties in this Agreement.

18.56 **"Initial Term"** is defined in Section 16.1.

18.57 **"Installation Deadline"** is defined in Section 2.1.3.

18.58 **"Installation Event"** is defined in Section 2.1.3.

18.59 **"Installation Plan"** is defined in Section 2.1.3.

18.60 **"Intellectual Property Rights"** means all right, title and interest, including all copyright rights, patent rights (including rights under all patent applications, patents, letters patent, supplementary patent certificates, inventor's certificates, continued prosecution applications, requests for continued examination, and other similar filings or stages thereof) and trademark rights as well as all proprietary rights (including Trade Secrets) and moral rights (including the rights of authorship and attribution and subsequent modification) throughout the world whether under the laws of the United States, any of its several states or any foreign jurisdiction and whether or not evidenced by certificates, applications or registrations therefor and whether granted permanently, on initial issuance or granted upon reissue, re-examination, division, extension, provisionally, in continuation or in continuation-in-part and at all times further including all goodwill associated with all such rights.

18.61 **"Interest Rate"** means the lesser of eighteen percent (18%) or the maximum rate permitted by Applicable Law.

18.62 **"Interruption"** means any material, or continuing, or repeated suspension or interruption in the supply of the Solution or Services by or on behalf of Contractor to State, or any other material, or continuing, or repeated failure of Contractor to meet its obligations under this Agreement in regard to the Solution or Services, whether resulting from breach, termination, partial or complete cessation of business, disruption of business, bankruptcy or other insolvency proceedings, or otherwise, or termination of this Agreement.

18.63 **"Key Personnel"** is defined in Section 6.5.

18.64 **"Licensed Programs"** means all operating system software and other software programs (including all Contractor Licensed Programs and Third Party Licensed Programs) provided by Contractor hereunder.

18.65 **"Major Revisions"** is defined in Section 2.3.

18.66 **"Maintenance Services"** is defined in Sections 2.1.1(v).

18.67 **"Mandatory Requirements"** is defined in Section 1.2.

18.68 **"Milestone Payment"** is defined in Section **Error! Reference source not found..**

18.69 **"Milestone Deadline"** means each of the dates listed in the "Milestone Deadline" column of the tables set forth on Appendix A to Attachment 4 of Solution Order No. 1 (Milestones).

18.70 **"Non-Infringement Warranty"** is defined in Section 14.1.5(c).

18.71 **"Operating Program"** is defined in Section 2.1.1(iv).

18.72 **"OSS"** is defined in Section 12.9.

18.73 **"Output"** is defined in Section 12.1.

18.74 **"Performance Levels"** is defined in Section 8.1.

18.75 **"Performance Requirements"** is defined in Section 4.1.1.

18.76 **"Person"** means any individual, corporation, limited liability company, partnership, limited partnership, business trust, or other entity of any nature.

18.77 **"Pilot Election"** means the pilot election to be administered on November 5, 2019 in up to 6 Counties (exact Counties to be determined by mutual agreement), including the coding of election database (and additional training needed in connection therewith), training of personnel including poll-workers of the Counties hosting the Pilot Election, logic and accuracy testing at each of the participating State Sites, election day support at the participating State Sites, and post-Pilot Election auditing and validation of results.

18.78 **"Privacy Regulations"** is defined in Section 11.5.

18.79 **"Project Manager"** is defined in Section 6.4.

18.80 **"Proprietary Materials"** means: (a) all runtime and non-runtime machine-readable, executable object code, human readable source code, in any language whatsoever (including HTML, CGI, XML, Java, Visual Basic and C) and on any operating or database platform, system or environment whatsoever (including Windows, Unix, Linux, DB2, J2EE, Oracle, SQL or any mainframe) as well as all computer system designs, user interfaces, commented source code, explanations, flow charts, schematics, algorithms, subroutine descriptions, class and object descriptions, memory and overlay maps, statements of principles of operations, architecture standards, data flow descriptions, class, base-class and sub-class descriptions, data structures, control logic and other computer formatting, programming or scripting code; (b) all inventions and discoveries, whether or not patentable, reduced to practice or recorded in a medium; (c) all published and unpublished works of authorship including audio-visual works, "look and feel," artwork, illustrations, images, photographs and printed or graphic matter; (d) all tangible materials, including all prototypes, models, designs, files, templates libraries (.dll or otherwise), tools, graphics, screen displays and/or their other user interface components or "look and feel" (as that phrase is understood and applied under Title 17 U.S.C.), creative content, algorithms, formulae data, information, reports and technologies; (e) business and technical requirements and system designs and architectures in any form or medium.

18.81 **"Receiving Party"** is defined in Section 11.1.

18.82 **"Regulated Information"** is defined in Section 11.5.

18.83 **"Regulation Compliant"** is defined in Section 14.1.13.

18.84 **"Renewal Period"** is defined in Section 16.1.

18.85 **"Residuals"** means any information in intangible form that is not protectable under copyright or patent law, or protected as a trade secret or other intellectual property right including any ideas, concepts, know-how or techniques contained therein.

18.86 **"Revision"** is defined in Section 2.3.

18.87 **"Security Breach"** means (i) unauthorized physical or technical access to any Contractor Computer System; (ii) any circumstance that may constitute or result in, any unlawful or unauthorized acquisition, access, loss, theft, use or disclosure of any Confidential Information, Regulated Information, or State Data in the possession of any of the Contractor Parties; (iii) any breach or attempted breach of the security of any Confidential Information, Regulated Information, or State Data, or of any of the controls of any of the Contractor Parties intended to protect the same; or (iv) any other circumstances or events that

could compromise the privacy or security of any of the Confidential Information, Regulated Information, or State Data in the possession of any of the Contractor Parties.

18.88 **"Service Level Agreements"** means the service levels to be maintained by Contractor throughout the Term as more fully described in a Services Order or Services Order Attachment.

18.89 **"Services"** is defined in Section 2.1.1.

18.90 **"Services Order"** means a written instrument signed by an authorized signatory of a State Entity and an authorized representative of Contractor substantially in the form of Exhibit C. Such Services Order will include any requirements, considerations, or objectives which differ from the general provisions of this Agreement and not otherwise address in a Solution Order; for example, the intent of the parties with respect to any rights to particular developments (intellectual property), specific Milestone Events and/or Milestone Dates and/or quality and warranty considerations, special fees, and all such other particular objectives, considerations, or requirements in conjunction with the delivery of Services by Contractor. Except as otherwise specifically provided in such Services Order, each Services Order shall be governed by the terms of this Agreement.

18.91 **"Services Order Attachment"** is defined in Section 4.4.

18.92 **"Site Specifications"** means the reasonable environmental specifications as relate to utilities, temperature, and humidity conditions, which Contractor suggests are maintained at the State Sites for efficient operation and use of the Solution at those State Sites.

18.93 **"Software"** is defined in Section 2.1.1.

18.94 **"Solution"** is defined in Section 1.1.

18.95 **"Solution Order"** is defined in Section 2.1.1.

18.96 **"Source Code"** means a copy of the complete source code corresponding to the object code of a given Deliverable, as applicable, plus any pertinent commentary or explanation (including any and all explanations, flow charts, schematics, algorithms, subroutine descriptions, class and object descriptions, memory and overlay maps, statements of principles of operations, architecture standards, data flow descriptions, class, base-class and sub-class descriptions, data structures, and control logic) that may be necessary to render such source code understandable and useable by a reasonably trained computer-programming expert who is generally familiar with information technology systems in the financial and banking sectors. The source code shall include all Documentation, statements of principles of operation, and schematics, all as necessary or useful for the effective understanding and use of such source code. Insofar as the development environment employed for the development, maintenance, and implementation of any source code includes any device, programming, or Documentation not commercially available to State on reasonable terms through readily known sources other than Contractor, the source code shall include all such devices, programming, or Documentation. The foregoing reference to "development environment" is intended to apply to any programs, including compilers, "workbenches," tools, and higher-level (or "proprietary") languages, used by Contractor for the development, maintenance, and implementation of the applicable source code.

18.97 **"Special Programs"** is defined in Section 2.1.1(ii).

18.98 **"Specifications"** means the technical and business requirements of State described in a given Solution Order or Services Order, including all technical detail and design specifications, functionality matrices, requirements definition, request for proposals, proposals, gap analysis, requirements for project management, relevant project considerations, objectives, Milestone Events and/or Milestone Dates, and Performance Levels set forth therein.

18.99 **"Specifications Warranty"** is defined in Section 14.1.12(b).

18.100 **"State"** is defined in the initial paragraph of this Agreement.

18.101 **"State Contractor"** means any individual, corporation, limited liability company, partnership, limited partnership, business trust or other business organization duly recognized under the laws of its applicable jurisdiction that provides services to State or any other State Entity.

18.102 **"State Data"** is defined in Section 12.3.

18.103 **"State Entity"** means the State and the Counties.

18.104 **"State Relationship Managers"** is defined in Section 6.1.

18.105 **"State Site"** means the 159 locations of the State Entities at which the Solution is to be implemented and such other locations as may be designated by State from time to time.

18.106 **"Support Services"** is defined in Section 2.1.1(iii).

18.107 **"SVS"** is defined in Section 1.1.

18.108 {Reserved}.

18.109 **"Term"** is defined in Section 16.1.

18.110 **"Termination Assistance"** is defined in Section 16.6.

18.111 **"Termination Assistance Period"** is defined in Section 16.7.

18.112 **"Third Party Licensed Programs"** means those Licensed Programs identified on the applicable Solution Order as being licensed by a Contractor Solution Partner.

18.113 **"Third Party Materials"** means all Proprietary Materials the Intellectual Property Rights for which are owned, by an individual or entity other than State Entities) and Contractor (including Contractor Affiliates).

18.114 **"Trade Secrets"** means any business, scientific or technical data, information, design, process, procedure, formula, or improvement that is commercially valuable to either party and is not generally known in the industry. Each party acknowledges that the Trade Secrets of the other party have been developed by that party at great expense and with the considerable effort of skilled professionals. Each party also acknowledges that the Services and Deliverables under this Agreement may of necessity incorporate Trade Secrets.

18.115 **"Training Services"** is defined in Section 4.2.

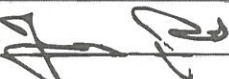
18.116 **"Transfer Control Laws"** is defined in Section 7.3.2.

18.117 **"Transition Plan"** is defined in Section 16.6.

18.118 **"Upgraded Solution"** is defined in Section 2.3.

[This space intentionally left blank; signatures appear on following pages.]

IN WITNESS WHEREOF, the parties have caused this Master Solution Purchase and Services Agreement to be executed by their duly authorized representatives as of the date first written above.

|                                                                                       |                                                                                        |
|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <b>STATE OF GEORGIA<br/>OFFICE OF THE SECRETARY OF STATE</b>                          | <b>Dominion Voting Systems, Inc.</b>                                                   |
| By:  | By:  |
| Name: <u>BRAD RAFFENSPERGER</u>                                                       | Name: <u>John Poulos</u>                                                               |
| Title: <u>SECRETARY OF STATE</u>                                                      | Title: <u>President &amp; CEO</u>                                                      |
| Date: <u>8/12/2019</u>                                                                | Date: <u>7/29/2019</u>                                                                 |
| By:  |                                                                                        |
| Name: <u>Gabriel Sterling</u>                                                         |                                                                                        |
| Title: <u>Chief Operating Officer</u>                                                 |                                                                                        |
| Date: <u>8/9/2019</u>                                                                 |                                                                                        |