

State of Georgia Sourcewell Participating Addendum

| | | |
|---|--------------------------------------|--|
| Solicitation Title Radio Communications | Solicitation Number 042021 | Contract Number 99999-SPD-T20250623-0002 |
|---|--------------------------------------|--|

1. This Contract is entered into between the Agency and the Contractor named below:

Agency's Name
Department of Administrative Services (hereafter called Agency)

Contractor's Name
Motorola Solutions, Inc. (hereafter called Contractor)

| | | |
|---------------------------------|--------------------------------|----------------|
| 2. Contract to Begin: 1/1/23 | Date of Completion: 6/23/25 | Renewals: 0 |
|---------------------------------|--------------------------------|----------------|

3. Performance Bond, if any: _____ Other Bonds, if any: _____

| | |
|--|---|
| 4. Authorized Person to Receive Contract Notices for Agency: Carl Hall, Contract Management Manager | Authorized Person to Receive Contract Notices for Contractor: Scott P. Adler |
|--|---|

5. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Statewide Contract:

| |
|--|
| Attachment 1: Sourcewell Participating Addendum Terms and Conditions |
| Attachment 2: Sourcewell Master Agreement # 042021-MOT |
| Attachment 3: Statement of Work (SOW) Template |
| Attachment 4: Request for Proposals #42021 for Public Safety Communications Technology and Hardware Solutions |
| Attachment 5: Contractor's response to RFP #042021, as accepted by Sourcewell |

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

6. **Contractor**

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

| | |
|---|---------------------------|
| By (Authorized Signature) <i>Scott Adler</i> | Date Signed 12/29/2022 |
|---|---------------------------|

Printed Name and Title of Person Signing
Scott P. Adler, Vice President

Address
Motorola Solutions, Inc. 3025 Windward Plaza, Suite 350, Alpharetta, GA 30005

7. **Agency**

Agency Name
Department of Administrative Services

| | |
|---|---------------------------|
| By (Authorized Signature) <i>Jim Barnaby</i> | Date Signed 12/29/2022 |
|---|---------------------------|

Printed Name and Title of Person Signing
Jim Barnaby State Purchasing Deputy Commissioner

Address
200 Piedmont Ave, SE Suite 1804 West Tower, Atlanta, Georgia 30334-9010

**STATE OF GEORGIA
PARTICIPATING ADDENDUM
ATTACHMENT 1
TERMS AND CONDITIONS**

**Sourcewell Master Agreement #: 042021-MOT
GA Statewide Contract Number: 99999-SPD-T20250623-0002**

Public Safety Communications Technology and Hardware Solutions

A. DEFINITIONS AND GENERAL INFORMATION

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

- i. **“Agency”** means the Department of Administrative Services of the State of Georgia.
- ii. **“Awarded Item Schedule”** means the summarizing document, if any, listing the goods and services as awarded and may also denote the Contractor providing such goods and services.
- iii. **“Contract”** or **“Statewide Contract”** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
- iv. **“Contractor”** means the provider(s) of the goods and services under the Statewide Contract.
- v. **“Purchase Instrument”** means the documentation issued by the Agency or User Agencies to the Contractor for a purchase of goods and services in accordance with the terms and conditions of the Statewide Contract. The Purchase Instrument should reference the Statewide Contract and may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Agency or User Agencies.
- vi. **“Response”, “Contractor’s Response”** or **“Final Response”** means the Contractor’s submitted response to the Master Agreement # 042021-MOT, including any modifications or clarifications accepted by the Agency.
- vii. **“RFX”** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the Statewide Contract Form that was issued to solicit the goods and/or services that are subject to the Statewide Contract.
- viii. **“State”** means the State of Georgia, the Agency, User Agencies, and any other authorized state entities issuing Purchase Instruments against the Statewide Contract.
- ix. **“Participating Addendum Form”** means the document that contains basic information about the Statewide Contract and incorporates by reference the applicable Contract Terms and Conditions and the Sourcewell Master Agreement. No objection or amendment by a Contractor to the RFX requirements or the

Statewide Contract shall be incorporated by reference into this Statewide Contract unless the Agency has accepted the Contractor's objection or amendment in writing. The Participating Addendum Form is defined separately and referred to separately throughout the Statewide Contract Terms and Conditions as a means of identifying the location of certain information. For example, the initial term of the Statewide Contract is defined by the dates in the Participating Addendum Form.

- x. **“User Agency” or “User Agencies”** means any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to or required to make purchases from this PA.
- 2. **Certified Source of Goods and Services.** Pursuant to Section 50-5-57 of the Official Code of Georgia Annotated (O.C.G.A.), the Agency hereby certifies the Contractor as a source of supply to the User Agencies of the goods and services identified in this PA. Orders shall be placed individually and from time to time by the User Agencies. The execution of this Statewide Contract only establishes the Contractor as an authorized source of supply by the Agency and creates no financial obligation on the part of the Agency.
- 3. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.
- 4. **Reporting Requirements.** Contractor shall provide all reports required by the Master Agreement # 042021-MOT. In addition, unless otherwise provided in the Master Agreement, Contractor shall keep a record of the purchases made pursuant to the PA and shall submit a quarterly written report to the Agency.

B. DURATION OF CONTRACT

- 1. **Contract Term.** The Participating Addendum (PA) shall begin and end on the dates specified in the PA unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this PA shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
- 2. **Contract Extension.** In the event that this PA shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified goods and services, the Agency may, with the written consent of Contractor, extend this PA for such period as may be necessary to afford the State a continuous supply of the identified goods and services.

C. DESCRIPTION OF GOODS AND SERVICES

- 1. **Scope.** This PA establishes a statewide contract (“Statewide Contract”) with Contractor as a non-exclusive, non-mandatory source of supply for Public Safety Communications Products, Services and Solutions for (1) all State of Georgia governmental entities subject to O.C.G.A. § 50-5-50 et seq. (informally known as the State Purchasing Act), including but not limited to certain state offices, agencies, departments, boards, bureaus, commissions, institutions, and colleges and universities and (2) all other State of Georgia governmental entities such as state authorities, local government, municipalities, cities, townships, counties and other political subdivisions of the State of Georgia. All entities authorized to make purchases pursuant to this addendum shall be referred to individually as “Purchasing Entity” and collectively as “Purchasing Entities” and entities of the State may also be referenced to as “the State”. Purchasing Entities

may not sign their own Participating Addenda unless approved by the Chief Procurement Officer of the State of Georgia.

The purchase of any goods or services must be within the scope of services available through the Master Contract. No terms and conditions of service providers (including but not limited to resellers, subcontractors and partners) will be considered binding on the Participating State or a Purchasing Entity. The Contractor may include transactional terms and conditions in Statements of Work, but they will be considered last in the order of precedence. Any documents containing terms and conditions that are in conflict with the terms and conditions of the Master Agreement or this PA are not binding on the parties.

Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions of this PA, even if the work is performed by a subcontractor. Contractor shall ensure compliance by all service providers (including but not limited to resellers, subcontractors, partners, or agents) of all obligations and requirements set forth under the Master Agreement and this PA.

Purchasing Entities may require retainage as specified in their individual Statements of Work or Purchase Orders.

The following products or services are included in this contract portfolio: Motorola Solutions, Inc. has been awarded the following categories/sub-category/solutions.

Detail regarding available services, warranty, software options along with products and pricing are available on the Sourcewell website.

- i. P25 radio infrastructure
- ii. Fire station alerting
- iii. Vehicular repeaters
- iv. APX portable & mobile radios
- v. Private LTE infrastructure
- vi. Private LTE devices
- vii. Dispatch consoles
- viii. Backhaul, microwave, MPLS, etc.
- ix. Buildings, towers, & site equipment
- x. Integration services
- xi. RF site development
- xii. Maintenance & support

2. Ordering Process. Orders to purchase Radios and Dispatch Consoles may be accomplished via Purchase Order or via a Statement of Work issued by Purchasing Entity. The purchase of Radio Solutions must be accomplished through a Statement of Work issued by the Purchasing Entity. Contractor may not fulfil any order for a Radio Solution that is not accompanied by a Statement of Work. Orders of Radio Solutions shall be accomplished via issuance of a Statement of Need by the Purchasing Entity to Resellers and evaluation of proposals submitted by resellers in response to the Statement of Need.

i. Statement of Need. The Purchasing Entity shall issue a detailed Statement of Need to the Reseller(s) who offer the applicable Radio Solution(s). DOAS reserves the right to require a specific format, information, and pre-approvals on the Statement of Need Form. The format of the Statement of Need is left to the discretion of the Purchasing

Entity, but forms submitted by entities of the State of Georgia at a minimum must contain the following:

1. Current State
2. Desired Scope
3. Business Requirements
4. Technical Requirements
5. Functional Requirements

ii. **Proposal.** Contractor shall provide the Purchasing Entity with a Proposal addressing the requested Radio Services. At a minimum, the Proposal will include the following:

1. Price
2. Scope – Detailed Statement of Work containing Milestones and Timeframe
3. Conditions, SLAs, Obligations
4. Additional Terms and Conditions (which shall not diminish Purchasing Entity's rights under this PA)

iii. **Statement of Work.** Orders will be placed by a Purchasing Entity directly with Contractor or approved subcontractor, fulfillment partner, dealer or reseller. The Purchasing Entity may modify Master Agreement or Participating Addendum terms and conditions relating to Purchasing Entity's specific order through a Statement of Work, which must be signed by both the Purchasing Entity and Contractor; however, such Statement of Work shall not diminish the rights of the Purchasing Entity under the Master Agreement or the PA. A Statement of Work shall be between the signing Purchasing Entity and the Contractor, and shall not be interpreted to diminish, change, or impact any other Statement of Work entered with a separate Purchasing Entity. An Statement of Work shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the Master Agreement and shall not diminish, change, or impact the rights of DOAS with regard to DOAS's contractual relationship with the Contractor under the Terms of the Master Agreement and Participating Addendum. Orders of Radio Solutions for State Agencies, Departments, Boards, Bureaus, Commissions, Universities, and Schools (collectively "State Entities") shall incorporate the Statement of Need and the final negotiated version of Contractor Proposal (including SOW). It is the responsibility of the Contractor to ensure orders from State Entities include required documents.

Upon request, Contractor will assist Purchasing Entities in obtaining any applicable license agreements, maintenance agreement, and any other documents pertinent to the products and/or services in this Participating Addendum wherever such information and documents have not been made available within the Master Contract. Contractor shall ensure that such agreements and documents contain static terms and that weblinks are not included in the terms of such agreements and documents as generally provided pursuant to O.C.G.A. § 50-5-64.1, which indicates that the State may not agree to terms which may be unilaterally changed by the other party at some point in the future.

The State of Georgia constitution prohibits State entities from pledging the State's credit. Accordingly, entities of the State of Georgia may only be obligated for the amount indicated in a purchase order executed by the Purchasing Entity. Contractor shall ensure that all sales to entities of the State of Georgia and any supplemental agreements comply with the provisions of O.C.G.A. § 50-5-64.1 and State of Georgia Law and Policy as described in the memo "Contracting with State Entities", most recently revised on January 4, 2021

<https://doas.ga.gov/assets/State%20Purchasing/Stage%203%20Documents/SPD-SP060ContractingwithStateEntities.pdf> and any subsequent revisions to the memo.

Contractor shall ensure that all sub-Contractors providing services under this agreement executes the appropriate e-verify affidavit located at [http://www.audits.qa.gov/NALGAD/section3 affidavits.html](http://www.audits.qa.gov/NALGAD/section3%20affidavits.html).

- 3. Product Shipment and Delivery.** All products shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All items shall be at the Contractor's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the User Agencies, regardless of when the hidden damage is discovered.
- 4. Non-Exclusive Rights.** The Statewide Contract is not exclusive. The Agency reserves the right to select other contractors to provide goods and services similar to goods and services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar goods and services from other contractors upon prior approval of the Agency, which approval shall be made at the sole discretion of the Agency when it is deemed to be in the best interests of the State, and shall be conclusive.
- 5. No Minimums Guaranteed.** The Statewide contract does not guarantee any minimum level of purchases.

D. COMPENSATION

- 1. Payment terms shall be as specified in the Proposal and Invoice.** Invoices. Invoices for payments must be submitted by the Contractor to the Purchasing Entity requesting the services with sufficient detail to support payment. The terms and conditions included in the Contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the Purchasing Entity, and no action by the Purchasing Entity, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.
- 2. Inspection and Approval.** Final inspection and approval of all work required under the contract shall be performed by the designated Purchasing Entity officials. Payments shall not be made until contractual deliverable(s) are received and accepted by the Purchasing Entity.
- 3. Payment.** Purchasing Entity will render payment to Contractor when the terms and conditions of the Contract and specifications have been satisfactorily completed on the part of the Contractor as solely determined by the Participating Entity. Payment will be made by the responsible Purchasing Entity. In no event, shall the Purchasing Entity be responsible or liable to pay for any services provided by the Contractor prior to the Effective Date of the contract, and the Contractor hereby waives any claim or cause of action for any such services.
- 4. Travel Expenses.** Expenses for travel shall not be reimbursed unless specifically permitted under the duties of the Contractor. All travel must be approved in advance by

the Purchasing Entity. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State, available here: <https://sao.georgia.gov/state-travel-policy>.

5. **Federal Funds.** Payments under this Contract may be made from federal funds obtained by the State. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements. Participating entities may include additional contract terms and conditions with their PO's that incorporate language required by federal grant conditions.
6. **Delay of Payment Due to Contractor's Failure.** If the User Agencies in good faith determine that the Contractor has failed to perform or deliver any service or product as required by the Statewide Contract, the Contractor shall not be entitled to any compensation under the Statewide Contract until such service or product is performed or delivered. In this event, the User Agencies may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the User Agencies to incur costs, the User Agencies may deduct the amount of such incurred costs from any amounts payable to Contractor. The User Agencies' authority to deduct such incurred costs shall not in any way affect the Agency's sole authority to terminate the Statewide Contract.
7. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the User Agency any sum or the User Agency must obtain substitute performance, the User Agency may set off the sum owed against any sum owed by the User Agency to the Contractor.

E. TERMINATION

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

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

- 5. Termination Due to Change in Law.** The Agency shall have the right to terminate this Statewide Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:
- i. The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or
 - ii. The Agency's duties are substantially modified.
- 6. Payment Limitation in Event of Termination.** In the event of termination of the Statewide Contract for any reason by the Agency, the User Agencies shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to the date specified in the notice of termination for which the User Agencies are obligated to pay pursuant to the Statewide Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Statewide Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.
- 7. The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:
- i. Cease work under the Statewide Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Statewide Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;
 - ii. Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
 - iii. Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Statewide Contract;
 - iv. Cooperate in good faith with the Agency, the User Agencies, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
 - v. Immediately return to the User Agencies any payments made by the User Agencies for goods and services that were not delivered or rendered by the Contractor.

F. CONFIDENTIAL INFORMATION

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

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

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

G. INDEMNIFICATION AND LIMITATION OF LIABILITY

1. General Indemnity. Contractor will participate fully in the defense of or defend (subject to the approval of the Attorney of the State of Georgia), indemnify, and hold State harmless from and against any and all damages, losses, liabilities, and expenses (including reasonable fees and expenses of attorneys) arising from any actual third-party claim, demand, action, or proceeding (“**Claim**”) for personal injury, death, or direct damage to tangible property to the extent caused by strict liability Contractor’s negligence, gross negligence or willful misconduct while performing its duties under an Ordering Document or an Addendum, except to the extent the claim arises from State’s negligence or willful misconduct.

2. Intellectual Property Infringement. Contractor will participate fully in the defense of or defend (subject to the approval of the Attorney General of the State of Georgia) State against any third-party claim alleging that a Contractor-developed or manufactured Product or Service (the “**Infringing Product**”) directly infringes a United States patent or copyright (“**Infringement Claim**”), and Contractor will pay all damages finally awarded against State by a court of competent jurisdiction for an Infringement Claim, or agreed to in writing by Contractor in settlement of an Infringement Claim. Contractor’s duties under this **Section– Intellectual Property Infringement** are conditioned upon: (a) State promptly notifying Contractor in writing of the Infringement Claim; (b) Contractor having control of the defense of the suit and all negotiations for its settlement or compromise, provided, however, State must consent in writing to any money damages or obligations for which it may be responsible; and (c) State cooperating with Contractor and, if requested by Contractor, providing reasonable assistance in the defense of the Infringement Claim. If Contractor fails to vigorously pursue the defense or settlement of the intellectual property claim, State may assume the defense or settlement of it and Contractor shall be liable for all costs and expenses, including reasonable attorneys’ fees and related costs incurred by state in defense or settlement of the intellectual property claim.
 - i. If an Infringement Claim occurs, or in Contractor’s opinion is likely to occur, Contractor may at its option and expense: (a) procure for State the right to continue using the Infringing Product; (b) replace or modify the Infringing Product so that it becomes non-infringing; or (c) grant State (i) a pro-rated refund of any amounts pre-paid for the Infringing Product (if the Infringing Product is a software Product, i.e., Licensed Software or Subscription Software) or (ii) a credit for the Infringing Product, less a reasonable charge for depreciation (if the Infringing Product is Equipment, including Equipment with embedded software).

 - ii. In addition to the other damages disclaimed under this Agreement, Contractor will have no duty to defend or indemnify State for any Infringement Claim that arises from or is based upon: (a) State Data, State-Provided Equipment, Non-Contractor Content, or third-party equipment, hardware, software, data, or other third-party materials; (b) the combination of the Product or Service with any products or materials not provided by Contractor; (c) a Product or Service designed, modified, or manufactured in accordance with State’s designs, specifications, guidelines or instructions; (d) a modification of the Product or Service by a party other than Contractor; (e) use of the Product or Service in a manner for which the Product or Service was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by State to use or install an update to the Product or Service that is intended to correct the claimed infringement. In no event will Contractor’s liability resulting from an Infringement Claim extend in any way to any payments due on a royalty basis,

other than a reasonable royalty based upon revenue derived by Contractor from State from sales or license of the Infringing Product.

iii. This **Section – Intellectual Property Infringement** provides State’s sole and exclusive remedies and Contractor’s entire liability in the event of an Infringement Claim. For clarity, the rights and remedies provided in this Section are subject to, and limited by, the restrictions set forth below.

3. **DISCLAIMER OF CONSEQUENTIAL DAMAGES.** EXCEPT FOR BREACHES OF DATA SECURITY OR CONFIDENTIALITY OBLIGATIONS, PERSONAL INJURY, OR DEATH, CONTRACTOR, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, AND ASSIGNS (COLLECTIVELY, THE “**CONTRACTOR PARTIES**”) WILL NOT BE LIABLE IN CONNECTION WITH THIS AGREEMENT (WHETHER UNDER CONTRACTOR’S INDEMNITY OBLIGATIONS, A CAUSE OF ACTION FOR BREACH OF CONTRACT, UNDER TORT THEORY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR REVENUES, EVEN IF CONTRACTOR HAS BEEN ADVISED BY STATE OR ANY THIRD PARTY OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES AND WHETHER OR NOT SUCH DAMAGES OR LOSSES ARE FORESEEABLE.
4. **DIRECT DAMAGES.** EXCEPT FOR BREACHES OF DATA SECURITY OR CONFIDENTIALITY OBLIGATIONS, PERSONAL INJURY OR DEATH, OR INTELLECTUAL PROPERTY INFRINGEMENT, THE TOTAL AGGREGATE LIABILITY OF THE CONTRACTOR PARTIES, WHETHER BASED ON A CLAIM IN CONTRACT OR IN TORT, LAW OR EQUITY, RELATING TO OR ARISING OUT OF THE AGREEMENT WILL NOT EXCEED THE FEES SET FORTH IN THE ORDERING DOCUMENT UNDER WHICH THE CLAIM AROSE. NOTWITHSTANDING THE FOREGOING, FOR ANY SUBSCRIPTION SOFTWARE OR FOR ANY RECURRING SERVICES, THE CONTRACTOR PARTIES’ TOTAL LIABILITY FOR ALL CLAIMS RELATED TO SUCH PRODUCT OR RECURRING SERVICES IN THE AGGREGATE WILL NOT EXCEED THE TOTAL FEES PAID FOR SUCH SUBSCRIPTION SOFTWARE OR RECURRING SERVICE, AS APPLICABLE, DURING THE CONSECUTIVE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT FROM WHICH THE FIRST CLAIM AROSE.
5. **ADDITIONAL EXCLUSIONS.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR WILL HAVE NO LIABILITY FOR DAMAGES ARISING OUT OF (A) STATE DATA, INCLUDING ITS TRANSMISSION TO CONTRACTOR, OR ANY OTHER DATA AVAILABLE THROUGH THE PRODUCTS OR SERVICES; (B) STATE-PROVIDED EQUIPMENT, NON-CONTRACTOR CONTENT, THE SITES, OR THIRD-PARTY EQUIPMENT, HARDWARE, SOFTWARE, DATA, OR OTHER THIRD-PARTY MATERIALS, OR THE COMBINATION OF PRODUCTS AND SERVICES WITH ANY OF THE FOREGOING; (D) MODIFICATION OF PRODUCTS OR SERVICES BY ANY PERSON OTHER THAN CONTRACTOR; (E) RECOMMENDATIONS PROVIDED IN CONNECTION WITH OR BY THE PRODUCTS AND SERVICES; OR (G) STATE’S OR ANY AUTHORIZED USER’S BREACH OF THIS AGREEMENT OR MISUSE OF THE PRODUCTS AND SERVICES.
6. **Survives Termination.** The indemnification obligation of the Contractor shall survive termination of the Statewide Contract.

H. INSURANCE

Contractor shall provide all insurance as required by the Master Agreement# 042021-MOT.

I. BONDS

The Contractor shall provide all required bonds in accordance with the terms of the Master Agreement# 042021-MOT and as stated in the PA.

J. WARRANTIES

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

that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Statewide Contract.

- 5. Conformity with Contractual Requirements.** The Contractor represents and warrants that the goods and services provided in accordance with the Statewide Contract will appear and operate in conformance with the terms and conditions of the Statewide Contract.
- 6. Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Statewide Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
- 7. Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Statewide Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.
- 8. Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials, or equipment shall remain in the Contractor until fully paid for by the User Agencies.
- 9. Industry Standards.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Statewide Contract, which shall take precedence.
- 10. Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform services under this Statewide Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency as specified in the Master Agreement# 042021-MOT. All persons assigned to perform services under this Statewide Contract shall be qualified to perform such services. Personnel assigned by Contractor shall have all professional licenses required to perform the services.
- 11. Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of services under this Statewide Contract. Contractor shall be responsible for providing transportation necessary to perform all services.

K. PRODUCT RECALL

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

State shall agree to the performance of such repairs by the State upon mutually acceptable terms.

L. CONTRACT ADMINISTRATION

1. Order of Preference.

- i.** The Participating Addendum (“PA”), including any Amendments and Exhibits attached, including Exhibit A. A Participating Entity’s Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State’s contractual relationship with the Contractor under the Master Agreement
- ii.** A Statement of Work and Purchase Order issued against the Participating Addendum; however, no such Statement of Work or Purchase Order shall diminish, change, or impact the rights of 1) the Lead State regarding the Lead State’s contractual relationship with the Contractor under the Master Agreement; or 2) DOAS with regard to the DOAS’s contractual relationship with the Contractor under the PA. No such agreement shall diminish the rights provided to the Purchasing Entity under the Master Agreement or this PA
- iii.** The Master Agreement Terms & Condition
- iv.** The Solicitation
- v.** Contractor’s response to the Solicitation, as revised and accepted by the Lead State; and

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Participating Addendum are only those that are expressly accepted by the Participating State and must be in writing and attached to the Participating Addendum as an Exhibit or Attachment. The Participating Addendum language prevails unless a mutually agreed exception has been made in writing as an amendment to this Participating Addendum, signed by the parties and approved as required by the laws of the State of Georgia.

No other terms and conditions shall apply, including terms and conditions listed in the Contractor’s response to the Solicitation, or terms listed or referenced on the Contractor’s website, in the Contractor quotation/sales order or in similar documents subsequently provided by the Contractor to a Purchasing Entity. No invoice or other documents associated with any sales, orders, or supply of any good or service under this Participating Addendum shall contain any terms or conditions other than as set forth in the Participating Addendum. Any such extraneous terms and conditions shall be void, invalid, and unenforceable against the State of Georgia or the Participating Entity. Any refusal by Contractor/Subcontractor to supply any goods or services under this Participating Addendum conditioned upon the State of Georgia or the Participating Entity submitting to any extraneous terms and conditions shall be a material breach of the Participating Addendum and constitute an act of bad faith by the Contractor/Subcontractor.

2.

i. **DOAS Participation in Contract Disputes.** Consistent with its statutory authority, DOAS is acting solely in a representative capacity and on behalf of Purchasing Entities. Accordingly, DOAS is not a party to this Agreement unless DOAS itself makes a purchase pursuant to the Agreement, and need not be joined as a party to any dispute that may arise out of this Agreement. With regard to this Agreement, the officers, agents and employees of DOAS are acting solely in their official capacity and need to be joined as a party to any dispute that may arise out of this Agreement.

ii. **Administrative Fee and Sales Reporting Submission**

1. Pursuant to O.C.G.A. Section 50-5-51(10), DOAS has the authority to collect monies, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to O.C.G.A. Section 50-5-57. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new statewide contracts, training, and technology. For this statewide contract, DOAS requires each supplier to pay to DOAS an administrative fee on all sales pursuant to the resulting statewide contract. The administrative fee amount for this statewide contract is 1%. The Fee will not be identified separately from the product and/or service pricing offered to Authorized Entities wherever that pricing may appear (website, catalog, invoices, etc.). This Fee will be collected by the Contractor and remitted to DOAS in accordance with the following paragraphs. The table below, which is incorporated in the State of Georgia Statewide Contract document, contains due dates for both quarterly sales reports and administrative fees.

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

| <i>DOAS' Fiscal Quarters</i> | <i>Months</i> | <i>Supplier's Quarterly Sales Report Due Date</i> | <i>Supplier's Payment Due Date (In Response to DOAS generated Invoice)</i> |
|---|------------------------------------|---|--|
| <i>Quarter 1</i> | <i>July 1st – September 30th</i> | <i>October 20th</i> | <i>November 15th</i> |
| <i>Quarter 2</i> | <i>October 1st – December 31st</i> | <i>January 20th</i> | <i>February 15th</i> |
| <i>Quarter 3</i> | <i>January 1st – March 31st</i> | <i>April 20th</i> | <i>May 15th</i> |
| <i>Quarter 4</i> | <i>April 1st – June 30th</i> | <i>July 20th</i> | <i>August 15th</i> |
| 30 DAYS FOLLOWING TERMINATION OF SWC | | | |

At the end of each state fiscal quarter as defined above, Supplier shall prepare the Quarterly Sales Report and submit the file through the Supplier Portal of Team Georgia Marketplace, including the Supplier's most up-to-date Invoice Contact Name (Billing Contact), Supplier Billing Address, and Supplier Billing E-Mail. In the event that no sales have occurred, the Supplier must complete and submit the Quarterly Sales Report, indicating that no sales have occurred, and submit the file through Supplier

Portal of Team Georgia Marketplace. No later than the date identified above as the "Supplier's Payment Due Date" for each fiscal quarter, the Supplier shall remit a payment of fees to DOAS in response to a DOAS generated invoice, through Electronic Funds Transfer (EFT).

By submission of these reports and corresponding Supplier payments, Supplier is certifying their correctness. DOAS, at its sole discretion, may also accept payment of Fees from the Supplier via electronic funds transfer (EFT).

2. **Auditing and Contract Close Out.** All sales reports and Fee payments shall be subject to audit by the State. Supplier shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the statewide contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Supplier shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Supplier relating to orders, invoices or payments or any other documentation or materials pertaining to the statewide contract, wherever such records may be located during normal business hours. Supplier shall not impose a charge for audit or examination of the Supplier's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Supplier for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities. In no event shall Supplier retain any amount of money in excess of the compensation to which Supplier is entitled and all Fees owed DOAS shall be paid within thirty (30) calendar days of termination of the statewide contract for any reason.
3. **Modifying or Canceling the Fee.** DOAS reserves the right to modify and/or cancel the Fee at any time. Supplier shall immediately amend the statewide contract pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.
4. **Late Payment Fee.** In the event DOAS does not receive the Supplier's payment of the Fees on or before the Supplier's Payment Due Date, the parties agree the Supplier must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

$$\begin{aligned} &(\text{Administrative Fee Amount Due}) \times (18\%) = X \\ &X / 365 \text{ (366 for leap years)} = Y \\ &Y \times (\text{Number of Days Payment is Late}) = \text{Interest Owed} \end{aligned}$$

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Supplier does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Supplier makes an error and

overpays, the Supplier is responsible for alerting DOAS in writing of the Supplier's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund or credit the overpayment amount to the Supplier no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment. DOAS will have no responsibility for interest or any other fees with respect to Supplier's overpayment of Fees.

5. **Default.** THE SUPPLIER'S RESPONSIBILITY TO COLLECT AND REMIT THE ADMINISTRATIVE FEE ON BEHALF OF DOAS IS A SERIOUS RESPONSIBILITY AS THE SUPPLIER IS HANDLING STATE FUNDS. Accordingly, failure to comply with these contractual requirements shall constitute grounds for declaring Supplier in default and recovering re-procurement costs from Supplier in addition to all outstanding Fees and interest.
- iii. **Georgia Procurement Conference.** Participation in DOAS State Purchasing's Annual Georgia Procurement Conference (GPC) DOAS hosts an annual marketing and training trade conference, usually in late April or early May, to educate public procurement professionals on the commodities and services available on statewide contracts, offer them educational platforms to learn new techniques and best practices from state and national industry experts and provide marketing, networking and training opportunities to statewide contract Suppliers. The attendees at these events have included public procurement professionals from all state agencies, the colleges and universities of the Board of Regents and the Technical College System of Georgia, local cities and municipalities across the state, and many independent authorities. The Exhibitor Expo, which is one of the highlights of the conference, has significant marketing value and is extremely cost effective as it provides exceptional opportunities for statewide Suppliers to market directly to thousands of attendees. The Georgia Procurement Conference is scheduled each year at the Jekyll Island Convention Center and is primarily supported by statewide Suppliers as exhibitors. The cost to exhibit in the past has ranged from \$1,300 to \$1,600 depending on booth location desired. DOAS believes that the Expo is important because it provides public purchasers with an opportunity to meet over 300 statewide contract Suppliers and receive important information on new and existing products and services. It provides statewide contract Suppliers with training workshops and the unparalleled opportunity to establish and renew business relationships with existing customers and to market their business to approximately 800 attendees, many of whom represent potential new customers. Please note that exhibiting at the Georgia Procurement Conference is not required and no points will be awarded to those Bidders who commit to participate.
- iv. **Changes in Contractor Representation.** Changes in Contractor Representation. DOAS requires the assignment of a primary account representative (for each category). The Contractor shall identify by name and location the primary account representative for each awarded category who will be responsible for the performance of the contract. The Contractor must also provide a next in line account representative, that will serve as a back-up for the State. The State requires the Contractor to notify DOAS of any changes in key account representatives, in writing within 10 calendar days of the change.
- v. **Relationship Among Public Entities.** Each Purchasing Entity's obligations and liabilities are independent of every other Purchasing Entity's obligations and

liabilities. Termination of one Purchasing Entity does not constitute grounds for termination for a different Purchasing Entity.

- vi. **Waiver and Modification.** No waiver of any default by either party shall act as a waiver of a subsequent or different default. The provisions of this Agreement may not be modified or waived except by another agreement in writing executed by authorized representatives. A Purchasing Entity and Contractor may modify the provisions of the agreement only to the extent applicable to said Purchasing Entity's purchase.
- vii. **Anti-Indemnification and Anti-Representation.** Any provision in the Agreement is void to the extent that it imposes an obligation upon DOAS or a Purchasing Entity that would properly be characterized as an indemnity. DOAS and User Agencies make no representations or warranties to Contractor, and any language to the contrary is void.
- viii. **Statute of Limitations.** Any provision in the Agreement is void to the extent that it modifies the statute of limitations or alters the time period within which an action must be brought.
- ix. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** No method of mandatory alternative dispute resolution shall apply to any dispute, claim or controversy arising out of or relating to this Agreement. In addition to any dispute resolution procedures otherwise required under this Statewide Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Statewide Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, forty-five (45) calendar days after the date of filing the written request for mediation with the mediator or mediation service, or sixty (60) calendar days after the delivery of the

written demand for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire.

- x. **Non-appropriations.** Pursuant to O.C.G.A. § 50-5-64, any purchase made pursuant to this PA will terminate immediately and absolutely if the Purchasing Entity determines that adequate funds are not appropriated or granted or funds are de-appropriated such that Purchasing Entity cannot fulfill its obligations under the PA, which determination is at Purchasing Entity's sole discretion and shall be conclusive. The Purchasing Entity will pay Contractor for all conforming equipment shipped and services rendered up to the date of termination.
- xi. **Users.** A Purchasing Entity has no liability for any acts or omissions of any person that Purchasing Entity allows to use the software, unless such acts or omissions are within the scope of that person's employment or have been properly authorized by Purchasing Entity.
- xii. **Privacy.** As used in this paragraph, the term "data" means any information regarding any person or entity other than a Purchasing Entity that is gathered or acquired by Purchasing Entity as a result of the software licensed by Purchasing Entity being used, except to the extent fully disclosed in writing,

M. COMPLIANCE WITH THE LAW, RULES, ORDINANCES, REGULATIONS, AND APPLICABLE POLICY

1. **General Compliance.** This Agreement is entered into pursuant to O.C.G.A. § 50-5-50 et seq. As a public entity, all of procuring entities obligations are obligations are subject to applicable laws. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Statewide Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Statewide Contract. Contractor and Contractor's personnel shall also comply with all State, Agency, and Purchasing Entity policies and standards in effect during the performance of the Statewide Contract, including but not limited to the Agency and Purchasing Entities' policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics.
2. Contractor warrants and represents that the provisions of O.C.G.A. Section 21 et seq. have not and must not be violated under the terms of this Statewide Contract.
3. Contractor warrants and represents that Contractor is not currently engaged in and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §50-5-85.

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

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

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

- iv. Contractor has made false certification here in above; or
 - v. Contractor has violated such certification by failure to carry out the requirements of O.C.G.A. Section 50-24-3(b).
- 5. State Security.** Contractor agrees to comply with all provisions of the then-current State of Georgia IT Policies, Standards, and Procedures, including but limited to those which may be found at <https://gta.georgia.gov/psg/> or a successor URL(s), as are pertinent to Contractor's operation. Contractor further agrees to comply with all provisions of the relevant Purchasing Entity's then-current security procedures as are pertinent to Supplier's operation and which have been supplied to Supplier by such Purchasing Entity. For any individual Purchasing Entity location, security procedures may include but not be limited to: Background checks, records verification, photographing, and fingerprinting of Contractor's employees or agents. Contractor may, at any time, be required to execute and complete, for each individual Contractor employee or agent, additional forms which may include non-disclosure agreements to be signed by Contractor's employees or agents acknowledging that all Purchasing Entity information with which such employees and agents come into contact while at the Purchasing Entity site is confidential and proprietary. Any unauthorized release of proprietary or Personal information by the Contractor or an employee or agent of Contractor shall constitute a breach of its obligations under this Section and the Contract. Contractor shall immediately notify Agency and applicable Purchasing Entity of any breach of unencrypted and unredacted personal information and other personally identifying information provided by Agency or Purchasing Entity to Contractor. Contractor shall provide Agency and applicable Purchasing Entity the opportunity to participate in the investigation of the breach.
- 6. Sexual Harassment Prevention.** The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment. Furthermore, the State of Georgia

maintains an expectation that its contractors and their employees and subcontractors will interact with entities of the State of Georgia, their customers, and other contractors of the State in a professional manner that contributes to a respectful work environment free from sexual harassment.

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

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

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

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

- 7. National Defense Authorization Act (NDAA).** A vital component of DOAS's mission is ensuring that any equipment or services procured by Authorized Entities adequately protects the security of state data. Effective August 13, 2018, the John McCain National Defense Authorization Act (NDAA), H.R. 5515 (<https://www.congress.gov/bill/115th-congress/house-bill/5515/text#toc-H4350A53097BD46409287451A50C4F397>), provides that agencies of the federal government are prohibited from procuring equipment or services from Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). In addition, federal agencies are prohibited from procuring certain video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any of their subsidiaries or affiliates). For similar reasons, DOAS, has determined that Suppliers utilizing manufacturer's equipment, subcomponent products or services provided by these entities will be excluded from receiving an awarded

contract. Please confirm that you agree not to utilize manufacturer's equipment, subcomponent products or services from any of the companies identified in the NDAA under any resultant contract award with the State of Georgia.

8. Amendments. Any further Amendments to the Master Agreement after the Effective Date of this PA that have been approved by the Lead State, will not be applicable to this PA and will not be valid unless made in writing as an amendment to this PA, signed by the parties and approved as required by the laws of the State of Georgia. No oral understanding or agreement not incorporated in this Participating Addendum is binding on any of the parties.
9. **Third Party Beneficiaries.** This Agreement is made solely and specifically among and for the benefit of the Parties hereto (including Purchasing Entities), and their respective successors and assigns, and no person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

N. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

1. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Statewide Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Statewide Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.
2. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** In addition to any dispute resolution procedures otherwise required under this Statewide Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Statewide Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally

in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

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

3. **Assignment and Delegation.** The Statewide Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
4. **Subcontractors.** All contactors, dealers, and resellers authorized in the State of Georgia, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants under the Sourcewell master agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Contractor must ensure that any subcontractor (including service providers) fulfillment partner, dealer, or reseller who makes sales under this PA complies with the terms of the Master Agreement and this PA. No terms or conditions of the Service provider (including but not limited to subcontractors, resellers and partners), not included in this PA, shall be considered binding on DOAS or the purchasing entity unless specifically agreed to in writing and reflected herein.

Contractor must ensure that any sub-Contractor (including service providers) fulfillment partner, dealer, or reseller who makes sales under this Participating Addendum complies with the terms of the Master Agreement and this Participating Addendum. No terms or conditions of the goods or service provider (including but not limited to sub-contractors, resellers, and partners), not included in this PA, shall be considered binding upon DOAS unless specifically agreed to by DOAS in writing.

5. **Reseller Approval.** Contractors wishing to add a Reseller to the Statewide contract must follow the State approval process. Resellers must be approved in advance by the State as a condition of eligibility under this PA. DOAS reserves the right to rescind any such participation. DOAS also reserves the right to request the Contractor to name additional Resellers, in the best interest of the State, at the State's sole discretion. The Contractor must complete and submit the following forms as part of the State Reseller approval process:
 - i. Sales and Use Tax Form – Populated with Reseller information
 - ii. Debarment Letter – Contractor statement indicating Reseller is not debarred (Federal or State level)

- iii. E-Verify Form
- iv. DOAS Reseller Request/Approval Spreadsheet – Contractor to complete DOAS approval spreadsheet with Reseller contact information and PO instructions. Contractor shall specify whether orders must be placed directly with Contractor or may be placed directly with the designated Reseller. Contractor must provide the State, in advance, all necessary ordering information, billing address and Federal Identification number.

Approved Resellers must be eligible to quote lower than or equal contract pricing under this Contract. Contractors are encouraged to identify multiple approved Resellers to participate in competitive transactions.

Contractor shall be responsible for Reseller performance and compliance with all Contract terms and conditions. Products purchased through Reseller must be reported by the Contractor in the required Quarterly Sales Reports to the State.

Immediate notice to DOAS is required by the Contractor, in the event, a change in Reseller's status occurs during the Contract term.

Contractor shall ensure that all subcontractors providing services under this agreement executes the appropriate e-verify affidavit located at http://www.audits.ga.gov/NALGAD/section_3_affidavits.html.

- 6. **Integration.** The Statewide Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Statewide Contract.
- 7. **Headings or Captions.** The paragraph headings or captions used in the Statewide Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 8. **Not a Joint Venture.** Nothing in the Statewide Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Statewide Contract.
- 9. **Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Statewide Contract, and for any default of activities and obligations.
- 10. **Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Statewide Contract, this Statewide Contract supersedes all prior contracts or

agreements between the Agency and the Contractor for the goods and services provided in connection with the Statewide Contract.

- 11. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Statewide Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 12. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Statewide Contract on behalf of the party at the address identified in the Statewide Contract Form. Each such notice shall be deemed to have been provided:
- i. At the time it is actually received; or,
 - ii. Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
 - iii. Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

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

- 13. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Statewide Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 14. Severability.** If any provision of the Statewide Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Statewide Contract. Further, if any provision of the Statewide Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Statewide Contract shall not affect any other part of this Statewide Contract, and the remainder of this Statewide Contract shall continue to be of full force and effect.
- 15. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Statewide Contract. Contractor shall ensure that all personnel providing goods and services to the State are responsive to the State's requirements and requests in all respects.
- 16. Authorization.** The persons signing this Statewide Contract represent and warrant to the other parties that:
- i. It has the right, power and authority to enter into and perform its obligations under the Statewide Contract; and

- ii. It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Statewide Contract and the Statewide Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

17. Successors in Interest. All the terms, provisions, and conditions of the Statewide Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

18. Record Retention and Access. The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The Contractor should maintain separate accounts and records for the Agency and the User Agencies. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

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

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

21. Clean Air and Water Certification. Contractor certifies that none of the facilities it uses to produce goods provided under the Statewide Contract are on the Environmental Protection Agency (EPA) List of violating Facilities. Contractor will immediately notify the Agency of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.

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

23. Use of Name or Intellectual Property. Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the

expressed prior written consent of the State. Contractor agrees not to refer to DOAS or Purchasing Entities in such a manner as to state or imply that its services, products or software is endorsed or preferred by Purchasing Entities, the State of Georgia, or any unit of either. The foregoing shall not prohibit Contractor from identifying Purchasing Entity as a customer in a customer list.

- 24. Taxes.** User Agencies are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. User Agencies are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Statewide Contract, which verification is incorporated herein by reference.
- 25. Certification Regarding Sales and Use Tax.** By executing the Statewide Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Statewide Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.
- 26. Delay or Impossibility of Performance.** Neither party shall be in default under the Statewide Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Statewide Contract.
- 27. Obligations Beyond Contract Term.** The Statewide Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Statewide Contract. All obligations of the Contractor incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Statewide Contract.
- 28. Counterparts.** The Agency and the Contractor agree that the Statewide Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 29. Further Assurances and Corrective Instruments.** The Agency and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Statewide Contract.
- 30. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Statewide Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services

required to perform services for the State. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to the State or to another contractor.

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

ATTACHMENT 3

**STATEMENT OF WORK (SOW) TEMPLATE
 BETWEEN (NAME OF PURCHASING ENTITY) AND (SUPPLIER NAME)
 ISSUED UNDER INSERT SWC NAME CONTRACT NUMBER INSERT CONTRACT**

Exhibit A, between Insert Name of Purchasing Entity and Insert Supplier Name (“Supplier”) is issued pursuant to the (INSERT SWC NAME), Effective Date. This SOW is subject to the terms and conditions contained in SWC Number Insert Contract Number (“Contract”) between the STATE OF GEORGIA and Supplier. In the event of any discrepancy between this Exhibit A and the Contract, the provisions of the Contract shall control.

[Note to Template Users: Instructions for using this template to draft a Statement of Work are in gray highlight and bold. These instructions should be deleted after the appropriate text has been added to the Statement of Work. The highlighted area is also fillable.]

STATEMENT OF WORK

This Statement of Work (SOW) is issued by the Insert Name of Purchasing Entity, hereinafter referred to as “Purchasing Entity” under the provisions of the Contract,”. The objective of the project described in this SOW is for the Supplier to provide the Purchasing Entity with Enter the description of services to be performed by the supplier. *(Customize the last sentence to state what you are getting from the Supplier, based on the SWC Contract language, and with your project name.)*

1. PERIOD OF PERFORMANCE

The work authorized in this SOW will occur within XX months of execution of this Statement of Work. *(Customize this section to match what you are getting from the Supplier, based on the allowable scope of the Contract and your project’s specific needs within that allowable scope.)*

2. PLACE OF PERFORMANCE *(Assign performance locations to major milestones or any other project granularity, depending on your transparency and governance needs, if needed.)* Tasks associated with this project will be performed at the Purchasing Entity’s location(s), or other locations as required by the effort.

3. PROJECT DEFINITIONS. *(Provide project unique definitions so that all stakeholders have the same understanding. Ensure these do not conflict with the Contract definition.)*. All definitions of the Contract shall apply to and take precedence over this SOW. Purchasing Entity’s specific project definitions are listed below:

4. PROJECT SCOPE

(Provide a description of the scope of your project and carve out what is NOT in the scope of your project. Remember that it must fit within the VITA Contract scope.)

- a. General Description of the Project Scope
- b. Project Boundaries

5. PURCHASING ENTITY’S SPECIFIC REQUIREMENTS

(Provide information about your project’s and your agency’s specific requirements for this particular project including, but not limited to the following subsections):

- a. Purchasing Entity-Specific Requirements
- b. Special Considerations for Implementing Technology at Purchasing Entity’s Location(s)
- c. Other Project Characteristics to Insure Success

6. CURRENT SITUATION

(Provide enough background information to clearly state the current situation to Supplier so that Supplier cannot come back during performance claiming any unknowns or surprises. Some example subsections are provided below. You may collapse/expand as you feel is necessary to provide adequate information and detail.)

- a. Background of Purchasing Entity’s Business Situation
- b. Current Architecture and Operating System
- c. Current Work Flow/Business Flow and Processes
- d. Current Legacy Systems
- e. Current System Dependencies
- f. Current Infrastructure (Limitations, Restrictions)
- g. Usage/Audience Information

7. PRODUCTS AND SERVICES TO SUPPORT THE PROJECT REQUIREMENTS

- a. Required Products
(List the products, or if your project is for a Solution, the Solution components, (hardware, software, etc.) provided by Supplier that will be used to support your project requirements. Identify any special configuration requirements, and describe the system infrastructure to be provided by the Purchasing Entity.
- b. Required Services
(List the services (e.g., requirements development, Solution design, configuration, interface design, data conversion, installation, implementation, testing, training, risk assessment, performance assessment, support and maintenance) that will be provided by Supplier in the performance of your project. You are urged to refer to the statewide Contract for the definition of Services and for the allowable scope in drafting language for this section.
- c. Training Requirements and/or Purchasing Entity Self-Sufficiency/Knowledge Transfer
(Provide an overview and details of training services to be provided for your project and any special requirements for specific knowledge transfer to support successful implementation of the Solution. If the intent is for the Purchasing Entity to become self-sufficient in operating or maintaining the Solution, determine the type of training necessary, and develop a training plan, for such user self-sufficiency. Describe how the Supplier will complete knowledge transfer in the event this Statement of Work is not completed due to actions of Supplier or the non-appropriation of funds for completion affecting the Purchasing Entity.

8. ITEMIZED PROJECT COSTS

(Provide staff positions, milestones, equipment, licenses and accompanying costs.)

| | | |
|--|--|--|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

9. TOTAL PROJECT PRICE

The total Fixed Price for this Project shall not exceed \$US\$\$\$\$\$. \$\$

10. PROJECT ASSUMPTIONS AND PROJECT ROLES AND RESPONSIBILITIES

(This section contains areas to address project assumptions by both the Supplier and the Purchasing Entity and to assign project-specific roles and responsibilities between the parties. Make sure that all assumptions are included to alleviate surprises during the project. Ensure that all primary and secondary (as needed) roles and responsibilities are included. You will tailor the Responsibility Matrix table below to fit your project’s needs.)

a. Project Assumptions

The following assumptions are specific to this project:

11. PROJECT ROLES AND RESPONSIBILITIES

The following roles and responsibilities have been defined for this project:

| Responsibility Matrix | Supplier | Purchasing Entity |
|-----------------------|----------|-------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Section 12 of Sourcewell Motorola Contract #042021 is replaced by Attachment 4, Data Security Terms and Conditions.

ATTACHMENT 4

STATE OF GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES DATA SECURITY TERMS AND CONDITIONS

A. DEFINITIONS AND GENERAL INFORMATION

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

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

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

B. Data Ownership and Protection

1. **Data Ownership.** The State will own all right, title and interest, including all intellectual property rights, in its data provided under this Agreement. Contractor shall not access Sensitive State Data, except 1) in the course of data center operations, 2) in response to service or technical issues, 3) as required by Contractor to perform the services covered by this Agreement or 4) at the State’s request. Contractor has a limited, non-exclusive license to use Sensitive State Data solely for the purpose of performing its obligations under this Agreement.
2. **Data Protection.** Protection of personal privacy and data shall be an integral part of the cloud products and services provided by Contractor and designed to ensure that there is no inappropriate or unauthorized access to or use of Sensitive State Data at any time. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of Sensitive State Data and comply with the following conditions:
 - i. Contractor shall maintain appropriate administrative, physical, and technical security measures to safeguard against unauthorized access, use, disclosure, alteration, or theft of Sensitive State Data. Such security measures shall be in accordance with current NIST 800-53 standards commensurate with the FISMA data classification specified by the State. If no data classification is specified by the State, in accordance with the measures applicable to the FISMA moderate classification.
 - ii. Contractor shall use industry best practices and up-to-date security tools and technologies and practices such as network firewalls, anti-virus protections, vulnerability scans, system logging, 24/7 system monitoring, third party penetration testing, and intrusion detection methods in providing services under this Agreement.
 - iii. Where the security objectives of confidentiality, authentication, non-repudiation, or data integrity are categorized FISMA compliance level moderate or higher and controlled by Contractor via cloud or delivery of maintenance and repair services, all electronic Sensitive State Data shall be encrypted at rest on portable devices

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

- iv. Unless otherwise provided in the Agreement Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Sensitive State Data to that which is necessary to perform job duties.
- v. Contractor shall not disclose Sensitive State Data to any third party without the prior written consent of the State except as otherwise provided by the Agreement or required by law. Contractor shall ensure that its employees and agents who will have potential access to Sensitive State Data have passed background screening and possess the qualifications and training to comply with the terms of this Agreement. Contractor shall promote and maintain an awareness of the importance of securing Sensitive State Data among Contractor's employees and agents.

3. Data Location. Contractor shall provide its operational services to the State solely from data centers in the U.S. and Contractor shall notify State of such locations. Storage of Sensitive State Data, used in regular system operation, at rest shall be located solely in location(s) or data centers in the U.S. and Contractor shall notify State of such locations. However, the State recognizes that Contractor has offices that provide 24/7 support around the world, and that development of its technologies occur within and outside of the US. System monitoring, normal support and developer support may be outside of the U.S. and communication with support may cause transfer and/or access to support data, which may include Sensitive State Data, outside of the U.S.

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

- 1. Incident Response.** Contractor may need to communicate with outside parties regarding a Security Incident or data Breach, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually agreed upon, defined by law, or contained in the Agreement. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Agreement. Any contacting of law enforcement on matters regarding State systems or data must be followed by a report to the Georgia Information Sharing and Analysis Center (GISAC) at (404) 561-8497.
- 2. Security Incident Reporting Requirements.** Contractor shall report a Security Incident to the appropriate State identified contact within twenty-four hours of determination.
- 3. Breach Reporting Requirements.** Upon becoming aware of a Data Breach or Security Incident, Contractor shall
 - i. Promptly notify the State identified contact within twenty-four hours of discovery or sooner, unless shorter time is required by the Agreement or applicable law;
 - ii. Fully investigate the incident and cooperate fully, to the extent possible without impacting other customers, with the State's investigation of and response to the incident. Except as otherwise required by law, Contractor shall not provide notice of the incident directly to individuals whose Personally Identifiable Information was involved, regulatory agencies, or other entities, without prior written permission from the State;

- iii. promptly implement necessary remedial measures reasonably determined by the State and agreed to by Contractor; and
- iv. document responsible actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary

D. Liability.

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

E. Security

1. **Data Center Audit.** If applicable in the performance of the services covered by this Agreement, Contractor shall ensure an independent audit or provide ISO 27001 certification of its data centers at least annually at its expense and provide a copy of the audit report upon request under a non-disclosure agreement and with reasonable technical restrictions. A Service Organization Control (SOC) 2 audit report or approved equivalent (the ISO 27001 certification) sets the minimum level of a third-party audit.
2. **Security Processes.** Contractor shall disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and Contractor.
3. **Encryption of Data at Rest.** For data categorized as moderate or high in Federal Information Processing Standard 199, Contractor shall ensure confidentiality and integrity of information at rest consistent with security control SC-28, Protection of Information at Rest, in NIST Special Publication 800-53. However, it is recognized that some data cannot be encrypted at rest due to high speed processing requirements. Data subject to high speed processing requirements shall be protected using best practices, such as firewalls and restricted access. The State also recognizes that Contractor does not have control over information entered into customer fields and that the State is responsible for making sure that information requiring such protection is not entered into unprotected customer fields.

F. Response to Legal Orders, Demands, or Requests for Data

1. Except as otherwise expressly prohibited by law, Contractor shall:
 - i. immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by Contractor seeking Sensitive State Data;
 - ii. consult with the State regarding its response;
 - iii. cooperate with the State's reasonable requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request; and
 - iv. upon the State's request, provide the State with a copy of its response.

2. If the State receives a subpoena, warrant, or other legal order, demand (including request pursuant to the Georgia Open Records Act) or request seeking Sensitive State Data maintained by Contractor, the State shall promptly provide a copy to Contractor. Contractor shall promptly supply the State with copies of data required for the State to respond and shall cooperate with the State's reasonable requests in connection with its response.

G. Termination Obligations.

Upon termination or expiration of the Agreement, Contractor shall implement In the State's sole discretion, a secure, orderly (1) destruction of Sensitive State Data in the format and at a time specified by State.

Destroyed Sensitive State Data shall be permanently deleted and shall not be recoverable according to National Institute of Standards and Technology (NIST) approved methods. Certificates of destruction shall be provided to the State. Contractor may retain a copy of Sensitive State Data if necessary to comply with law or its applicable professional standards.

H. Compliance

1. Contractor shall comply with all applicable laws and regulations in performing services under this agreement. Any Contractor personnel visiting the State's facilities will comply with all applicable State policies regarding access to, use of, and conduct within such facilities. The State shall provide copies of such policies to Contractor upon request.

2. Contractor warrants that the service it will provide to the State is fully compliant with relevant laws, regulations, and guidance that is applicable to the service, such as: the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH), Gramm-Leach-Bliley Financial Modernization Act (GLB), Payment Card Industry Data Security Standards (PCI-DSS), Americans with Disabilities Act (ADA), Federal Export Administration Regulations, and Defense Federal Acquisitions Regulations.