



STATE OF GEORGIA eSOURCE CONTRACT TERMS

These eSource Contract Terms are applicable to all solicitations posted within eSource. Please note that these terms and conditions may be supplemented or revised by additional instructions or special terms provided by the State Entity with the solicitation. In the event of a conflict between these eSource Contract Terms and the additional instructions, special terms or attached contract provided by the State Entity with the solicitation, the latter shall govern.

A. DEFINITIONS

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

- (i) **“State Entity”** means the State of Georgia entity identified in the eRFX to contract with the successful supplier.
- (ii) **“Contract”** means the agreement between the State Entity and the Contractor as defined by the State of Georgia eSource Contract Terms and all incorporated documents.
- (iii) **“Contractor”** means the provider of the goods and/or services under the Contract.
- (iv) **“Response”** means the Contractor’s submitted response to the eRFX, including any modifications or clarifications explicitly accepted by the State Entity in writing.
- (v) **“eRFX”** means the Request for Quotes, Request for Proposals, or other solicitation document (and any amendments or addenda thereto) that was used to solicit the goods and/or services that are subject to the Contract.

B. INCORPORATED DOCUMENTS

The terms, conditions, and specifications of the eRFX and the Contractor’s Response are hereby incorporated by reference and made a part hereof just as if they had been fully set out herein. In the case of any inconsistency or conflict among the specific provisions of the Contract and any incorporated documents, any inconsistency or conflict shall be resolved as follows: first, by giving preference to the specific provisions of any contract terms (such as special terms or an attached contract) included with the eRFX; second, by giving preference to the specific provisions of the eRFX; third, by giving preference to the eSource Contract Terms; and fourth, by giving preference to the specific provisions of the Contractor’s Response. Any pre-printed terms and conditions included on Contractor’s forms or invoices shall be null and void.

C. DURATION OF CONTRACT

The Contract between the State Entity and the Contractor shall begin and end on the dates specified in the eRFX (or upon completion of all deliverables), unless terminated earlier in accordance with the applicable terms and conditions of this Contract. Pursuant to O.C.G.A. Section 50-5-64, this Contract shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year in which the appropriations have been made.

D. DELIVERABLES

1. **Specifications in Bidding Documents.** The Contractor shall provide all goods, services, and other deliverables required in the eRFX that comply with the specifications contained in the eRFX and the terms of the Contract, plus those goods, services and other deliverables as may additionally be described in Contractor’s Response.
2. **Product Shipment and Delivery.** All products shall be shipped F.O.B. destination, freight prepaid and included to the location(s) specified in the eRFX or as provided in the State Entity’s purchase instrument. All items shall be at the Contractor’s risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the State Entity, regardless of when the hidden damage is discovered.

- 3. Non-Exclusive Rights and No Minimums Guaranteed.** The Contract is not exclusive. The State Entity reserves the right to select other contractors to provide goods and services similar to goods and services described in the Contract during the term of the Contract. The Contract does not guarantee any minimum level of purchases unless stated otherwise in the eRFx.

E. COMPENSATION

- 1. Pricing.** The Contractor will be paid for the goods and services sold pursuant to the Contract in accordance with the Contract. Unless clearly stated otherwise in the eRFx, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
- 2. Billings.** If applicable, and unless the eRFx provides otherwise, the Contractor shall submit, on a regular basis, an invoice for goods and services supplied to the State Entity under the Contract at the billing address identified by State Entity and the State Entity shall remit payment to the Contractor within thirty (30) calendar days of the State Entity's receipt of the invoice.
- 3. Delay of Payment Due to Contractor's Failure.** If the State Entity in good faith determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such service or product is performed or delivered. In this event, the State Entity may withhold that portion of the Contractor's compensation which represents payment for services or products that were not performed or delivered.

F. TERMINATION

- 1. Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if the State Entity determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the State Entity cannot fulfill its obligations under the Contract, which determination is at the State Entity's sole discretion and shall be conclusive. If the State Entity declares a lack of funding pursuant to this paragraph, the State Entity will not contract for the same goods or services during the remainder of the fiscal year (July 1 – June 30) in which the lack of funding was declared.
- 2. Termination Upon Notice.** Following thirty (30) calendar days' written notice, the State Entity may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor.
- 3. Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the State Entity, the State Entity shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which the State Entity is obligated to pay pursuant to its Contract or purchase instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State Entity under the Contract in the event of termination.
- 4. The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the State Entity, the Contractor shall cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs. Contractor shall immediately cease using and return to the State Entity any personal property or materials, whether tangible or intangible, provided by the State Entity to the Contractor. Further, the Contractor shall immediately return to the State Entity any payments made by the State Entity for goods and services that were not delivered or rendered by the Contractor.

G. PATENT/COPYRIGHT INFRINGEMENT INDEMNIFICATION

Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State of Georgia, the State Entity, and its officers, employees, agents and volunteers (collectively, the "Indemnified Parties") and indemnify the Indemnified Parties against any award of damages and costs made against the Indemnified Parties by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the goods and/or services constitutes an infringement of any United States Letters Patent, trademark, trade dress, copyright or other intellectual property right, provided the State gives the Contractor immediate notice in writing of the institution of such suit (except that failure to give immediate notice shall not limit Contractor's obligations hereunder except to the extent Contractor is prejudiced thereby), permits Contractor to fully participate in the defense of the same, and gives Contractor

all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the State Entity shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the Indemnified Parties reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

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

- (i) Procure for the State the right to continue using the goods and/or services;
- (ii) Replace or modify the same so that it becomes non-infringing; or
- (iii) Remove the same and cancel any future charges pertaining thereto.

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

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

The indemnification obligation of the Contractor shall survive termination of the Contract.

H. INSURANCE AND BONDS

Contractor shall provide all insurance and all required bonds in accordance with the eRFx.

I. WARRANTIES

1. **Warranties.** The Contractor represents and expressly warrants that all aspects of the goods and services provided or used by it are merchantable and shall at a minimum conform to the standards in the Contractor's industry. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Contractor. Acceptance by the State Entity shall not relieve the Contractor of its warranty or any other obligation under the Contract.
2. **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 Entity pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State Entity is good and that transfer of title or license to the State Entity is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.
3. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State Entity.

J. CONTRACT ADMINISTRATION

1. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Contract. The provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Contract. Contractor certifies that Contractor is not currently

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

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

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

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

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

3. Amendments. The Contract may be amended in writing by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by duly authorized representatives of the parties.

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

5. Choice of Law and Forum. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of state law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State of Georgia.

6. Integration. The Contract represents the entire agreement between the parties.

7. Notice. Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the eRFX.

8. Severability. If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract.

9. Time is of the Essence. Time is of the essence with respect to the performance of the terms of the Contract.

10. 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. Contractor will immediately notify the State Entity if Contractor is debarred by the State of Georgia or placed on the Consolidated List of Debarred, Suspended and Ineligible Contractors by a federal entity.

11 Taxes. The State Entity is exempt from certain sales and use taxes. By executing the Contract the Contractor certifies it is either (a) registered with the Georgia 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.

12. Force Majeure. Neither party will be liable to the other party for nonperformance resulting from labor strikes, riots, wars, acts of governmental authorities preventing performance, extraordinary weather

conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

- 13. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Contract, Contractor's liability to the State Entity for any claim of damages arising out of this Contract shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Contract or \$100,000.00, whichever is greater. No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor shall only be liable to the extent of Contractor's contribution to the situation giving rise to the claim. Contractor shall have no liability if the situation giving rise to the claim results solely from the act or omission of the State Entity. Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.
- 14. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.
- 15. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State Entity 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.