

CONTRACT BETWEEN

THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH

AND

FOR

**DATA WAREHOUSE SYSTEM WITH DECISION SUPPORT
AND EXECUTIVE INFORMATION CAPABILITIES**

RFP No. : GTA000211

DCH Contract No.: XXXX

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THIS CONTRACT, with an effective date of _____ (hereinafter referred to as the “Effective Date”), is made and entered into by and between the Georgia Department of Community Health (hereinafter referred to as “DCH” or the “Department”) and _____ (hereinafter referred to as the “Contractor”).

WHEREAS, DCH is responsible for health care policy, purchasing, planning and regulation pursuant to the Official Code of Georgia Annotated (O.C.G.A.) § 31-5A-4 et. seq.;

WHEREAS, DCH is the single State agency designated to administer medical assistance in Georgia under Title XIX of the Social Security Act of 1935, as amended, and O.C.G.A. §§ 49-4-140 *et seq.* (the “Medicaid Program”), and is charged with ensuring the appropriate delivery of health care services to Medicaid recipients and PeachCare members;

WHEREAS, DCH has caused Request for Proposals Number GTA000211 (hereinafter referred to as the “RFP”) to be issued through the Georgia Technology Authority (hereinafter referred to as “GTA”), which is expressly incorporated as if completely restated herein;

WHEREAS, the goal of the RFP is to assist DCH in simplifying its Data Warehouse and Decision Support System and Executive Information System (hereinafter referred to as “DWS/DSS/ESI”);

WHEREAS, DCH has received from Contractor a proposal in response to the RFP, (hereinafter referred to as “Contractor’s Proposal,”) which is expressly incorporated into this Contract as if completely restated herein; and,

WHEREAS, DCH accepts Contractor’s Proposal to provide various services for the Department.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and the Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

1. SCOPE OF SERVICE/ STATEMENT OF WORK

The purpose of this Contract is to replace the Department’s current Decision Support System (hereinafter referred to as “DSS”), Executive Information System (hereinafter referred to as “ESI”), and Data Warehouse System (hereinafter referred to as “DWS”)(collectively known as the “Scope of Services”). The Contractor shall provide the Services so that the delivery of the DWS/DSS/EIS services is simplified wherein information is more readily available, retrievable and flexible in various formats.

The Parties agree that DCH retains Contractor to furnish all of the goods, services and other deliverables as contemplated by this Contract, the RFP, Contractor’s Proposal, the

Notice of Award (“NOA”) and any amendments (collectively the “Solicitation Documents”). In addition, the Contractor shall be subject to the terms and conditions set forth in this Contract.

In the event of a conflict in language between the various documents incorporated into this Contract, the terms, conditions, provisions and requirements of the RFP shall control and govern. In the event of a conflict in language between the RFP and this Contract, the terms, conditions, provisions and requirements set forth in this Contract shall govern and control without exception.

Additionally, the Parties agree that the Department shall not pay or otherwise compensate the Contractor for any services, goods or deliverables outside of the above Scope of Service or Statement of Work. The Department shall not make any exceptions or waivers on this matter. In the event of a dispute regarding whether an item is within the Scope of Service or Statement of Work, the Parties will attempt to reach a mutually agreeable solution. If the Parties fail to reach a mutual agreement, **Section 25. Conflict Resolution**, of this Contract shall control, govern and not be subject to appeal.

A. DCH Responsibilities

DCH shall:

1. have the absolute right to approve or disapprove Contractor’s designated staff assigned to this Contract and to approve or disapprove any changes in key staff, or require the removal or reassignment of any of Contractor’s employees or subcontractor’s employees found unacceptable to DCH;
2. designate a key person or persons for special training in the use of Contractor’s products and services and shall notify Contractor of any changes in key personnel within five (5) business days from the date of the change;
3. provide all necessary claims and population data in a medium and format approved by DCH and Contractor within the timeframes established as a part of Contractor’s initial Work Plan;
4. review and approve all deliverables and invoices for payment;
5. DCH may conduct a financial audit or programmatic audit or both.

B. General Contractor Responsibilities

The Contractor shall immediately notify the Department of any of the following changes:

1. Change in business address, telephone number, facsimile number, and e-mail address;
2. Change in corporate status or nature;

3. Change in business location;
4. Change in solvency;
5. Change in corporate officers, executive employees, or corporate structure;
6. Change in ownership, including but not limited to the new owner's legal name, business address, telephone number, facsimile number, and e-mail address;
7. Change in incorporation status; or,
8. Change in federal employee identification number or federal tax identification number.

C. Specific Contractor Responsibilities

The Contractor shall complete the following actions, tasks, obligations and responsibilities:

1. Submit a project plan to DCH that will cover the implementation and operations time periods. The project plan, once approved by DCH must be updated at least biweekly through the implementation phase of the project.
2. Create the database design and convert the DCH data into the DWS/DSS/EIS. The data included shall include all Medicaid and PeachCare claims, enrollment, and provider data (fee-for-service and managed care); all SHBP and BORHP claims, enrollment, and provider data (indemnity, PPO, HMO, and CDHP); as well as any other applicable data sets identified by DCH and the vendor in the project plan.
3. Update the database with monthly claims and/ managed care encounter data during the operational phase of the contract.
4. Provide DCH initial training for all users of the DWS/DSS/EIS products. For the operational phase, one training class per product will be included in the base contract for new users in DCH as well as two additional training sessions to be used as needed by DCH.
5. Provide DCH telephone support during normal business hours, Monday through Friday, 8 AM through 5 PM.
6. In addition all proposed scope of services in the vendors response to the DCH RFP shall be included in this contract.

D. Deliverables

Contractor shall deliver the following reports or items to the Department:

A. Implementation Phase:

1. Final Project Work Plan shall be delivered to DCH no later than 15 calendar days after contract signing. Within a week, DCH will

indicate if plan is acceptable or not and if necessary when changes must be submitted.

2. Data Conversion and Downloading shall be complete by September 1, 2005.
3. Required staffing levels shall be in place by September 1, 2005 and remain in place throughout the life of the contract.
4. Data enhancements/corrections shall be complete or identified in a corrective action plan by November 1, 2005.
5. Data Warehouse data transfer shall be complete by December 1, 2005.
6. EIS Reports shall be completely designed by December 1, 2005.
7. Training materials, equipment, and documents shall be submitted for approval by December 1, 2005.
8. Operational Readiness Testing shall be complete by December 16, 2005.
9. Installation of the base system and all necessary equipment shall be complete by January 3, 2006.
10. All actions set forth in the corrective action plan shall be complete by January 3, 2006.
11. Implementation Phase shall be complete by January 3, 2006.
12. Final user training for all products shall be complete by March 1, 2006.

B. Operational Phase

1. Databases shall be updated on a monthly basis within 10 calendar days of receipt of data unless DCH and the vendor agree to a different schedule in the Final Project Work Plan.
2. The Contractor and DCH shall schedule a monthly status meeting to cover any outstanding or ongoing issues or projects involving the DWS/DSS/EIS and/or the DWS/DSS/EIS Contractor.

2. TERM OF CONTRACT

This Contract shall begin on the Effective Date and shall continue until the close of the then current State fiscal year unless renewed as hereinafter provided. DCH shall have six options to renew this Contract for an additional term of up to one (1) State fiscal year, which shall begin on July 1, and end at midnight on June 30, of the following year, each upon the same terms, conditions and price in effect at the time of the renewal. The option shall be exercisable solely and exclusively by DCH. As to each term, the Contract shall be terminated absolutely at the close of the then current State fiscal year without further obligation by DCH.

3. PAYMENT FOR SERVICES

DCH shall compensate the Contractor in accordance with the payment schedule as set forth in the Contractor's Cost Proposal, which is incorporated herein as Exhibit II and made a part of this Contract. Each invoice for payment must reference the Contract Number RFP No. GTA000211, DCH Contract No. _____, Contractor's tax identification number (XX-XXXXXXX) and be itemized to identify the activities being billed. DCH will pay the invoice within thirty-(30) calendar days of receipt upon approval of deliverables and the invoice by the DCH Project Leader and Contract Specialist. Each invoice should be mailed to the following address:

Georgia Department of Community Health
Contracts Administration
Attn.: Ms. Shawn Walker, Contracts and Fiscal Service Manager
2 Peachtree Street, N.W. - 35th Floor
Atlanta, Georgia 30303-3159

The relevant deliverables shall be mailed to the Project Leader and Contract Specialist named in the *Notice* provision of this Contract.

The total of all payments made by DCH to Contractor under this Contract shall not exceed \$_____ (hereinafter the "Maximum Funds"), which has been provided for through the use of State or federal grants or other funds. DCH shall have no responsibility for payment beyond that amount. It is expressly understood that the total amount of payment to the Contractor will not exceed the Maximum Funds provided above, unless Contractor has obtained prior written approval, in the form of a Contract amendment, authorizing an increase in the total payment. Additionally, the Contractor agrees that the Department will not pay or otherwise compensate the Contractor for any work that it performs in excess of the Maximum Funds.

4. FUNDING

Notwithstanding any other provision of this Contract, the Parties hereto acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. At the sole discretion of DCH, this Contract shall terminate without further obligation of the State if the source of payment for DCH's obligation no longer exists or is insufficient. The certification by DCH of the events stated above shall be conclusive and not subject to appeal.

5. PAYMENT OF TAXES

Contractor will forthwith pay all taxes lawfully imposed upon it with respect to this Contract or any product delivered in accordance herewith. DCH makes no representation

whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity.

6. RELATIONSHIP OF PARTIES

Neither Party is an agent, employee, or servant of the other. It is expressly agreed that Contractor and any subcontractors and agents, officers, and employees of Contractor or any subcontractor in the performance of this Contract shall act as independent contractors and not as officers or employees of DCH. The parties acknowledge, and agree, that the Contractor, its agents, employees, and servants shall in no way hold themselves out as agents, employees, or servants of DCH. It is further expressly agreed that this Contract shall not be construed as a partnership or joint venture between the Contractor or any subcontractor and DCH.

7. INSPECTION OF WORK

DCH, the State Contractor, the Department of Health and Human Services, the General Accounting Office, the Comptroller General of the United States, if applicable, or their authorized representatives, shall have the right to enter into the premises of Contractor and/or all subcontractors, or such other places where duties under this Contract are being performed for the DCH, to inspect, monitor or otherwise evaluate the services or any work performed pursuant to this Contract. All inspections and evaluations of work being performed shall be conducted with prior notice and during normal business hours. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

8. STATE PROPERTY

Contractor agrees that any papers, materials and other documents that are produced or that result, directly or indirectly, from or in connection with Contractor's provision of the services under this Contract shall be the property of DCH upon creation of such documents, for whatever use that DCH deems appropriate, and Contractor further agrees to execute any and all documents, or to take any additional actions that may be necessary in the future to effectuate this provision fully. In particular, if the work product or services include the taking of photographs or videotapes of individuals, Contractor must obtain the consent from such individuals authorizing the use by DCH of such photographs, videotapes, and names in conjunction with such use. Contractor shall also obtain necessary releases from such individuals, releasing DCH from any and all claims or demands arising from such use.

Contractor shall be responsible for the proper custody and care of any State-owned property furnished for Contractor's use in connection with the performance of this Contract. Contractor will also reimburse DCH for its loss or damage, normal wear and tear excepted, while such property is in the Contractor's custody or use.

9. OWNERSHIP AND USE OF DATA/ UPGRADES

A. OWNERSHIP AND USE OF DATA

All data created from information, documents, messages (verbal or electronic), reports, or meetings involving or arising out of this Contract is owned by DCH (“DCH Data”). Contractor is expressly prohibited from sharing or publishing DCH Data or any information relating to Medicaid or PEHB data without the prior written consent of DCH. In the event of a dispute regarding what is or is not DCH Data, the Department’s decision on this matter shall be final and not subject to appeal.

B. SOFTWARE AND OTHER UPGRADES

The Parties also understand and agree that any upgrades or enhancements to software programs, hardware, or other equipment, whether electronic or physical, shall be made at the Contractor’s expense only, unless the upgrade or enhancement is made at the Department’s request and solely for the Department’s use. Any upgrades or enhancements requested by and made for the Department’s sole use shall become the Department’s property without exception or limitation. The Contractor’s agrees that it will facilitate the Department’s use of such upgrade or enhancement and cooperate in the transfer of ownership, installation, and operation by the Department.

The Contractor is responsible for the maintenance and upgrade of all standard commercial off the shelf hardware and software such that the DCH solution is always current with the industry standard or then prevalent or standard version of the software or hardware. This expense is solely the Contractor’s and will not be paid for by DCH.

Notwithstanding the above, the Parties acknowledge and agree that all trademark software systems utilized by Contractor in the performance of this Contract are proprietary to the Contractor and that DCH shall acquire no title, license or interest in such software under this Contract with the exception as stated above.

10. CONTRACTOR STAFFING

A. STAFFING ASSIGNMENTS AND CREDENTIALS

Contractor warrants and represents that all persons, including independent contractors and consultants assigned by it to the performance of this Contract, shall be employees or formal agents of Contractor and shall have the credentials necessary (i.e., licensed, and bonded, as required) to perform the work required herein. Contractor shall include a similar provision in any contract with any

subcontractor selected to perform work hereunder. Contractor also agrees that DCH may approve or disapprove Contractor's subcontractors or its staff assigned to this Contract prior to the proposed staff assignment. DCH's decision on this matter shall not be subject to appeal.

In addition, Contractor warrants that all persons assigned by it to perform work under this Contract shall be employees or authorized subcontractors of Contractor and shall be fully qualified, as required in the RFP and specified in Contractor's Proposal, to perform the services required herein. Personnel commitments made in Contractor's Proposal shall not be changed unless approved by the Department in writing. Staffing will include the named individuals at the levels of effort proposed.

Contractor shall provide and maintain sufficient qualified personnel and staffing to enable the Deliverables to be provided in accordance with the RFP and Contractor's Proposal. Contractor warrants that Contractor will comply with all staffing/personnel obligations set out in the RFP, including but not limited to those pertaining to security, health, and safety issues.

B. STAFFING CHANGES

DCH reserves the right to approve or disapprove any proposed changes in key staff – project manager, database managers, and analysts, or require the removal or reassignment of any Contractor employee or subcontractor employee that the Department deems to be unacceptable. The Department's decision on this matter shall not be subject to appeal.

Notwithstanding the above provisions, the Parties acknowledge and agree that the Contractor may terminate any of its employees designated to perform work or services under this Contract, as permitted by applicable law. In the event of a Contractor employee termination, the Contractor will provide DCH with immediate notice of the termination, the reason(s) for the termination, and an action plan for replacing the discharged employee.

C. CONTRACTOR'S FAILURE TO COMPLY

Should Contractor at any time: 1) refuse or neglect to supply adequate and competent supervision; 2) refuse or fail to provide sufficient and properly skilled personnel, equipment, or materials of the proper quality or quantity; 3) fail to provide the services in accordance with the timeframes, schedule or dates set forth in this Contract; or 4) fail in the performance of any term or condition contained in this Contract, DCH may (in addition to any other contractual, legal or equitable remedies) proceed to take any one or more of the following actions after five (5) calendar days written notice to Contractor:

- a. withhold any monies then or next due to Contractor; or,
- b. obtain the services or their equivalent from a third party, pay the third party for same, and withhold the amount so paid to third party from any money then or thereafter due to Contractor; or,
- c. withhold monies in the amount of any damage caused by any deficiency or delay in the services.

11. CRIMINAL BACKGROUND CHECKS

Contractor shall, upon request, provide DCH with a resume or satisfactory criminal background check or both of any members of its staff or a subcontractor's staff assigned to or proposed to be assigned to any aspect of the performance of this Contract.

12. SUBCONTRACTS

A. Use of Subcontractors

Contractor will not subcontract or permit anyone other than Contractor personnel to perform any of the work, services, or other performance required of the Contractor under this Contract, or assign any of its rights or obligations hereunder, without the prior written consent of DCH. Prior to hiring or entering into an agreement with any subcontractor, any and all subcontractors shall be approved by DCH. Contractor shall, in writing, provide to DCH the names of all proposed or actual subcontractors, the scope of work of each subcontractor, and the percentage of work to be performed by each subcontractor relative to the total scope of the Contract. Contractor is solely responsible for all work contemplated and required by this Contract, whether Contractor performs the work directly or through a subcontractor.

Contractor shall give DCH immediate notice in writing by registered mail or certified mail of any action or suit filed by any subcontractor and prompt notice of any claim made against Contractor by any subcontractor or vendor that in the opinion of Contractor, may result in litigation related in any way to this Contract.

B. Cost or Pricing by Subcontractors

Contractor shall submit, or shall require any subcontractors hereunder to submit, cost or pricing data for any subcontract to this Contract prior to award. Contractor shall, also, certify that the information submitted by subcontractor is to the best of their knowledge and belief, accurate, complete and current as of the date of agreement, or the date of the negotiated price of the subcontract to the Contract or Amendment to the Contract. Contractor shall insert the substance of this section in each subcontract hereunder.

If DCH determines that any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract was increased by any significant sum because of the inaccurate cost or pricing data, then such price and cost shall be reduced accordingly and this Contract and the subcontract shall be modified in writing to reflect such reduction.

13. REQUIRED TRAVEL, TRAVEL EXPENSES AND USE OF STATE VEHICLES

Should DCH formally request Contractor's participation in activities on DCH's behalf, which require travel, Contractor will be reimbursed for travel necessary to that activity in accordance with the State and DCH travel policies, procedures and prevailing per diem rates which may be found at www2.state.ga.us/Departments/AUDIT/m&lg/travlreg.html, and are incorporated herein by reference and made a part of this Contract as if completely restated herein. The travel must be specifically required and approved by the DCH Project Leader listed in Section 26, *Notice*, prior to such travel with the duration, purpose and location of travel and any other pertinent information requested by the Project Leader needed for approval.

State vehicles shall not be used in the performance of this Contract.

14. LICENSE, CERTIFICATE, PERMIT REQUIREMENT

Contractor shall have, obtain, and maintain in good standing any Georgia-licenses, certificates and permits that are required prior to and during the performance of work under this Contract. Contractor agrees to provide DCH with certified copies of all licensees, certificates and permits necessary upon request.

15. RISK OF LOSS AND REPRESENTATIONS

DCH takes no title to any of Contractor's goods used in providing the services and/or deliverables hereunder and Contractor shall bear all risk of loss for any goods used in performing work pursuant to this Contract.

The Parties agree that DCH may reasonably rely upon the representations and certifications made by the Contractor, including those made by the Contractor in the Contractor's Response to the RFP and this Contract, without first making an independent investigation or verification.

The Parties also agree that DCH may reasonably rely upon any audit report, summary, analysis, certification, review, or work product that the Contractor produces in accordance with its duties under this Contract, without first making an independent investigation or verification.

16. PROHIBITION OF GRATUITIES AND LOBBYIST DISCLOSURES

Contractor, in the performance of this Contract, shall not offer or give, directly or indirectly, to any employee or agent of the State of Georgia, any gift, money or anything of value, or any promise, obligation, or contract for future reward or compensation at any time during the term of this Contract, and shall comply with the disclosure requirements set forth in O.C.G.A. § 45-1-6.

Contractor also states and warrants that it has complied with all disclosure and registration requirements for vendor lobbyists as set forth in O.C.G.A. § 21-5-1, et. seq. and all other applicable law, including but not limited to registering with the State Ethics Commission. In addition, Contractor states and warrants that no federal money has been used for any lobbying of State officials, as required under applicable federal law. For the purposes of this Contract, vendor lobbyists are those who lobby State officials on behalf of businesses that seek a contract to sell goods or services to the State or oppose such Contract.

17. RECORDS REQUIREMENTS

Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this Contract to the extent and in such detail as will properly reflect all costs for which payment is made under the provisions of this Contract and/or any document that is a part of this Contract by reference or inclusion. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles, and the costs properly applicable to the Contract shall be readily ascertainable therefrom.

A. Records Retention Requirements

Contractor shall preserve and make available all of its records pertaining to the performance under this Contract for a period of five (5) years from the date of final payment under this Contract, and for such period, if any, as is required by applicable statute or by any other section of this Contract. If the Contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for period of five (5) years from the date of termination or of any resulting final settlement. Records that relate to appeals, litigation, or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreements as to which exception has been taken by the State Contractor or any of his duly authorized representatives, shall be retained by Contractor until such appeals, litigation, claims or exceptions have been disposed of.

B. Access to Records

The State and federal standards for audits of DCH agents, contractors, and programs are applicable to this section and are incorporated by reference into this Contract as though fully set out herein.

Pursuant to the requirements of 42 C.F.R. § 434.6(a)(5) and 42 C.F.R. § 434.38, Contractor shall make all of its books, documents, papers, provider records, medical records, financial records, data, surveys and computer databases available for examination and audit by the DCH, State Attorney General, State Health Care Fraud Control Unit, the State Department of Audits, or authorized State or federal personnel. Any records requested hereunder shall be produced immediately for on-site review or sent to the requesting authority by mail within fourteen (14) calendar days following a request. All records shall be provided at the sole cost and expense of Contractor. DCH shall have unlimited rights to use, disclose, and duplicate all information and data in any way relating to the Contract in accordance with applicable State and federal laws and regulations.

18. CONFIDENTIALITY REQUIREMENTS

A. GENERAL CONFIDENTIALITY REQUIREMENTS

Contractor shall treat all information that is obtained or viewed by it or through its staff and subcontractors performance under this Contract as confidential information, and shall not use any information so obtained in any manner, except as may be necessary for the proper discharge of its obligations. Employees or authorized subcontractors of Contractor who have a reasonable need to know such information for purposes of performing their duties under this Contract shall use personal or patient information, provided such employees and/or subcontractors have first signed an appropriate non-disclosure agreement that has been approved and maintained by DCH. Contractor shall remove any person from performance of services hereunder upon notice that DCH reasonably believes that such person has failed to comply with the confidentiality obligations of this Contract. Contractor shall replace such removed personnel in accordance with the staffing requirements of this Contract. DCH, the Georgia Attorney General, federal officials as authorized by federal law or regulations, or the authorized representatives of these parties shall have access to all confidential information in accordance with the requirements of State and federal laws and regulations.

B. HIPAA COMPLIANCE

The Contractor also agrees to assist DCH in its efforts to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its amendments, rules, procedures, and regulations. To that end, the Contractor will

cooperate and abide by any requirements mandated by HIPAA or any other applicable laws. The Contractor acknowledges that HIPAA may require the Contractor and DCH to sign a Business Associate Agreement or other documents for compliance purposes, including but not limited to a Business Associate Agreement. The Contractor agrees to cooperate with DCH on these matters and to sign whatever documents that may be required for HIPAA compliance and to abide by their terms and conditions.

19. TERMINATION OF CONTRACT

This Contract may terminate or may be terminated by DCH for any or all of the following reasons:

- a. default by the Contractor, upon thirty (30) calendar days notice; or
- b. convenience of DCH, upon thirty (30) calendar days notice; or
- c. immediately, in the event of insolvency or declaration of bankruptcy by the Contractor; or
- d. immediately, when sufficient appropriated funds no longer exist for the payment of DCH's obligation under this Contract.

A. Termination Procedures

Contractor shall:

- a. Stop work under the Contract on the date and to the extent specified in the notice of termination;
- b. Place no further orders or subcontract for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;
- d. Assign to DCH, in the manner and to the extent directed by the Contract Administrator, all of the right, title, and interest of Contractor under the orders or subcontracts so terminated, in which case DCH shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- e. With the approval of the Contract Administrator, settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of the Contract;
- f. Complete the performance of such part of the work as shall not have been terminated by the notice of termination;
- g. Take such action as may be necessary, or as the Contract Administrator may direct, for the protection and preservation of any and all property or

information related to the Contract that is in the possession of Contractor and in which DCH has or may acquire an interest.

B. Termination Claims

After receipt of a notice of termination, Contractor shall submit to the Contract Administrator any termination claim in the form and with the certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination. Upon failure of Contractor to submit its termination claim within the time allowed, the Contract Administrator may, subject to any review required by the State procedures in effect as of the date of execution of the Contract, determine, on the basis of information available, the amount, if any, due to Contractor by reason of the termination and shall thereupon cause to be paid to Contractor the amount so determined.

Upon receipt of notice of termination, Contractor shall have no entitlement to receive any amount for lost revenues or anticipated profits or for expenditures associated with this or any other contract. Upon termination Contractor shall be paid in accordance with the following:

- a. At the contract price(s) for completed deliverables and services delivered to and accepted by DCH; and/or
- b. At a price mutually agreed upon by Contractor and DCH for partially completed deliverables.

In the event of the failure of Contractor and DCH to agree in whole or in part as to the amounts with respect to costs to be paid to Contractor in connection with the total or partial termination of work pursuant to this article, DCH shall determine, on the basis of information available, the amount, if any, due to Contractor by reason of termination and shall pay to Contractor the amount so determined.

20. LIQUIDATED DAMAGES

In the event that Contractor fails to meet the terms, conditions, or requirements of this Contract and financial damages are difficult or impossible to ascertain exactly, Contractor agrees that DCH may access liquidated damages, not penalties, against the Contractor for the deficiencies. Please see Attachment G, which is completely incorporated into this Contract as if completely restated herein, for more specific information. The Parties further acknowledge and agree that the specified liquidated damages are reasonable and the result of a good faith effort by the Parties to estimate the actual harm caused by the Contractor's breach.

21. INDEMNIFICATION

Contractor hereby releases and agrees to indemnify and hold harmless DCH, the State of Georgia and its departments, agencies and instrumentalities (including the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, The State Employee Board Form Liability Funds, the State Insurance and Hazard Reserve Fund, and other self-insured funds, all such funds hereinafter collectively referred to as the "Funds") from and against any and all claims, demands, liabilities, losses, costs or expenses, and attorneys' fees, caused by, growing out of, or arising from this Contract, due to any act or omission on the part of Contractor, its agents, employees, customers, invitees, licensees or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by Contractor, or due to the application or violation of any pertinent federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of Contractor, and this indemnification survives the termination of the Contract and the dissolution or, to the extent allowed by the law, the bankruptcy of Contractor.

22. INSURANCE

Contractor shall, at a minimum, prior to the commencement of work, procure the insurance policies identified below at Contractor's own cost and expense and shall furnish DCH with proof of coverage at least in the amounts indicated. It shall be the responsibility of Contractor to require any subcontractor to secure the same insurance coverage as prescribed herein for Contractor, and to obtain a certificate evidencing that such insurance is in effect. In addition, Contractor shall indemnify and hold harmless DCH and the State from any liability arising out of Contractor's or subcontractor's untimely failure in securing adequate insurance coverage as prescribed herein:

- Workers' Compensation Insurance, the policy (ies) to insure the statutory limits established by the General Assembly of the State of Georgia. The Workers' Compensation Policy must include Coverage B – Employer's Liability Limits of:

Bodily Injury by Accident	\$ 500,000 each accident
Bodily Injury by Disease	\$ 500,000 each employee \$ 1,000,000 policy limits

Contractor shall require all subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Worker's Compensation Coverage.

- Commercial General Liability Policy (ies) as follows:
 Combined Single Limits: \$ 1,000,000 per person
 \$ 3,000,000 per occurrence

The Commercial General Liability Policy must be on an “occurrence” basis.

- Liability for property damage in the amount of \$3,000,000, including contents coverage for all records maintained pursuant to this Contract.

DCH should be listed as the additional insured on all coverage.

23. PERFORMANCE BOND

Contractor shall obtain at Contractor’s own expense a performance bond issued by a surety company authorized to do business in the State of Georgia in an amount equal to the value of the Contract for each fiscal year of the Contract for all work that may be undertaken pursuant to the Contract. The performance bond shall be in the form of the Performance Bond attached to this Contract as Exhibit “I.”

The Performance Bond shall cover the period beginning with the implementation phase through the life of the Contract, including but not limited to amendments, renewals and extensions. The amount of the Performance Bond shall be adjusted every six (6) months to reflect any increase in the amount of work to be performed under this Contract. Contractor shall provide DCH with written documentation of the surety and the actual performance bond during any interim period. This requirement does not preclude the annual submission requirement.

24. COMPLIANCE WITH ALL LAWS

A. NON-DISCRIMINATION

Contractor agrees to comply with applicable federal and State laws, rules and regulations, and the State’s policy relative to nondiscrimination in employment practices because of political affiliation, religion, race, color, sex, physical handicap, age, or national origin. Nondiscrimination in employment practices is applicable to employees for employment, promotions, dismissal and other elements affecting employment.

B. DELIVERY OF SERVICE AND OTHER FEDERAL LAWS

Contractor agrees that all work done as part of this Contract will comply fully with applicable administrative and other requirements established by applicable federal and State laws and regulations and guidelines, including but not limited to §1902(a)(7) of the Social Security Act and DCH Policies and Procedures, and assumes responsibility for full compliance with all such applicable laws, regulations, and guidelines, and agrees to fully reimburse DCH for any loss of funds or resources or overpayment resulting from non-compliance by Contractor, its staff, agents or subcontractors, as revealed in subsequent audits. The

provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.) and the rules and regulations as promulgated by the United States Department of Labor in Title XXIX of the Code of Federal Regulations are applicable to this Contract. Contractor shall agree to conform with such federal laws as affect the delivery of services under this Contract including but not limited to the Titles VI, VII, XIX of the Social Security Act, the Federal Rehabilitation Act of 1973, the Davis Bacon Act (40 U.S.C. § 276a et seq.), the Copeland Anti-Kickback Act (40 U.S.C. § 276c), and the Americans with Disability Act of 1993 (including but not limited to 28 C.F.R. § 35.100 et seq.). Contractor will agree to conform to such requirements or regulations as the United States Department of Health and Human Services may issue from time to time. Authority to implement federal requirements or regulations will be given to Contractor by DCH in the form of a contract amendment.

C. COST OF COMPLIANCE WITH APPLICABLE LAWS

The Contractor agrees that it will bear any and all costs (including but not limited to attorneys' fees, accounting fees, research costs, or consultant costs) related to, arising from, or caused by compliance with any and all laws, such as but not limited to federal and State statutes, case law, precedent, regulations, policies, and procedures. In the event of a disagreement on this matter, the Department's determination on this matter shall be conclusive and not subject to appeal.

D. GENERAL COMPLIANCE

Additionally, the Contractor agrees to comply and abide by all laws, rules, regulations, statutes, policies, or procedures that may govern the Contract, the deliverables in the Contract, or either Party's responsibilities. To the extent that applicable laws, rules, regulations, statutes, policies, or procedures require the Contractor to take action or inaction, any costs, expenses, or fees associated with that action or inaction shall be borne and paid by the Contractor solely.

25. CONFLICT RESOLUTION

Any dispute concerning a question of fact or obligation related to or arising from this Contract that is not disposed of by mutual agreement shall be decided by the Contract Administrator who shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Contractor. The written decision of the Contract Administrator shall be final and conclusive, unless the Contractor mails or otherwise furnishes a written appeal to the Commissioner of DCH within ten (10) calendar days from the date of receipt of such decision. The decision of the Commissioner or his duly authorized representative for the determination of such appeal shall be final and conclusive. In connection with any appeal proceeding under this provision, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

Pending a final decision of a dispute hereunder, Contractor shall proceed diligently with the performance of the Contract.

26. CONFLICT OF INTEREST AND CONTRACTOR INDEPENDENCE

No official or employee of the State of Georgia or the federal government who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of the project, voluntarily acquire any personal interest, direct or indirect, in this Contract or proposed Contract.

Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any material manner or degree with, or have a material adverse effect on the performance of its services hereunder. Contractor further covenants that in the performance of the Contract no person having any such interest shall be employed.

All of the Parties hereby certify that the provisions of O.C.G.A. §45-10-20 through §45-10-28, which prohibit and regulate certain transactions between State officials and employees and the State of Georgia, have not been violated and will not be violated in any respect throughout the term.

In addition, it shall be the responsibility of the Contractor to maintain independence and to establish necessary policies and procedures to assist the Contractor in determining if the actual employees performing work under this Contract have any impairments to their independence. To that end, the Contractor shall submit a written plan to DCH within five (5) business days of the execution of this Contract in which it outlines the Contractor's policies and procedures relating to how it monitors and enforces employee impartiality and independence. The Contractor further agrees to take all necessary actions to eliminate threats to impartiality and independence, including but not limited to reassigning, removing, or terminating employees.

27. NOTICE

All notices under this Contract shall be deemed duly given upon delivery, if delivered by hand, or three (3) calendar days after posting, if sent by registered or certified mail, return receipt requested, to a party hereto at the addresses set forth below or to such other address as a party may designate by notice pursuant hereto.

For DCH:

Contract Administration:

Georgia Department of Community Health

2 Peachtree Street, NW - ____th Floor
Atlanta, GA 30303-3159
(404) ____ - ____ - Phone
(404) ____ - ____ - Fax
e-mail address:

Project Leader:

Georgia Department of Community Health
2 Peachtree Street, NW - ____th Floor
Atlanta, GA 30303-3159
(404) ____ - ____ - Phone
(404) ____ - ____ - Fax
e-mail address:

For Contractor:

(404) _____
(404) _____ - Fax
e-mail address _____

It shall be the responsibility of Contractor to inform the Contract Administrator of any change in address in writing no later than five (5) business days after the change.

28. MISCELLANEOUS

A. Choice of Law or Venue

This Contract shall be governed in all respects by the laws of the State of Georgia. Any lawsuit or other action brought against DCH or the State based upon or arising from this Contract shall be brought in a court or other forum of competent jurisdiction in Fulton County in the State of Georgia.

B. Attorney's Fees

In the event that either Party deems it necessary to take legal action to enforce any provision of the Contract, and in the event DCH prevails, Contractor agrees to pay all expenses of such action including reasonable attorney's fees and costs at all stages of litigation as awarded by the court, a lawful tribunal, hearing officer or administrative law judge. If Contractor prevails in any such action, the court or

hearing officer, at its discretion, may award costs and reasonable attorney's fees to the Contractor. The term legal action shall be deemed to include administrative proceedings of all kinds, as well as all actions at law or equity.

C. Survivability

The terms, provisions, representations and warranties contained in this Contract shall survive the delivery or provision of all services or deliverables hereunder.

D. Drug-Free Workplace

Contractor must certify to DCH that a drug-free workplace will be provided for Contractor's employees during the performance of the Contract as required by the "Drug-Free Workplace Act", O.C.G.A. § 50-24-1, et seq. and applicable federal law. Contractor will secure from any subcontractor hired to work in a drug-free workplace such similar certification. Any false certification by Contractor or violation of such certification, or failure to carry out the requirements set forth in the Code, may result in Contractor being suspended, terminated or debarred from the performance of this Contract.

E. Certification Regarding Debarment, Suspension, Proposed Debarment and Other Matters

Contractor certifies that it is not presently debarred, suspended, proposed for debarment or declared ineligible for award of contracts by any federal or State agency.

F. Waiver

The waiver by DCH of any breach of any provision contained in this Contract shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Contract and shall not establish a course of performance between the parties contradictory to the terms hereof.

G. Force Majeure

Neither party to this Contract shall be responsible for delays or failures in performance resulting from acts beyond the control of such party. Such acts shall include, but not be limited to, acts of God, strikes, riots, lockouts, acts of war, epidemics, fire, earthquakes, or other disasters.

H. Binding

This Contract and all of its terms, conditions, requirements, and amendments shall

be binding on DCH and Contractor and their respective successors and permitted assigns.

I. Time is of the Essence

Time is of the essence in this Contract. Any reference to “days” shall be deemed calendar days unless otherwise specifically stated.

J. Authority

DCH has full power and authority to enter into this Contract, and the person acting on behalf of and signing for Contractor has full authority to enter into this Contract, and the person signing on behalf of Contractor has been properly authorized and empowered to enter into this Contract on behalf of Contractor and to bind Contractor to the terms of this Contract. Each party further acknowledges that it: has had the opportunity to consult with and/or retain legal counsel of its choice; read this Contract; understands this Contract; and agrees to be bound by it.

K. Ethics in Public Contracting

Contractor understands, states, and certifies that it made its proposal to the RFP without collusion or fraud and that it did not offer or receive any kickbacks or other inducements from any other Contractor, Contractor, supplier, manufacturer, or subcontractor in connection with its proposal to the RFP.

L. Days

All references to “days” shall be construed to mean calendar days, unless otherwise indicated.

M. Contract Language Interpretation

The Contractor and the Department agree that in the event of a disagreement regarding, arising out of, or related to contract language interpretation, the Department’s interpretation of the contract language in dispute shall control and govern. The Department’s interpretation of the contract language in dispute shall not be subject to appeal under any circumstance.

N. Assessment of Fees

The Contractor and the Department agree that the Department may elect to deduct any assessed fees from payments due or owing to the Contractor or direct the Contractor to make payment directly to the Department for any and all assessed fees. The choice is solely and strictly the Department’s choice.

O. Cooperation with Other Contractors

In the event that the Department has entered into or enters into agreements with other Contractors for additional work related to the services rendered hereunder, the Contractor agrees to cooperate fully with such other Contractors. The Contractor shall not commit any act that will interfere with the performance of work by any other Contractor.

Additionally, if the Department eventually awards this Contract to another Contractor, the Contractor agrees that it will not engage in any behavior or inaction that prevents or hinders the work related to the services contracted for in this contract. In fact, the Contractor agrees to submit a written turn-over plan and/or transition plan to the Department within thirty (30) days of receiving the Department's intent to terminate letter. The Parties agree that the Contractor has not successfully met this obligation until the Department accepts its turn-over plan and/or transition plan.

The Contractor's failure to cooperate and comply with this provision, shall be sufficient grounds for the Department to halt all payments due or owing to the Contractor until it becomes comply with this or any other contract provision. The Department's determination on the matter shall be conclusive and not subject to appeal.

P. Contractor Accounting Requirements and Record Retention

Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this Contract (collectively the "Records") to the extent and in such detail as will properly reflect all payments received under this Contract for at least five (5) years after the termination of the Contract. Contractor's accounting procedures and practices shall conform to GAAP/GASB and the costs properly applicable to the Contract shall be readily ascertainable there from.

Contractor agrees to make available at all reasonable times during the period set forth below any of the Records of the contracted work for inspection or audit by any authorized representative of DOAS or the Georgia State Auditor. Contractor shall preserve and make available its Records for a period of five (5) years from the date of final payment under this Contract and for such period, if any, as is required by applicable statute, by any other paragraph of the RFP, or this Contract. If the Contract is completely or partially terminated, the Records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement. Records that relate to appeals, litigation, or the settlements of claims arising out of the performance of this Contract, or costs and expenses of any such agreement as to

which exception has been taken by the State Auditor or any of his duly authorized representatives, shall be retained by Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

Q. Section Titles Not Controlling

The section titles used in this Contract are for reference purposes only and shall not be deemed a part of this Contract.

R. Limitation of Liability/Exceptions

Nothing in this Contract shall limit Contractor's indemnification liability or civil liability arising from, based on, or related to claims brought by the Department or any third party or any claims brought against the Department or the State by a third party or the Contractor.

S. Cooperation with Audits

The Contractor agrees to assist and cooperate with the Department in any and all matters and activities related to or arising out of any audit or review, whether federal, private, or internal in nature, at no cost to the Department.

The Parties also agree that the Contractor shall be solely responsible for any costs it incurs for any audit related inquiries or matters. Moreover, the Contractor may not charge or collect any fees or compensation from DCH for any matter, activity, or inquiry related to, arising out of, or based on an audit or review.

T. Homeland Security Considerations

Contractor shall perform the services to be provided under this Contract entirely within the boundaries of the United States. Also, Contractor will not hire any individual to perform any services under this Contract if that individual is required to have a work visa approved by the U.S. Department of Homeland Security and such individual has not met this requirement.

If Contractor performs services or uses services in violation of the foregoing paragraph, Contractor shall be in material breach of this Contract and shall be liable to the Department for any costs, fees, damages, claims, or expenses it may incur. Additionally, the Contractor shall be required to hold harmless and indemnify the Department pursuant to the indemnification provisions of this Contract.

The prohibitions in this Section shall also apply to any and all agents and subcontractors used by the Contractor to perform any services under this Contract.

29. AMENDMENT IN WRITING

No amendment, waiver, termination or discharge of this Contract, or any of the terms or provisions hereof, shall be binding upon either party unless confirmed in writing. None of the Solicitation Documents may be modified or amended, except by writing executed by both parties. Additionally, Centers for Medicare and Medicaid Services (hereinafter “CMS”) approval may be required before any such amendment is effective. DCH shall determine, in its sole discretion, when such CMS approval is required. Any agreement of the parties to amend, modify, eliminate or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein.

30. CONTRACT ASSIGNMENT

Contractor shall not assign this Contract, in whole or in part, without the prior written consent of DCH, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

31. SEVERABILITY

Any section, subsection, paragraph, term, condition, provision, or other part of this Contract that is judged, held, found or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Contract, and the remainder of this Contract shall continue to be of full force and effect as set out herein.

32. COMPLIANCE WITH AUDITING AND REPORTING REQUIREMENTS FOR NON-PROFIT ORGANIZATIONS (O.C.G.A. § 50-20-1 ET SEQ.)

The Contractor agrees to comply at all times with the provisions of the Federal Single Audit Act (hereinafter called the Act) as amended from time to time, all applicable implementing regulations, including but not limited to any disclosure requirements imposed upon non-profit organizations by the Georgia Department of Audits as a result of the Act, and to make complete restitution to the Department of any payments found to be improper under the provisions of the Act by the Georgia Department of Audits, the Georgia Attorney General’s Office or any of their respective employees, agents, or assigns.

33. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or contracts. No written or oral agreements, representatives, statements, negotiations, understandings, or discussions that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the parties.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

GEORGIA DEPARTMENT OF COMMUNITY HEALTH

Tim Burgess, Commissioner

Date

CONTRACTOR NAME

BY: _____
Signature

Date

Print/Type Name

TITLE

AFFIX CORPORATE SEAL HERE
(Corporations without a seal, attach a
Certificate of Corporate Resolution)

ATTEST: _____
**SIGNATURE

TITLE

* Must be President, Vice President, CEO or other authorized officer

**Must be Corporate Secretary

RFP No. GTA000211

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DCH Contract No. _____

Data Warehouse System with Decision Support and Executive Information Capabilities

DRUG-FREE WORKPLACE CERTIFICATE

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS
GRANTEES OTHER THAN INDIVIDUALS**

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS makes a determination regarding the award of the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about:
 - a) The dangers of drug abuse in the workplace;
 - b) The grantee's policy of maintaining a drug-free workplace;
 - c) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee who will be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will:
 - a) Abide by the terms of the statement; and

- b) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- 5. Notifying the agency within ten days after receiving notice under subparagraph 4. b) from an employee or otherwise receiving actual notice of such conviction;
- 6. Taking one of the following actions, within 30 days of receiving notice under subparagraph 4. b), with respect to any employee who is so convicted;
 - a) Taking appropriate personnel action against such an employee, up to and including termination; or
 - b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
- 7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

Contractor

Signature

Date

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS



Federal Acquisition Regulation 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (March 1996)

- (a) (1) The Contractor certifies, to the best of its knowledge and belief, that—
- (i) The Contractor and/or any of its Principals—
 - A. Are are not presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any Federal agency;
 - B. Have have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, evasion, or receiving stolen property; and
 - C. Are are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.
 - (ii) The Contractor has has not within a three-year period preceding this offer, had one or more contracts terminated for default by any federal agency.
- (2) “Principals,” for purposes of this certification, means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment; and similar positions).

This certification concerns a matter within the jurisdiction of an Agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under 18 U.S.C. § 1001.

- (b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (c) A certification that if any of the items in paragraph (a) of this provision exist will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Contractor's responsibility. Failure of the Contractor to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Contractor non-responsible.
- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

Contractor:

By: _____

Signature

Date

Name and Title

**GEORGIA DEPARTMENT OF COMMUNITY HEALTH
NON-PROFIT ORGANIZATION DISCLOSURE FORM**

Notice to all DCH Contractors: Pursuant to Georgia law, non-profit organizations that receive funds from a state organization must comply with audit requirements as specified in O.C.G.A. § 50-20-1 *et seq.* (hereinafter “the Act”) to ensure appropriate use of public funds. “Non-profit Organization” means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve or expand its operations. The term non-profit organization includes non-profit institutions of higher education and hospitals. For financial reporting purposes, guidelines issued by the American Institute of Certified Public Accountants should be followed in determining non-profit status.

The Department of Community Health (DCH) must report contracts with non-profit organizations to the Department of Audits and must ensure compliance with the other requirements of the Act. Prior to execution of any contract, the potential contractor must complete this form disclosing its corporate status to DCH. This form must be returned, along with proof of corporate status, to: Elvina Calland, Director, Contract and Procurement Administration, Georgia Department of Community Health, 35th Floor, 2 Peachtree Street, N.W., Atlanta, Georgia 30303-3159.

Acceptable proof of corporate or organizational status includes, but is not limited to, the following documentation:

- Financial statements for the previous year;
- Federal and State tax returns for the previous tax year;
- Articles of Incorporation;
- Corporate Charter;
- Board Minutes or Resolutions;
- Documents that confirm corporate or organizational status; or,
- Appropriate certification from the Georgia Secretary of State.

Entities that meet the definition of non-profit organization provided above and are subject the requirements of the Act will be contacted by DCH for further information.

COMPANY NAME: _____

ADDRESS: _____

PHONE: _____ FAX: _____

CORPORATE STATUS: (check one) For Profit _____ Non-Profit _____

I, the undersigned duly authorized representative of _____ do hereby attest that the above information is true and correct to the best of my knowledge.

Signature

Date

STATE OF GEORGIA
THE GEORGIA DEPARTMENT OF COMMUNITY HEALTH
2 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30303-3159

CONFIDENTIALITY STATEMENT
FOR SAFEGUARDING INFORMATION

I, the undersigned, understand and, by my signature, agree to comply with Federal and State requirements (**References: 42 CFR 431.300 – 431.306. Chapter 350-5 of Rules of Georgia Department of Community Health**) regarding the safeguarding of Medicaid information in my possession, including but not limited to information that is obtained electronically from the Fiscal Agent, vendors, or any other entity or individual while performing contractual services with or for the Department of Community Health, its agents or contractors.

Individual's Name: (typed or printed): _____

Signature: _____ Date: _____

Telephone No.: _____

Company or Agency Name and Address: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (hereinafter referred to as “Agreement”), effective this ____ day of _____, _____ is made and entered into by and between the Georgia Department of Community Health (hereinafter referred to as “DCH”) and _____ (hereinafter referred to as “Contractor”) as Amendment No. _____ to Contract No. _____ between DCH and Contractor dated _____ (“Contract”).

WHEREAS, DCH is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), to enter into a Business Associate Agreement with certain entities that provide functions, activities, or services involving the use of Protected Health Information (“PHI”);

WHEREAS, Contractor, under RFP No. GTA 000211, DCH Contract No. _____ (hereinafter referred to as “Contract”), may provide functions, activities, or services involving the use of PHI;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Contractor (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

1. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, published as the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Parts 160 and 164 (“Privacy Rule”):
2. Except as limited in this Agreement, Contractor may use or disclose PHI only to extent necessary to meet its responsibilities as set forth in the Contract provided that such use or disclosure would not violate the Privacy Rule if done by DCH.
3. **Unless otherwise required by Law, Contractor agrees:**
 - A. That it will not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement or as required by law.
 - B. To establish, maintain and use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
 - C. To mitigate, to the extent practicable, any harmful effect that is known to

Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this Agreement.

- D.** That its agents or subcontractors are subject to the same obligations that apply to Contractor under this Agreement and Contractor agrees to ensure that its agents or subcontractors comply with the conditions, restrictions, prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Contractor under this Agreement.
- E.** To report to DCH any use or disclosure of PHI that is not provided for by this Agreement of which it becomes aware. Contractor agrees to make such report to DCH in writing in such form as DCH may require within twenty-four (24) hours after Contractor becomes aware.
- F.** To make any amendment(s) to PHI in a Designated Record Set that DCH directs or agrees to pursuant to 45 CFR 164.526 at the request of DCH or an Individual, within five (5) business days after request of DCH or of the Individual. Contractor also agrees to provide DCH with written confirmation of the amendment in such format and within such time as DCH may require.
- G.** To provide access to PHI in a Designated Record Set, to DCH upon request, within five (5) business days after such request, or, as directed by DCH, to an Individual. Contractor also agrees to provide DCH with written confirmation that access has been granted in such format and within such time as DCH may require.
- H.** To give DCH, the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or their designees access to Contractor's books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DCH within five (5) business days after DCH, the Secretary or their designees request such access or otherwise as DCH, the Secretary or their designees may require. Contractor also agrees to make such information available for review, inspection and copying by DCH, the Secretary or their designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to DCH, the Secretary or their designees in such form, format or manner as DCH, the Secretary or their designees may require.
- I.** To document all disclosures of PHI and information related to such disclosures as would be required for DCH to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with the requirements of the Privacy Rule.
- J.** To provide to DCH or to an Individual, information collected in accordance with Section 3. I. of this Agreement, above, to permit DCH to respond to a request by

an Individual for an accounting of disclosures of PHI as provided in the Privacy Rule.

4. Unless otherwise required by Law, DCH agrees:

That it will notify Contractor of any new limitation in DCH's Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such limitation will affect Contractor's use or disclosure of PHI.

That it will notify Contractor of any change in, or revocation of, permission by an Individual for DCH to use or disclose PHI to the extent that DCH determines in the exercise of its sole discretion that such change or revocation will affect Contractor's use or disclosure of PHI.

That it will notify Contractor of any restriction regarding its use or disclosure of PHI that DCH has agreed to in accordance with the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such restriction will affect Contractor's use or disclosure of PHI.

5. The Term of this Agreement shall be effective as of _____, and shall terminate when all of the PHI provided by DCH to Contractor, or created or received by Contractor on behalf of DCH, is destroyed or returned to DCH, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

A. Termination for Cause. Upon DCH's knowledge of a material breach by Contractor, DCH shall either:

- (1) Provide an opportunity for Contractor to cure the breach or end the violation, and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by DCH;
- (2) Immediately terminate this Agreement if Contractor has breached a material term of this Agreement and cure is not possible; or
- (3) If neither termination nor cure is feasible, DCH shall report the violation to the Secretary.

B. Effect of Termination.

Except as provided in paragraph (A.) (2) of this Section, upon termination of this Agreement, for any reason, Contractor shall return or destroy all PHI received from DCH, or created or received by Contractor on behalf of DCH. This

provision shall apply to PHI that is in the possession of subcontractors or agents of Contractor. Neither Contractor nor its agents nor subcontractors shall retain copies of the PHI.

- (1) In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall send DCH detailed written notice of the specific reasons why it believes such return or destruction not feasible and the factual basis for such determination, including the existence of any conditions or circumstances which make such return or disclosure infeasible. If DCH determines, in the exercise of its sole discretion, that the return or destruction of such PHI is not feasible, Contractor agrees that it will limit its further use or disclosure of PHI only to those purposes DCH may, in the exercise of its sole discretion, deem to be in the public interest or necessary for the protection of such PHI, and will take such additional action as DCH may require for the protection of patient privacy or the safeguarding, security and protection of such PHI.
- (2) If neither termination nor cure is feasible, DCH shall report the violation to the Secretary.
- (3) Section 5. B. of this Agreement, regarding the effect of termination or expiration, shall survive the termination of this Agreement.

C. Conflicting Termination Provisions.

In the event of conflicting termination provisions or requirements, with respect to PHI, the termination provisions of Section 5 in this Business Associate Agreement shall control and supercede and control those in the underlying Contract.

6. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit DCH to comply with applicable Medicaid laws, rules and regulations, and the Privacy Rule, and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable Medicaid laws, rules and regulations and the laws of the State of Georgia shall supercede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of HIPAA and its Privacy Rule.
7. All other terms and conditions contained in the Contract and any amendment thereto, not amended by this Amendment, shall remain in full force and effect.

Signatures on following page

SIGNATURE PAGE

Individual's Name: (typed or printed): _____

*Signature: _____ Date: _____

Title: _____

Telephone No.: _____ Fax No. _____

Company or Agency Name and Address: _____

* Must be President, Vice President, CEO or Other Authorized Officer
**Must be Corporate Secretary

**VENDOR LOBBYIST DISCLOSURE
AND REGISTRATION CERTIFICATION FORM**



Pursuant to Executive Order Number 10.01.03.01 (the “Order”), which was signed by Governor Sonny Perdue on October 1, 2003, Contractors with the state are required to complete this form. The Order requires “Vendor Lobbyists,” defined as those who lobby state officials on behalf of businesses that seek a contract to sell goods or services to the state or those who oppose such a contract, to certify that they have registered with the State Ethics Commission and filed the disclosures required by Article 4 of Chapter 5 of Title 21 of the Official Code of Georgia Annotated. Consequently, every vendor desiring to enter into a contract with the state must complete this certification form. False, incomplete, or untimely registration, disclosure, or certification shall be grounds for termination of the award and contract and may cause recoupment or refund actions against Contractor.

In order to be in compliance with Executive Order Number 10.01.03.01, please complete this Certification Form by designating only one of the following:

- ❑ Contractor *does not have any* lobbyist employed, retained, or affiliated with the Contractor who is seeking or opposing contracts for it or its clients. Consequently, Contractor has not registered anyone with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

- ❑ Contractor *does have* lobbyist(s) employed, retained, or affiliated with the Contractor who are seeking or opposing contracts for it or its clients. The lobbyists are:

Contractor states, represents, warrants, and certifies that it has registered the above named lobbyists with the State Ethics Commission as required by Executive Order Number 10.01.03.01 and any of its related rules, regulations, policies, or laws.

Signatures on the following page

SIGNATURE PAGE

Contractor

Date

Signature

Title of Signatory

ATTACHMENT G – PERFORMANCE MEASUREMENTS AND LIQUIDATED DAMAGES

Performance Measurements	Standard	Guarantee
<p>1. Final Project Work Plan</p> <p>Pursuant to RFP Section 3.7, the Contractor shall develop and submit for approval a final written project work plan (the “Final Project Work Plan”) no later than fifteen (15) calendar days after contract execution, if the Parties are not able to reach a mutually agreeable date.</p>	<p>The Final Work Plan is due no later than fifteen (15) days after contract execution</p>	<p>The Contractor will pay the Department \$5,000.00 per calendar day for each calendar day that it fails to meet any part of this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>2. Installation</p> <p>Pursuant to RFP Section 3.7, the Contractor shall completely and correctly install the Base System, hardware, software, and other equipment or items needed to complete and perform the actions and tasks required by this Contract.</p>	<p>Installation shall be complete and fully operational on or before January 3, 2006</p>	<p>The Contractor will pay the Department \$5,000.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>3. Data Conversion/Data Downloading Plan</p> <p>Pursuant to RFP Section 3.7, the Contractor shall complete the Data Conversion/Data Downloading Plan (the “Downloading Plan”), as described in the RFP, and submit it to DCH for written approval on or before September 1, 2005.</p>	<p>The Downloading Plan shall be complete on or before September 1, 2005.</p>	<p>The Contractor will pay the Department \$2,500.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>

Performance Measurements	Standard	Guarantee
<p>4. Enhancements</p> <p>Pursuant to RFP Section 3.7, the Contractor shall satisfactorily complete and test all enhancements for the DWS/DSS/EIS, by November 1, 2005.</p>	<p>The enhancements shall be complete on or before November 1, 2005.</p>	<p>The Contractor will pay the Department \$500.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>5. Final User Training</p> <p>Pursuant to RFP Section 3.7, the Contractor shall complete the final user training of DCH staff (“Final User Training”), by March 1, 2006</p>	<p>Final User Training shall be complete on or before March 1, 2006.</p>	<p>The Contractor will pay the Department \$1,500.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment .</p>
<p>6. Data Warehouse Transfer</p> <p>Pursuant to RFP Section 3.7, the Contractor shall complete the transfer of all data into Data Warehouse (the “Data Warehouse Transfer”), by December 1, 2005.</p>	<p>The Data Warehouse Transfer shall be complete on or before December 1, 2005.</p>	<p>The Contractor will pay the Department \$1,000.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>

Performance Measurements	Standard	Guarantee
<p>7. Operational Readiness Test</p> <p>Pursuant to RFP Section 3.7, the Contractor shall conduct and complete the Operational Readiness Test, by December 16, 2005.</p>	<p>The Operational Readiness Test shall be complete on or before December 16, 2005.</p>	<p>The Contractor will pay the Department \$2,500.00 per calendar day for each calendar day or any part of a calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>8. First Operational Set of EIS Reports</p> <p>Pursuant to RFP Sections 3.3.3 and 3.7, the Contractor shall complete the first set of written EIS reports, charts, maps, and graphs from live data, .</p>	<p>The written EIS reports, charts, maps, and graphs shall be due on or before December 1, 2005.</p>	<p>The Contractor will pay the Department \$500.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>9. Implementation Phase</p> <p>Pursuant to RFP Section 3.7, the Implementation Phase shall be completed satisfactorily, by January 3, 2006 .</p>	<p>The Implementation Phase shall be complete on or before January 3, 2006.</p>	<p>The Contractor will pay the Department \$5,000.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>

Performance Measurements	Standard	Guarantee
<p>10. Corrective Action Plan</p> <p>Pursuant to RFP Section 3.7, the Contractor shall fully and satisfactorily complete all actions and items set forth in the Corrective Action Plan, by January 3, 2006.</p>	<p>The Contractor satisfactorily shall complete the Corrective Action Plan on or before January 3, 2006.</p>	<p>The Contractor will pay the Department \$5,000.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>11. User Instructions</p> <p>Pursuant to RFP Section 3.5, any changes to the operation of the DSS, EIS, or DW that may affect user instructions must be added to the user manual and training materials annually so that they reflect current documentation.</p>	<p>On-going requirement and obligation.</p>	<p>The Contractor will pay the Department \$200.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department monthly.</p>
<p>12. Update and Maintenance of Databases</p> <p>Pursuant to RFP Section 3.7, on a monthly basis, the Contractor shall update and maintain all databases within ten (10) business days of receipt of files from DCH's fiscal agent, unless the Parties agree to a different schedule in writing. The Contractor understands and agrees that this Performance Measurement is not met if DCH cannot access or use the new information in the databases.</p>	<p>This is a monthly requirement and it is an on-going obligation. The monthly update of the databases includes but is not limited to claims and managed care encounter data.</p>	<p>The Contractor will pay the Department \$1,500.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>

Performance Measurements	Standard	Guarantee
<p>13. Twenty-Four Hour Access</p> <p>Pursuant to RFP Section 3.8, the DWS/DSS/EIS must be accessible to DCH or its designated representatives twenty-four (24) hours a day electronically and/or via the internet, except for agreed upon periods of non-access due to database maintenance and scheduled updates, which shall be set forth in a written schedule annually.</p>	<p>This is an on-going requirement and obligation. The Contractor shall have the system available twenty-four (24) hours a day seven (7) days a week.</p>	<p>The Contractor will pay the Department \$2,500.00 per calendar day for each calendar day that it fails to meet this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>14. Training</p> <p>Pursuant to RFP Sections 3.5 and 3.7, the Contractor shall conduct satisfactory training and education of all DCH personnel staff and sub-contractors performing on or under this Contract. DCH must provide prior written approval of all training materials, equipment, and documents.</p>	<p>On-going requirement and obligation. However, the training materials, equipment, and documents must be approved by DCH on or before December 1, 2005.</p>	<p>The Contractor will pay the Department \$1,00.00 per calendar day for each calendar day that it fails to meet any part of this Performance Measurement or Standard.</p> <p>The Contractor will pay any assessments or liquidated damages to the Department as prescribed in the notice of assessment.</p>
<p>15. Staffing Level</p> <p>Pursuant to RFP Sections 3.5 and 3.7, the Contractor shall maintain sufficient staffing levels to meet the proposed level in the Contractor's Technical Proposal. In addition, pursuant to RFP Section 3.6.3 (3), changes in key personnel are subject to DCH approval. DCH's decision shall not be subject to appeal.</p>	<p>On-going requirement and obligation. However, the required staffing levels shall be in place on or before September 1, 2005.</p>	<p>The Contractor will pay the Department \$1,000.00 per calendar day for each calendar day that it fails to meet this Standard. The Contractor will pay \$500 per occurrence if there is a change in key personnel without DCH's approval.</p> <p>The Contractor will pay any assessed fees to the Department as prescribed in the notice of assessment.</p>

Performance Measurements	Standard	Guarantee
<p>16. Credentialing</p> <p>Pursuant to the Contract Section 24, the Contractor must verify and certify to DCH that all providers of services are properly licensed in accordance with any and all applicable Federal and State laws (whether administrative, common law, statutory, or other), standards, rules, regulations, or any combination of the foregoing. The providers of services shall have and maintain, at all times, such policies of malpractice insurance and workers' compensation insurance, as may be required by law or DCH.</p>	<p>On-going requirement and obligation. However, all credentialing requirements must be completed satisfactorily on or before July 1, 2005.</p>	<p>The Contractor will pay the Department \$5,000.00 per calendar day for each calendar day that it fails to meet any part of this Standard or Performance Measurement.</p> <p>The Contractor will pay any assessed fees to the Department quarterly.</p>
<p>17. General Failure to Comply with Contract Term, Provision, or Condition</p> <p>If the Contractor fails to meet a term, condition, or requirement of the Contract that is not specifically addressed in one of the above Performance Measurements and financial damages are difficult or impossible to ascertain exactly, the Contractor agrees that DCH may access additional liquidated damages in those cases.</p>	<p>On-going requirement and obligation.</p>	<p>The Contractor will pay the Department \$250.00 per calendar day for each calendar day that it fails to meet any part of this Performance Measurement or Standard.</p> <p>The Contractor shall pay any assessed fees to the Department as prescribed in the notice of assessment..</p>

Performance Measurements	Standard	Guarantee
<p>18. Telephone Support</p> <p>Pursuant to RFP Section 3.8, the Contractor shall provide telephone support to DCH for technical and analytic problems during normal business hours.</p>	<p>This support is to be provided Monday through Friday, 8:00 a.m. to 5:00 p.m.</p>	<p>The Contractor will pay the Department \$100 per hour or any part thereof that the Contractor is not available during normal business hours.</p> <p>The Contractor shall pay any assessed fees to the Department as prescribed in the notice of assessment.</p>
<p>19. Status Meetings</p> <p>Pursuant to RFP Section 3.7, the Contractor and DCH shall schedule a monthly status meeting to cover any outstanding or ongoing issues or projects.</p>	<p>The Contractor shall meet with DCH monthly to address unresolved issues associated with this Contract.</p>	<p>The Contractor will pay the Department \$1,500 per occurrence that the Contractor fails to participate in monthly status meetings.</p> <p>The Contractor shall pay any assessed fees to the Department as prescribed in the notice of assessment.</p>

The Contractor and the Department agree that in the event of a disagreement regarding, arising out of, or related to contract language interpretation, the Department's interpretation of the contract language in dispute shall control and govern. The Department's interpretation of the contract language in dispute shall not be subject to appeal under any circumstance.

The Contractor and the Department agree that the Department may elect to deduct any assessed fees from payments due or owing to the Contractor or direct the Contractor to make payment directly to the Department for any and all assessed fees. The choice is solely and strictly the Department's choice.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____ (Legal Name and Address of the Contractor) as principal (hereinafter “Contractor”), and _____, (Legal Name and Address of Surety) as Surety (hereinafter “Surety”) are held and firmly bound unto the Insert Agency Name, an agency of the State of Georgia as Obligee (hereinafter “Obligee”) in the amount of _____ Dollars (\$ _____), to which payment Contractor and Surety bind Themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Contractor has entered into Contract No. Enter Contract Number with the Obligee bearing date of _____ for _____ in accordance with the specifications contained in Contract No Enter Contract Number (and all documents referenced or incorporated therein) (hereinafter, collectively, the “Contract”) which Contract is incorporated by reference into this bond and made a part hereof.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly and faithfully perform and comply with the terms and conditions of said Contract; and shall indemnify and save harmless the Obligee against and from all cost, expenses, damages, injury or loss to which said Obligee may be subjected by reason of any wrongdoing, misconduct, want of care or skill, default or failure of performance on the part of said Contractor (or Contractor’s agents, subcontractors, employees or any other entity acting on Contractor’s behalf) in the execution or performance of said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

- (1) The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the Contract or to the work to be performed thereunder, or the specifications accompanying same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the Contract or to the Deliverables (as defined in the Contract) or to the specifications or drawings.
- (2) If pursuant to the Contract, the Contractor shall be and is declared by Obligee to be in default or breach under the aforesaid Contract and the Obligee has performed Obligee’s payment obligations thereunder not then in dispute, the Surety may promptly perform the Contract in accordance with its terms and conditions. It shall be the duty of the Surety to give an unequivocal notice in writing to the Obligee within twenty-five (25) days after receipt of a declaration of default of the Surety’s election to either remedy the default or defaults promptly or to perform the Contract promptly, time being of the essence. In said

notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it shall then be the duty of the Surety to give prompt notice in writing to the Obligee immediately upon completion of (a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned work, (c) the furnishing of each omitted item of work, and (d) the performance of the Contract. The Surety shall not assert its Contractor as justification for its failure to give notice of election or for its failure to promptly remedy the default or defaults or perform the Contract.

- (3) Supplementary to and in addition to the foregoing, whenever the Obligee shall notify the Surety that the Obligee has notice that the Contractor has failed to pay any subcontractor, materialmen, or laborer for labor or materials certified by the Contractor as having been paid, the Surety shall, within twenty (20) days of receipt of such notice, cause to be paid any unpaid amounts for such labor and materials.
- (4) It is expressly agreed by the Contractor and the Surety that the Obligee, if he desires to do so, is at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the work.
- (5) No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or the legal successors of the Obligee.
- (6) For the purposes of this bond, the name and address of the Authorized State of Georgia Licensed Agent to whom correspondence and telecommunications may be addressee and/or with whom business concerning this bond may be conducted will be as follows:

Name

City

Telephone

Signatures on the following page

SIGNATURE PAGE

Signed and sealed this ___ day of _____ in the presence of:

Witness

Contractor Seal

Title

Witness

Surety Seal

By: _____

Title _____

COUNTERSIGNED

By: _____