

**GETS Ready Program
Exhibit 3
(Form of Customer Purchase Agreement)
to the
Master Services Agreement**

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Customer Purchase Agreement

This **Customer Purchase Agreement** (including all attachments hereto, this “**Customer Purchase Agreement**”), dated as of _____, 20__ (the “**Customer Purchase Agreement Effective Date**”), is entered into by and between [Customer name], a _____, whose principal place of business is located at _____ (“**Customer**”) and [Service Provider name], a _____, whose principal place of business is located at _____ (“**Service Provider**”), pursuant to the Master Agreement for GETS Ready Services, Contract No. ____-GTA-____ between Georgia Technology Authority (“**GTA**”) and Service Provider, dated as of _____, 20__ (the “**GETS Ready MSA**”).

Recitals

WHEREAS, in 2016, GTA qualified several providers, including Service Provider, as part of its procurement RFQC # 98000-INF-0000001647 (the “**RFQC**”) for participation in GTA’s Georgia Enterprise Technology Services (GETS) platform, which provides consolidated and outsourced IT services to a core group of Executive Branch agencies, pursuant to GTA’s statutory mandate;

WHEREAS, GTA subsequently entered into that certain GETS Ready MSA as part of its “**GETS Ready Program**,” which facilitates the accelerated procurement by eligible entities (other than GTA’s Executive Branch agencies) of services similar to those within GTA’s GETS platform, by allowing such entities to contract directly with the GETS qualified service providers rather than with GTA;

WHEREAS, in addition to establishing the GETS Ready Program and confirming each service provider’s continuing qualification thereunder, GTA will provide governance over the contracts to monitor conformance to the GETS Ready MSA’s scope and terms;

WHEREAS, as a GETS Ready Program qualified service provider, Service Provider is eligible to provide the services described in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** hereto to eligible customers under the GETS Ready Program;

WHEREAS, as an eligible customer under the GETS Ready Program, Customer desires to obtain from Service Provider certain of the services described in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** as described in this Customer Purchase Agreement (the “**Services**”) and Service Provider desires to provide the Services to Customer; and

WHEREAS, this Customer Purchase Agreement provides the terms and conditions pursuant to which Service Provider shall provide and Customer shall purchase the Services.

NOW THEREFORE, in consideration of the mutual promises contained herein, and of other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, Service Provider and Customer hereby agree as follows:

1. **Customer Purchase Agreement Attachments; Definitions.**

1.1 **Customer Purchase Agreement Attachments.**

This Customer Purchase Agreement includes each of the following attachments, each of which is incorporated into this Customer Purchase Agreement by this reference:

Exhibit 1 Catalogue of Services, Service Levels, Pricing

| | |
|--------------|--|
| Attachment A | Form of Customer Participation Acknowledgement |
| Attachment B | Form of Change Order |
| Attachment C | Customer Rules |
| Attachment D | NIST-800-53 Worksheet |
| Attachment E | Insurance |

1.2 Definitions.

Capitalized terms used in this Customer Purchase Agreement shall have the meaning provided herein.

1.3 GTA Not Liable for Service Provider's or Customer's Obligations.

Service Provider and Customer acknowledge and agree that: (a) Service Provider shall be solely liable for its obligations under this Customer Purchase Agreement; (b) Customer shall be solely liable for its obligations (including the obligations of its authorized users) under this Customer Purchase Agreement; and (c) neither GTA nor the State of Georgia (nor any third party) shall be responsible for the obligations of Service Provider or Customer under this Customer Purchase Agreement. The foregoing acknowledgement and agreement shall be documented in a Customer Participation Acknowledgement in the form of **Attachment A (Form of Customer Participation Acknowledgement)** hereto (the "**Customer Participation Acknowledgement**"). Execution of the Customer Participation Acknowledgement by Customer and delivery of the executed Customer Participation Acknowledgement to GTA is a precondition to the effectiveness of this Customer Purchase Agreement.

2. Services, Change Orders and Scope.

2.1 Overview.

(a) **Services.** Service Provider shall provide the following services (the "**Services**"):

[Insert description / identification of the Services from Exhibit 1 (Catalogue of Services, Service Levels, Pricing)]

The Services include the development and delivery of any materials that are required to be developed, prepared or created and delivered or made available by Service Provider to Customer for the proper performance and use of the Services under this Customer Purchase Agreement. The Services shall be provided so as to meet or exceed the applicable service levels set forth in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** hereto ("**Service Levels**"). Service Provider shall provide the Services during the Customer Purchase Agreement Term. The parties, by their mutual written agreement at any time during the Customer Purchase Agreement Term, may modify the contents of **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** and/or any of the Services provided hereunder.

For clarity, Customer's (including any users authorized by Customer pursuant to Section 2.2 below) right to use the Services during the Customer Purchase Agreement Term includes the use of any of the following made available to

Customer by Service Provider: specifications, technical manuals, training materials, guides, flow diagrams, file descriptions, reports, analyses, notes, other written documentation related to or used in conjunction with the Services, and any other documentation or deliverables described in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** or elsewhere in this Customer Purchases Agreement; in each case, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded data (collectively, “**Provided Materials**”). Customer’s (and its authorized users’) rights to use any Provided Materials that have independent value outside of the receipt of the Services will survive the Customer Purchase Agreement Term (e.g., reports and analyses).

- (b) **Included Services.** If any services, functions or responsibilities not described in this Customer Purchase Agreement are inherent in or are reasonably required for the proper performance or provision of the Services, those services, functions and responsibilities shall be deemed to be included within the scope of the Services to be delivered for the Charges, to the same extent and in the same manner as if such services, functions or responsibilities were described in this Customer Purchase Agreement.
- (c) **Required Resources.** Except as otherwise expressly provided in this Customer Purchase Agreement, Service Provider shall be responsible for providing and maintaining all facilities, personnel, equipment, materials, network connectivity, supplies and other resources necessary to provide the Services. Each party shall be responsible for obtaining from any applicable third parties required consents designated as being such party’s responsibility (if any) in this Customer Purchase Agreement.

2.2 Authorized Users.

Customer (and its related entities) and its employees, consultants, contractors, service providers, suppliers or agents who are authorized by Customer to use the Services, may so use the Services. Such use shall be for Customer’s operations and not for redistribution or resale.

2.3 Change Orders.

At any time during the Customer Purchase Agreement Term, Service Provider and Customer may mutually agree to modify the Services by executing a change order, a form of which is set forth in **Attachment B (Form of Change Order)** hereto (each a “**Change Order**”); provided, however, any modifications of the Services shall be consistent with the descriptions of services in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)**.

2.4 Performance and Acceptance Procedure.

Service Provider shall perform the Services in accordance with the applicable timeframes or schedules provided under this Customer Purchase Agreement, or absent such timeframes or schedules, as Customer shall reasonably direct. In the event Customer notifies Service Provider that the Services fail to meet applicable requirements, Service Provider shall, as quickly as is practicable, correct deficiencies in the Services. All materials that are provided to Customer as part of the Services and identified in this Customer Purchase Agreement or other mutually agreed writing as “deliverables” will be subject to Customer’s review and acceptance, not to be unreasonably withheld.

2.5 Use of Intellectual Property.

Without limiting any rights expressly provided to Customer under this Customer Purchase Agreement, to the extent any Intellectual Property (as defined below), including documentation or tools containing or relying on Intellectual Property, is made available to Customer for its use of the Services (including use of deliverables), Service Provider grants to Customer and the other users of Services designated by Customer pursuant to Section 2.2 (Authorized Users) above, a non-exclusive, world-wide, royalty-free right and license, to access and use such Intellectual Property in connection with use of the Services (including use of the deliverables).

3. Term and Renewal.

The term of this Customer Purchase Agreement shall begin on the Customer Purchase Agreement Effective Date and unless terminated early in accordance with this Customer Purchase Agreement, shall expire on [the date that is three (3) years from the Customer Purchase Agreement Effective Date] (the "**Customer Purchase Agreement Term**"). For the avoidance of doubt, as part of this Customer Purchase Agreement, all Change Orders under a Customer Purchase Agreement shall terminate or expire with the termination or expiration of this Customer Purchase Agreement. *[Note: Customer and Service Provider may agree to a different Customer Purchase Agreement Term, or a particular Service might necessitate a different Customer Purchase Agreement Term.]*

4. Charges, Invoicing and Payment.

4.1 Charges.

The charges for the Services (the "**Charges**") are as follows:

*[Insert Charges from **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)**]*

4.2 Invoicing.

- (a) For non-recurring charges, unless otherwise specified in this Customer Purchase Agreement, Service Provider shall submit a one-time and accurate invoice to Customer following completion of the Services to which such non-recurring charges relate, including all applicable implementation charges.
- (b) For recurring charges, Service Provider shall submit timely and accurate invoices to Customer each month for the applicable Services performed in the prior month, which invoice will detail utilization of such Services for the preceding month.
- (c) Service Provider shall invoice Customer at the billing address specified in this Customer Purchase Agreement, or otherwise notified by Customer. Each invoice shall provide reasonable details regarding the quantity and description of Services provided (e.g., hours, users for recurring Services, completion of performance for non-recurring Services).
- (d) All amounts will be invoiced in U.S. dollars.
- (e) No invoices will be issued for any expenses incurred by Service Provider, except as expressly stipulated in this Customer Purchase Agreement and pre-approved in writing by Customer. Such expenses shall be invoiced at actual cost, with no markups permitted.

4.3 Payment of Charges.

- (a) Customer shall pay Service Provider for all amounts under this Customer Purchase Agreement that are due and payable by Customer within thirty (30) days of receipt of a correct and timely invoice for the Charges. Payments will be made in U.S. dollars.
- (b) No late payment fees or interest will accrue on past-due amounts.

4.4 Taxes.

- (a) Generally. Customers that constitute State agencies, as defined by O.C.G.A. § 48-1-2, are exempt from the assessment of sales and use taxes as allowed by law. In addition, such customers are exempt from federal taxes pursuant to 26 United States Code, Sections 4253(i) and (j). Customer makes no representation whatsoever as to the liability or exemption from liability of Service Provider to any tax imposed by any governmental authority. *[Note to draft: To the extent Customer is not an agency of Georgia as defined by O.C.G.A. §48-1-2, this provision should be adapted and any applicable sales and use taxes must be addressed.]*
- (b) Service Taxes. To the extent ever applicable, Service Provider will be responsible for sales, service, value-added, use, excise and other taxes assessed by tax authorities against either party on the provision of the Services as a whole, or on any particular Service from locations outside the United States (“**Service Taxes**”) (none of which Services are contemplated as of the Customer Purchase Agreement Effective Date); and Customer will be financially responsible for all Service Taxes arising out of or related to the provision of Services from locations within the United States. The parties agree to reasonably cooperate with each other, as set forth in this Section, in every case only to the extent in compliance with applicable laws: (i) to enable each to more accurately determine its own Service Tax liabilities under this Customer Purchase Agreement, (ii) to minimize such Service Taxes incurred in connection with this Customer Purchase Agreement, and (iii) to enable each party to receive any refunds or rebates of Service Taxes for which such party is financially responsible.
- (c) Income, Sales, Use and Property Taxes. Service Provider will be responsible for its own income taxes, and for any sales, lease, use, personal property, stamp, duty or other such taxes on equipment, materials or property it owns or leases or licenses from a third party.
- (d) Taxes on Goods or Services Used by Service Provider. Service Provider will be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Service Provider on any goods or services used or consumed by Service Provider in providing the Services where the tax is imposed on Service Provider’s acquisition or use of such goods or services and the amount of tax is measured by Service Provider’s costs in acquiring or procuring such goods or services and not by Customer’s cost of acquiring such goods or services from Service Provider.
- (e) Tax Filings. Service Provider represents, warrants and covenants that it will file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions.

- (f) Certification Regarding Sales and Use Tax. By executing this Customer Purchase Agreement, Service Provider certifies that it either: (i) is registered with the Department of Revenue or a similar agency in the applicable jurisdiction and collects and remits applicable state sales and use taxes as required by applicable law; or (ii) is not a “dealer” as defined in O.C.G.A. § 48-8-2 or other applicable law. Service Provider also acknowledges that Customer may declare void or terminate this Customer Purchase Agreement for default if the above certification is false.
- (g) Arm’s Length Compensation with Foreign Affiliates. Service Provider represents that each subcontractor (including affiliates of Service Provider), if any, providing Services from locations outside of the United States that provides similar services in the ordinary course of its business to customers unrelated to Service Provider or Customer will receive arm’s length compensation for all services they provide to Customer pursuant to this Customer Purchase Agreement.

5. Security and Conduct.

5.1 General Compliance Requirements.

- (a) Service Provider shall provide the Services and use all resources related thereto, in a secure and reasonable manner and in a manner meeting the security requirements under **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** and elsewhere under this Customer Purchase Agreement, as well as applicable policies of Customer (provided that Service Provider’s compliance with Customer policies or changes thereto that are made available to Service Provider after the Customer Purchase Agreement Effective Date will be subject to a Change Order to the extent material changes to the Services are required).
- (b) Any specific Customer requirements associated with Customer’s facilities, systems or data with which Service Provider must comply (“**Customer Rules**”) are expressly included in this Customer Purchase Agreement as **Attachment C (Customer Rules)**. Service Provider shall comply with the provisions in such attachment.
- (c) In the event that any of Service Provider’s or its subcontractors’ personnel do not comply with the requirements above, Customer, in its sole reasonable discretion and without limiting its other rights, may have the personnel’s access revoked or have such personnel removed from the premises, in accordance with applicable laws.

5.2 Disabling Devices.

Service Provider will use commercially reasonable efforts to identify, screen and prevent, and shall not introduce, any Disabling Device in any equipment or software provided by Service Provider and used in the performance of the Services. Without adversely impacting the Services, if a Disabling Device has been introduced into Customer’s systems by Service Provider or through systems owned, operated or directly controlled by Service Provider, then Service Provider shall, without limiting other rights and remedies that may be available to Customer, assist Customer as reasonably requested in reducing and/or eliminating the effects of any Disabling Device, including by assisting in restoring or recreating any lost data and/or software programming. As used above and in a Customer Purchase Agreement, “**Disabling Device**” means any virus, timer, clock, counter, time

lock, time bomb, Trojan horse, worms, file infectors, boot sector infectors or other limiting design, instruction or routine and surveillance software or routines or data gathering or collecting software or devices that could, if triggered, erase data or programming, have an adverse impact on the Services, cause Customer resources to become inoperable or otherwise incapable of being used in the full manner for which such resources were intended to be used, or collect any data or information. Nothing in this Section will restrict the Service Provider from installing software code that ensures licensing compliance, such as a software key, so long as the restrictions managed by such code are consistent with the terms of this Customer Purchase Agreement and Service Provider's obligations to provide the Services.

5.3 Data Security and Protection.

- (a) Compliance with Data Privacy and Data Protection Laws, Regulations and Customer Rules. In performing its obligations under this Customer Purchase Agreement, Service Provider will observe and comply with all applicable data privacy and data protection laws and regulations, including the applicable requirements under the Federal Information Security Management Act (or FISMA), 44 U.S.C. § 3541 et seq. In addition, the Services shall comply, to the extent applicable, with the National Institute of Standards and Technology (NIST) 800-53 standards.
- (b) NIST-800-53 Worksheet. As part of becoming a GETS Ready Program qualified service provider, Service Provider has completed the NIST 800-53 Worksheet, and such completed worksheet is attached hereto as **Attachment D (NIST-800-53 Worksheet)**. Service Provider agrees that, (i) as of the Customer Purchase Agreement Effective Date, to the extent applicable, the Services will comply with the provisions in **Attachment D (NIST-800-53 Worksheet)**, and, (ii) without Customer's prior written consent, Service Provider will not make any changes to the Services during the Customer Purchase Agreement Term that would result in a material adverse change to the information provided in **Attachment D (NIST-800-53 Worksheet)**.
- (c) Security Incident.
 - (i) Service Provider will promptly notify Customer in the event of any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance or incident that compromises, or could reasonably be expected to compromise, the security of any "personally identifiable information" (as such term is defined by NIST), including any circumstance pursuant to which applicable law requires notification to be given to affected individuals or regulators. Customer Rules may address more specific requirements regarding the process and requirements for Service Provider's notification.
 - (ii) If Service Provider's breach of this Customer Purchase Agreement results in any incident described in Section 5(c)(i) above, then Service Provider shall reimburse Customer for any reasonable associated expenses, including the cost of any required legal compliance (e.g., notices required by applicable law), the expenses related to the investigation and remediation of the incident, and any identity protection services made available to affected individuals.

6. Confidential Information.

- (a) In connection with this Customer Purchase Agreement, each of Service Provider and Customer (as a “**receiving party**”) may be furnished with, receive or otherwise have access to certain information relating to the other party (as a “**disclosing party**”) or its business or operations (including that of its customers or other third parties with which it deals) which it maintains in a confidential manner, whether provided to the other party in writing or otherwise (“**Confidential Information**”). Confidential Information may include analyses, compilations, reports and other materials. Neither receiving party shall disclose, transfer, use, copy or allow access to any Confidential Information of the disclosing party to any of the receiving party’s employees or to third parties, except those who have a legitimate “need to know” such Confidential Information and who are bound to the receiving party to protect the confidentiality of such information in a manner substantially equivalent to that required under this Customer Purchase Agreement.
- (b) Neither receiving party will have any obligation of confidentiality with respect to information that (i) is or becomes (through no improper action or inaction of the receiving party or any of its affiliates, agents, consultants or employees) generally available to the public; (ii) can be demonstrated by the receiving party to have been in its possession or known by it prior to receipt under this Customer Purchase Agreement; (iii) is rightfully disclosed to the receiving party by a third party without restriction; (iv) is disclosed by the receiving party with the written approval of the disclosing party; (v) is developed independently by the receiving party; or (vi) is obligated to be disclosed by applicable law, including order of a court of competent jurisdiction.
- (c) Notwithstanding the foregoing, Customer’s obligations hereunder may be subject to the provisions of the Georgia Open Records Act (O.C.G.A. § 50-18-70 et seq.), as it may be amended from time to time, or similar law applicable to Customer.
- (d) Promptly following written request of the disclosing party, the receiving party shall return to the disclosing party or otherwise destroy the disclosing party’s Confidential Information and certify that it has done so (except to the extent the receiving party has an express right under this Customer Purchase Agreement to maintain such Confidential Information).

7. Warranty and Disclaimer.

7.1 Warranty. Service Provider warrants that in providing the Services:

- (a) Service Provider will materially comply with its descriptions of the Services, such as are provided in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)**, or otherwise in documentation or written specifications provided by Service Provider (including as to performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements);
- (b) Service Provider will comply (and cause its subcontractors to comply) at all times with all laws, rules, and regulations applicable to Service Provider’s business or to the provision of the Services, as they may change from time to time, and Service Provider will obtain and maintain all permits and licenses required to comply with such laws, rules and regulations; but in all cases excluding any laws, rules, and regulations applicable exclusively to Customer;

- (c) Additionally, in the case of any laws, rules, and regulations not covered under Section 7.1(b), of which Customer has notified Service Provider and which apply to the conduct of Customer's operations or activities, Service Provider will comply with all of Customer's written directions to ensure that the Services are not performed in a manner that results in Customer being in violation of any laws, rules or regulations (such obligation being subject to the Change Order process where a change in the Services is required);
- (d) The Services will not violate or in any way infringe upon the rights of third parties, including proprietary information and non-disclosure rights, or any programming tools, methods, ideas, discoveries, know-how, show-how, concepts, drawings, designs, diagrams, models, algorithms, structures, sequences, techniques, flow charts, methodologies, processes, procedures, routines, subroutines, software code (both object and source code), data, research, development, specifications, documentation, user manuals, reports, summaries, inventions, patents, copyrights, trademarks, trade dress, trade secrets, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the foregoing rights (collectively, "**Intellectual Property**");
- (e) Service Provider is the lawful owner of, or otherwise has the required licenses, permits or other rights, to use and distribute (and to permit Customers to access or use) any pre-existing Intellectual Property associated with the Services, including any documentation;
- (f) The Services will be performed (i) by qualified personnel who are trained, skilled and available to perform the Services, and if required by this Customer Purchase Agreement or by applicable law, are validly licensed and/or has obtained all requisite permits to perform such Services), (ii) in a good and workmanlike manner, and (iii) in a manner consistent with that level of care and skill ordinarily exercised by other providers of similar services under similar circumstances at the time Services are provided;
- (g) Service Provider will have performed background checks on all Service Provider personnel prior to their providing Services hereunder (which, for clarity, may be performed prior to the Customer Purchase Agreement Effective Date). The Customer Rules at **Attachment C (Customer Rules)** may provide specific requirements related to Service Provider personnel, including background checks, with which Service Provider shall comply. Service Provider will not utilize individuals who have not passed the applicable background checks; and
- (h) Neither Service Provider nor any of its subcontractors have been debarred, suspended or declared ineligible by any entities of the State of Georgia or as defined in the Federal Acquisition Regulations 48 C.F.R. Ch. 1 Subpart 9.4 (or other equivalent law applicable to Customer). Service Provider immediately shall notify Customer if Service Provider or any of its subcontractors become debarred by the State of Georgia (or other jurisdiction applicable to Customer) or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by any federal entity.

7.2 Disclaimer. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXPRESS WARRANTIES SET FORTH IN SECTION 7.1 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SERVICE PROVIDER DISCLAIMS AND CUSTOMER WAIVES ALL OTHER WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

8. Indemnification and Infringement.

8.1 Indemnification by Service Provider.

- (a) At Customer's request, Service Provider will, at Service Provider's expense, indemnify, defend and hold harmless Customer and its officers, directors, employees and agents (hereinafter collectively referred to as "**Indemnitees**"), from any and all demands, liabilities, losses, penalties, fines, fees, interest, awards, judgments, settlement payments, costs or expenses (including court costs and reasonable attorneys' fees) (collectively, "**Losses**") incurred in connection with any third party claim, suit or demand to the extent arising from or based on any of the following: (i) Service Provider's violation of any applicable law, rule or regulation, or Service Provider's failure to comply with written instructions as described in Section 7.1(c) above; (ii) Service Provider's damage to or destruction of tangible or real property; (iii) bodily injury or death caused by Service Provider; (iv) Service Provider's failure to comply with its security obligations or Customer Rules; or (v) based on any aspect of the engagement or employment of any individuals by Service Provider or its subcontractors, or the termination of such employment or engagement (including claims related to non-payment of wages, discrimination/harassment, unemployment or workers compensation benefits, employee benefits, and any other claims concerning the terms and conditions of employment under any federal, state or local law governing employment) regardless of whether the claimant claims or is deemed by a court to be an employee or joint employee of Customer (it being expressly agreed between Service Provider and Customer that such individuals are not intended to be employees of Customer).
- (b) Additionally, Service Provider will, at Service Provider's expense, indemnify, defend and hold harmless the Indemnitees from any and all Losses incurred in connection with any third party claim, suit or demand arising from or based on an allegation that any of the Services, including any deliverable, as provided or performed by Service Provider, infringes such third party's Intellectual Property rights or misappropriates or causes unauthorized use of any trade secret belonging to such third party. The foregoing indemnity shall not apply if such third party claim, suit, or demand is caused solely by: (i) modifications to the Services undertaken by Customer and not approved or reasonably contemplated by Service Provider; or (ii) combination of the Services with products or services not provided by Service Provider unless otherwise approved or reasonably contemplated by Service Provider consistent with the terms of this Customer Purchase Agreement. With respect to any pending or threatened claim, suit or other demand, Service Provider shall obtain for Customer, at Service Provider's expense, the right to continue using the Services, including any deliverable, or alternatively replace or modify the Services, including any deliverable so that they are non-infringing and functionally equivalent and without performance being adversely and materially affected.

8.2 Indemnification Procedures.

- (a) **Notice.** Promptly after receipt by an Indemnitee of notice of the commencement or threatened commencement of any action, proceeding or other claim by a third party involving a claim in respect of which the Indemnitee may seek indemnification pursuant to the above, the Indemnitee will notify Service Provider of such claim in writing and provide to Service Provider all reasonably available information requested. No failure to so notify Service Provider will relieve it of its obligations under this Section 8 except to the extent that it can demonstrate damages or prejudice attributable to such failure. Within thirty (30) days following receipt of notice and such reasonably available information from the Indemnitee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due (the applicable period referred to herein as the “**Notice Period**”), Service Provider will notify the Indemnitee in writing if Service Provider assumes responsibility to indemnify, defend and hold harmless the Indemnitee and elects to be involved in the defense and settlement of that claim (an “**Notice of Election**”). Service Provider will be responsible for all Losses related to such claim if Service Provider is obligated to indemnify the Indemnitee.
- (b) **Procedure Following Notice of Election.** If Service Provider delivers a Notice of Election relating to any claim within the required Notice Period, Service Provider will be involved in the defense and settlement of such claim; provided, however, that (i) the Indemnitee will be entitled to participate in the defense of such claim at its own expense and the Office of the Attorney General of the State of Georgia will represent and defend the Indemnitee, and (ii) Service Provider will obtain the prior written approval of the Indemnitee and the Georgia Attorney General before entering into any settlement of such claim or ceasing to defend against such claim.
- (c) **Procedure Where No Notice of Election is Delivered.** If Service Provider does not deliver a Notice of Election relating to any claim within the required Notice Period or otherwise comply with its obligation to defend hereunder, the Indemnitee, represented by the Office of the Attorney General of the State of Georgia (or other arrangement allowed by law), may proceed to defend the claim in such manner as it may reasonably deem appropriate, at the cost and expense of Service Provider. Service Provider will promptly reimburse the Indemnitee for all applicable Losses related to such claim. In such case, the Indemnitee represented by the Attorney General of the State of Georgia (or other party as applicable) may settle any such claim without the consent of Service Provider. If it is determined that Service Provider failed to defend a claim for which it was liable, Service Provider will not be entitled to challenge the amount of any settlement or compromise paid by the Indemnitee.
- (d) Service Provider's obligation to indemnify any Indemnitee will survive the expiration or termination of this Customer Purchase Agreement by either Customer or Service Provider for any reason.

8.3 Infringement by Customer.

In the event Customer infringes upon or misappropriates the intellectual property of Service Provider with respect to any item used by Service Provider to provide the Services or which is provided by Service Provider to Customer under this Agreement, Customer will, without limiting any other rights and remedies Service Provider may have under this Agreement,

and at law or equity, be liable for any costs and expenses, including reasonable attorneys' fees, incurred by Service Provider as a result of such infringement or misappropriation.

9. Termination and Termination Assistance.

9.1 Termination by Customer.

Customer has the right to terminate this Customer Purchase Agreement, in whole or in part, if (a) Service Provider breaches or is in default of any material obligation of this Customer Purchase Agreement, which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after Service Provider's receipt of notice of such default (or such additional cure period as Customer may authorize); (b) Service Provider suspends or terminates its operation of business or, to the extent permitted by applicable federal and state law, Service Provider becomes subject to any bankruptcy or insolvency proceeding under federal or state law or becomes unable to pay its obligations as they accrue; or (c) if: (i) Service Provider is debarred or suspended from performing services on any public contracts; (ii) any certifications or licenses as may be required for Service Provider to provide the Services are revoked or no longer in effect for any reason, (iii) Service Provider materially breaches its obligations under Section 6 above, or (iv) Service Provider furnished any statement, representation or certification in connection with this Customer Purchase Agreement which is materially false or deceptive.

9.2 Termination by Service Provider.

If Customer fails to pay Service Provider when due undisputed invoiced amounts totaling at least two (2) months' worth of Charges under this Customer Purchase Agreement, and fails to make such payment within thirty (30) days after the date Customer receives notice of such non-payment and intention to terminate from Service Provider, then Service Provider may terminate this Customer Purchase Agreement by sending written notice to the applicable Customer terminating this Customer Purchase Agreement, in which event this Customer Purchase Agreement will terminate as of the date specified in the notice of termination (but not earlier than thirty (30) days after Customer's receipt of such notice). If Service Provider terminates this Customer Purchase Agreement in accordance with this Section, then, in addition to any applicable termination fees payable by Customer as and to the extent expressly set forth in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)** and not prohibited by law, Service Provider may require that Customer pre-pay on a monthly basis for any Termination Assistance (described below) to be provided by Service Provider following such termination. Such pre-payment will be based on the expected Charges but subject to reconciliation against the Charges actually incurred.

9.3 Termination for Convenience.

Customer may terminate this Customer Purchase Agreement, in whole or in part, for convenience (whether or not with cause) upon thirty (30) days prior written notice to Service Provider. Any such termination will be without fee or charge, other than (a) the fees for Services received up through the effective date of termination and (b) other defined termination fees, if any, that may be payable by Customer as and only to the extent expressly set forth in **Exhibit 1 (Catalogue of Services, Service Levels, Pricing)**, or, to the extent applicable, in a mutually agreed purchase order for Services.

9.4 Termination for Lack of Funding.

Service Provider acknowledges that institutions of the State of Georgia and other states are prohibited from pledging the credit of the State or such other state so as to prevent Customer from incurring a financial obligation unless funds to honor the obligation have been lawfully appropriated. Consequently, as may be the case, if the sources of payment for the Charges no longer exist or are determined to be insufficient, Customer will notify Service Provider promptly (and in any event within thirty (30) days) after Customer becomes aware of such, and may immediately terminate this Customer Purchase Agreement upon notice to Service Provider without any further obligation, other than payment for Services received. The determination of Customer as to the occurrence of the events stated in this paragraph will be conclusive.

9.5 Continued Performance.

Each of Service Provider and Customer shall continue performing its obligations under this Customer Purchase Agreement while any dispute is being resolved; provided that this provision shall not operate or be construed as prohibiting or delaying a party's exercise of any right it may have to terminate this Customer Purchase Agreement in whole or in part. Service Provider shall not deny, withdraw, or restrict Service Provider's performance of the Services to Customer, except as specifically and expressly agreed in writing by both Service Provider and Customer, pending resolution of any particular dispute.

9.6 Termination Assistance.

- (a) General. In connection with any expiration or any earlier termination of this Customer Purchase Agreement or any particular Services for any reason, Customer may request Service Provider to reasonably assist Customer in accomplishing a transition of the Services from Service Provider to Customer or to any replacement service provider designated by Customer, without interruption or adverse impact on the Services or any other services provided by third parties or business operations of Customer ("**Termination Assistance**"). Service Provider shall cooperate fully with Customer and any such replacement service provider with respect to any such requests. For clarity, Termination Assistance may include, at Customer's reasonable request, the continued provision of all or any portion of the Services beyond the scheduled expiration or termination date (i.e., regardless of the reason for termination).
- (b) Charges. To the extent Termination Assistance can be provided by Service Provider using personnel and resources already assigned to the Services, during their normal working hours and without adversely affecting Service Provider's ability to meet its performance obligations, there shall be no additional charge to Customer for such Termination Assistance. To the extent Termination Assistance requested by Customer cannot be so provided by Service Provider, Customer, in its sole discretion, may forego or delay any work activities or temporarily or permanently adjust the work to be performed by Service Provider, to permit the performance of Termination Assistance at no additional charge. If the foregoing is not possible, or if Customer otherwise authorizes the use of additional resources to perform Termination Assistance, then such Termination Assistance shall be chargeable based on the applicable rates and Charges under this Customer Purchase Agreement (e.g., a continuation of the Services will continue to incur the same Charges), or, if there are no such applicable rates or Charges, then based

on rates and charges that have been discounted from Service Provider's standard fees in a manner similar to the discounts embedded in the Charges.

10. Limitation of Liability.

10.1 Disclaimer of Certain Damages.

NEITHER SERVICE PROVIDER NOR CUSTOMER SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS CUSTOMER PURCHASE AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 Cap on Liability.

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS CUSTOMER PURCHASE AGREEMENT EXCEED THE AMOUNT OF THE CHARGES PAID OR PAYABLE BY CUSTOMER DURING THE TWENTY FOUR (24) MONTHS BEFORE THE EVENT GIVING RISE TO SUCH LIABILITY; PROVIDED THAT IF THE EVENT GIVING RISE TO LIABILITY OCCURS DURING THE FIRST TWENTY FOUR (24) MONTHS AFTER THE CUSTOMER PURCHASE AGREEMENT EFFECTIVE DATE, THE AMOUNT SHALL BE CALCULATED AS THE AMOUNT ANTICIPATED TO BE INVOICED TO CUSTOMER DURING THE FIRST TWENTY FOUR (24) MONTHS AFTER THE CUSTOMER PURCHASE AGREEMENT EFFECTIVE DATE, OR TWENTY FOUR (24) TIMES THE AVERAGE MONTHLY CHARGES THUS FAR, WHICHEVER IS MORE.

10.3 Exclusions and Stipulations.

THE PROVISIONS ABOVE IN THIS SECTION 10 SHALL NOT APPLY TO: (A) LOSSES ARISING FROM THE FAILURE TO COMPLY WITH CONFIDENTIALITY OBLIGATIONS; (B) LOSSES ARISING OUT OF GROSS NEGLIGENCE OR WILLFUL OR INTENTIONAL MISCONDUCT; OR (C) LOSSES ARISING OUT OF SERVICE PROVIDER'S OBLIGATIONS TO INDEMNIFY ANY INDEMNITEE. FURTHER, THE REIMBURSEMENT OBLIGATIONS UNDER SECTION 5.3(C)(II) SHALL BE DEEMED TO BE DIRECT DAMAGES AND NOT ANY OF THE TYPES OF DAMAGES DESCRIBED UNDER SECTION 10.1 ABOVE.

11. Insurance.

Service Provider will comply with the terms of **Attachment E (Insurance)**.

12. Cooperation.

- (a) General Defense. Each of Service Provider and Customer, on behalf of itself and its employees, agents, subcontractors, and assigns, agrees to cooperate fully in the defense of any litigation brought against the other party relating to the Services, and each of Service Provider and Customer shall give the other party prompt notice of any such claim, demand, suit or proceeding.
- (b) Service Provider Cooperation with Other Service Providers. In the event that Customer enters into arrangements with other service providers or government institutions for additional work related to the Services, Service Provider shall cooperate fully with such

other parties, including providing reasonable access to people, resources and information as reasonably required. Service Provider shall not commit any act which will interfere with the work performed by such other service provider or governmental institution.

13. Record Retention and Audit Rights.

- (a) Service Provider shall maintain accurate books, records and documents concerning financial status, billing and service records regarding the provision of Services under this Customer Purchase Agreement (collectively, "**Records**") throughout the Customer Purchase Agreement Term and for at least five (5) years after its termination or expiration.
- (b) Customer, by and through the state auditor or equivalent public authority in the applicable jurisdiction, shall have the right to, but not more than once per twelve (12) month period, inspect and audit any Records during normal business hours and upon not less than thirty (30) days' prior written notice to Service Provider; provided, however, that nothing herein requires Service Provider to disclose its internal pricing or cost information. Upon request, Service Provider shall deliver the required documentation and records on the date and at the location specified by Customer or its duly authorized officer. If an audit discloses incorrect billings that exceed five percent (5%) of the total Charges payable during the audited period with respect to the Services being audited under this Customer Purchase Agreement or other improprieties, Customer shall have the right to receive reimbursement from Service Provider not only for the overcharge but also for the reasonable costs of the audit.

14. Independent Contractor; Contractor Personnel.

14.1 Independent Contractor.

In its relationship with Customer, and for all tax, liability and insurance purposes, Service Provider is an independent contractor. Service Provider shall have the sole right to manage, control and direct the method, manner and means by which the Services are performed. Service Provider shall be responsible for compliance with all applicable laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. Neither Service Provider nor any of its agents, servants, employees, subcontractors or suppliers shall become or be deemed to become agents, representatives, or employees of Customer. This Customer Purchase Agreement shall not be construed so as to create a partnership or joint venture between Service Provider and Customer. Service Provider shall not hold itself out to be an employee or agent of Customer or use the name of Customer in its business in any way.

14.2 Subcontractors.

Service Provider at all times shall remain responsible for the performance and all acts or omissions of its employees, agents and subcontractors.

14.3 Trading with State Employees.

Each of Service Provider and Customer certify that this Customer Purchase Agreement does not and will not violate the provisions of Georgia's code of ethics and conflicts of interest statutes set forth in O.C.G.A. § 45-10-20, et seq. (or other equivalent law applicable

to Customer), in any respect. Service Provider shall not employ any individual whose employment would result in a violation of such law.

14.4 Drug-Free Work Place.

Service Provider certifies that: (a) a drug-free work place will be provided for Service Provider's personnel during the Customer Purchase Agreement Term, consistent with the description in **Exhibit 6 (Drug-Free Workplace)** to the GETS Ready MSA; and (b) it will secure from any subcontractor hired to perform Services the same certification. Service Provider may be suspended, terminated, or debarred if it is determined that Service Provider has made false certification with respect to the above or has violated such certification by failure to carry out the requirements of O.C.G.A. § 50-24-3 (or other equivalent law applicable to Customer).

15. Non-Exclusivity.

This Customer Purchase Agreement is entered into solely for the convenience of Customer and in no way precludes Customer reducing its use of the Services, including in connection with obtaining or arranging like goods and services from other suppliers. Similarly, this Customer Purchase Agreement does not preclude Service Provider from offering like goods and services to other persons or entities.

16. Vendor Lobbyist Certification.

Service Provider certifies that, as of the Customer Purchase Agreement Effective Date, any lobbyist employed by Service Provider to lobby within the State of Georgia has registered with the Georgia Government Transparency and Campaign Finance Commission and complied with the requirements of the Executive Order dated October 1, 2003 ("Providing for the Registration and Disclosure of Lobbyists Employed or Retained by Vendors to State Agencies"). Upon Customer's request, in connection with the execution of this Customer Purchase Agreement, Service Provider shall provide an equivalent certification to the foregoing under other law applicable to Customer. This Customer Purchase Agreement may be declared void at Customer's sole discretion, if it is determined that Service Provider has made false certification as described above or has violated such certification by failure to carry out the requirements of such Executive Order or other applicable law.

17. Immigration and Security.

Service Provider certifies that, as of the Customer Purchase Agreement Effective Date, it complies with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-90 (or other equivalent law applicable to Customer). The e-Verify Certificate form attached as **Exhibit 4 (E-Verify Affidavit – Service Provider)** to the GETS Ready MSA shall be completed by Service Provider and notarized, certifying compliance with the foregoing. Further, the e-Verify Certificate form attached as **Exhibit 5 (E-Verify Affidavit – Subcontractor)** to the GETS Ready MSA shall be completed by any subcontractors employed for delivery of the Services and notarized, certifying compliance with the foregoing.

18. Incorporation of Anti-BDS (Boycott, Divestment and Sanctions Campaign against Israel) Legislation.

Service Provider certifies that Service Provider is not currently engaged in, and agrees for the duration of the Customer Purchase Agreement Term not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85 (or other equivalent law applicable with respect to Customer).

19. Miscellaneous.

19.1 Assignment.

Service Provider shall not assign this Customer Purchase Agreement or any of its rights hereunder, regardless of whether such assignment is voluntary or involuntary, and whether it is by merger, consolidation, dissolution, operation of law or any other manner, without Customer's prior written consent, such consent not to be unreasonably withheld. Any purported assignment by Service Provider without such consent shall be null and void.

19.2 Applicable Law and Venue.

The laws of the State of Georgia, U.S.A., without regard to its conflict of laws principles, govern all matters arising out of or relating to this Customer Purchase Agreement and the transactions it contemplates, including its interpretation, construction, performance and enforcement. Any lawsuit or other action based on a claim arising from this Customer Purchase Agreement shall be brought in the Superior Court of Fulton County, Georgia, for State agencies and in the superior court of domicile for other Customers, unless expressly otherwise provided in this Customer Purchase Agreement.

19.3 Entire Agreement; Amendments.

This Customer Purchase Agreement (including its attachments and other documents incorporated herein) constitutes the entire agreement between Customer and Service Provider with respect to its subject matter and supersedes all other representations, understandings or agreements that are not expressed herein, whether oral or written. Each of Service Provider and Customer agree to cooperate in good faith in connection with any amendments to this Customer Purchase Agreement as may be required; provided, however, no change or modification or other amendment to this Customer Purchase Agreement shall be valid unless the same is reduced to writing and signed by both of Service Provider and Customer.

19.4 Headings.

The headings in this Customer Purchase Agreement have been inserted for convenience only and shall not affect or control the meaning or construction of any of the provisions in this Customer Purchase Agreement.

19.5 Waiver.

Service Provider and Customer may waive a provision of this Customer Purchase Agreement only by a writing executed by the party or both parties against which the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Customer Purchase Agreement, and no act, omission or course of dealing between the parties shall operate as a waiver or estoppel of any right, remedy or condition. A waiver made in writing of a right under or provision of this

Customer Purchase Agreement on one occasion shall be effective only for that instance and occasion and only for the purpose stated, and a waiver once given is not to be construed as a waiver on any future occasion or against any other party except as expressly provided in the applicable writing executed by the party against which enforcement is sought.

19.6 Severability.

All provisions of this Customer Purchase Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. All provisions of this Customer Purchase Agreement will be construed in such a manner as to carry out the fullest intention of Service Provider and Customer as is enforceable and valid.

19.7 Remedies.

Except as expressly limited herein, no remedies or rights conferred upon either Service Provider or Customer under this Customer Purchase Agreement are intended to be exclusive of any remedy or right provided by law or in equity, but each shall be cumulative and shall be in addition to every other remedy or right given hereunder or now or hereafter existing at law or in equity (including the right of specific performance).

19.8 Notices.

All notices, requests, or other communications (excluding invoices) under this Customer Purchase Agreement shall be in writing and either transmitted via overnight order, facsimile with correct answerback, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested at the following addresses. Notices will be effective when received.

Customer:

Customer Name

Customer Street Address

Customer City, State, Zip Code

Customer Contact Name

Customer Contact Title

Service Provider:

Service Provider Name

Service Provider Street Address

Service Provider City, State, Zip Code

Service Provider Contact Name

Service Provider Contact Title

19.9 Publicity.

Service Provider shall not release without Customer's prior written approval any publicity regarding this Customer Purchase Agreement, including notices, information, pamphlets, press releases, research, reports, signs and similar public notices prepared by or for Service Provider, identifying Customer; provided, however, Service Provider may reference this Customer Purchase Agreement in proposals for other contracts, subject to reasonable confidentiality restrictions, without Customer's prior approval.

19.10 No Liens.

Service Provider will not file, or by its action or inaction permit, any liens to be filed on or against property (including realty) of Customer. In the event that any such liens shall arise as a result of Service Provider's action or inaction, Service Provider shall promptly obtain a bond or otherwise undertake to fully and promptly satisfy such liens and remove or have such liens removed at its sole cost and expense within no more than ten (10) business days of such lien arising. If Service Provider fails to so satisfy and have removed any such lien, Customer may, in its sole discretion, pay the amount of such lien and deduct such amounts from payments due to Service Provider or, if no further payments are due, promptly recover such amount from Service Provider.

19.11 Counterparts.

Service Provider and Customer may execute this Customer Purchase Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures for both Service Provider and Customer need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by electronic mail shall be as effective as executing and delivering this Customer Purchase Agreement in the presence of the other party. Neither Service Provider nor Customer shall be bound by this Customer Purchase Agreement until both parties have executed it.

19.12 Interpretation.

Unless the context requires otherwise, as used in this Customer Purchase Agreement: (a) "including" (and any of its derivative forms) means including but not limited to, (b) "may" means has the right, but not the obligation to do something, and "may not" means does not have the right to do something, and (c) "will" and "shall" are expressions of command, not merely expressions of future intent or expectation.

19.13 Order of Precedence.

In the event of any conflict or inconsistency among the terms of this Customer Purchase Agreement (excluding its attachments) and any attachments to this Customer Purchase Agreement, then to the maximum extent that the conflicting or inconsistent terms can reasonably be interpreted so that such terms are consistent with and supplemental to one another and do not conflict with each other, such consistent, non-conflicting and supplemental interpretation shall prevail, in a manner that gives effect to all of such terms, absent an express statement of exclusion of a particular provision of another document, or an express statement that one provision or term in another document takes precedence

over another or applies notwithstanding the other (in which case, that express statement of exclusion, precedence or application shall first be given effect). Subject to the foregoing, any conflict or inconsistency in this Customer Purchase Agreement (excluding its attachments) and any attachments to this Customer Purchase Agreement shall be resolved by giving precedence in the following order:

- (a) this Customer Purchase Agreement (excluding its attachments); and
- (b) the attachments to this Customer Purchase Agreement.

19.14 Survival.

Any provision of this Customer Purchase Agreement which contemplate performance or observance subsequent to any termination or expiration of the Customer Purchase Agreement shall survive any such termination or expiration and continue in full force and effect. Additionally, all terms and conditions of this Customer Purchase Agreement shall survive expiration or termination to the fullest extent necessary to give each of Service Provider and Customer the full benefit of its bargain. In this regard, to the extent Services are provided beyond termination or expiration of this Customer Purchase Agreement through Termination Assistance, then all related terms and conditions will survive such termination or expiration and will continue to apply.

19.15 Further Assurances.

Each of Service Provider and Customer will execute and deliver such other instruments and documents, and take such other actions, as the other party may reasonably request to evidence or effect the transactions contemplated by this Customer Purchase Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of Service Provider and Customer have executed this Customer Purchase Agreement as of the Customer Purchase Agreement Effective Date.

[Name of Customer]

By: _____

Name: _____

Title: _____

Date: _____

[Name of Service Provider]

By: _____

Name: _____

Title: _____

Date: _____