

CONTRACT #12
RFS # 317.01-20001
FA # NA
Edison # Pending

**Department of Finance and
Administration
Business Solutions Delivery**

VENDOR:
Planview, Inc.



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
BUSINESS SOLUTIONS DELIVERY
312 ROSA L. PARKS AVENUE
SUITE 1600, TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243

LARRY B. MARTIN
COMMISSIONER

STEPHANIE DEDMON
DIRECTOR

March 7, 2014

Mr. Lucian Geise, Director
Fiscal Review Committee
320 6th Avenue North
8th Floor, Rachel Jackson Building
Nashville, TN 37243

Dear Sir:

Please find attached, for the Fiscal Review Committee's consideration, documentation of a Special Contract Request pertaining to the non-competitive contract award to Planview, Inc. for the provision of Planview SaaS (Software as a Service) and Consulting Services. The Department of Finance and Administration respectfully requests to be placed on the agenda to present this request at the March 17th Fiscal Review Committee meeting.

The subject contract involves the provision of the following:

- SaaS (software as a service), including the use of the Planview Enterprise application, the application environment hosting by Planview, Inc., and the related application training, documentation and best practices repository.
- Technical support and problem resolution,
- Training services,
- Consulting services to assist with the implementation and configuration of the Planview Enterprise application for State use, and the integration with several State applications (E.G., Edison, SharePoint, FileNet, and Remedy).

Planview, Inc. is the sole provider of the services that are the subject of this contract. OIR has established Planview as the state standard tool for project and portfolio management (PPM). This software will be rolled out to all executive branch agencies to automate the annual information systems planning process, requiring agencies to submit their plans and the related project proposal/cost benefit analysis requests online. Additionally, this tool will provide a single, enterprise view of proposed and approved IT projects, will enable agencies to better manage IT and business resources across their portfolio of IT projects and will be used by a to-be established IT governance board for review and prioritization of IT projects at an enterprise level. The PPM tool will provide the agencies with a single repository to build and more effectively manage its portfolio of projects over time, including cost, scope and schedule management.

We respectfully request an exception to the 60 day documentation submission because we need to begin the work April 1st to enable us to have the information systems planning piece configured and ready to roll out to the agencies for off-cycle project requests by September. This will significantly reduce paper, save time and will automate the submission and approval processes.

Thank you for your consideration of this request. We look forward to appearing before the Committee at its next scheduled meeting. Please see attached Planview contract summary.

Sincerely,

A handwritten signature in blue ink that reads "Stephanie Dedmon".

Stephanie Dedmon
Director

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Debbie Knox	*Contact Phone:	741-4099
*Original Contract Number:	New Contract; one not yet assigned	*Original RFS Number:	31701-20001
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>	
*Original Contract Begin Date:	March 31, 2014	*Current End Date:	March 30, 2019
Current Request Amendment Number: <i>(if applicable)</i>			
Proposed Amendment Effective Date: <i>(if applicable)</i>			
*Department Submitting:	Finance and Administration		
*Division:	Business Solutions Delivery		
*Date Submitted:	March 7, 2014		
*Submitted Within Sixty (60) days:	No		
<i>If not, explain:</i>	OIR has established Planview as the state standard PPM tool. Existing IT Planning business cycles require work to begin April 1 to enable the information systems planning processes to be configured within the tool and rolled out to agencies by September.		
*Contract Vendor Name:	Planview, Inc.		
*Current Maximum Liability:	\$3,750,000		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY:	FY:	FY:	FY:
Not applicable. This is a new contract.			
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:	FY:	FY:	FY:
Not applicable. This is a new contract.			
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	Not applicable. This is a new contract.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	Not applicable. This is a new contract.		

Supplemental Documentation Required for
Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		Not applicable. This is a new contract.	
*Contract Funding Source/Amount:	State:	\$3,750,000	Federal:
Interdepartmental:			<i>Other:</i>
If " <i>other</i> " please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Sole Source	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$4,195,000	

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY: 2019
SaaS Services, including probable addition of 250 users	\$0	\$859,865	\$510,933	\$510,933	\$641,201	\$655,577
Customer Support for 900 user base	\$0	\$40,000	\$40,000	\$40,000	\$40,000	\$40,000
SaaS environment set up and one-time licensing	\$35,000	\$0	\$0	\$0	\$0	\$0
Training and Training Materials	\$0	\$91,440	\$0	\$0	\$0	\$0
Consulting Services	\$165,000	\$80,051	\$0	\$0	\$0	\$0

Supplemental Documentation Required for
Fiscal Review Committee

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.					
Deliverable description:	FY:	FY:	FY:	FY:	FY:
<p>There are no direct savings to be realized by entering into this contract, but the service benefits to be realized could indirectly create significant savings. This software will be rolled out to all executive branch agencies to automate the annual information systems planning process, requiring agencies to submit their plans and project/CBA requests online. Additionally, this tool will provide a single, enterprise view of proposed and approved IT projects, will enable agencies to better manage IT and business resources across their portfolio of IT projects and will be used by a to-be established IT governance board for review and prioritization of IT projects at an enterprise level. The PPM tool will provide the agencies with a single repository to build and more effectively manage its portfolio of projects over time, including cost, scope and schedule management.</p>					
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.					
Proposed Vendor Cost: (Planview, Inc.) *	FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY: 2019
SaaS Subscription	\$515,244	\$515,244	\$515,244	\$515,244	\$515,244
Training	\$100,435	\$0	\$0	\$0	\$0
Consulting	\$425,000	\$50,000	\$50,000	\$50,000	\$50,000
Other Vendor Cost: (Compuware) *	FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY: 2019
SaaS Subscription	\$1,560,000	\$100,000	\$100,000	\$100,000	\$100,000
Training	\$840,000	\$0	\$0	\$0	\$0
Consulting	\$525,000	\$0	\$0	\$0	\$0
Other Vendor Cost: (CA Technologies) *	FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY: 2019
SaaS Subscription	\$619,776	\$619,776	\$619,776	\$619,776	\$619,776
Training	\$130,000	\$0	\$0	\$0	\$0
Consulting	\$497,330	\$0	\$0	\$0	\$0
<p>* Note that an assessment of technical and cost aspects of the above vendors was performed during the technology research project that resulted in Planview Enterprise being designated as the state standard solution for Project and Portfolio Management. Planview, Inc. is the sole source provider of this software.</p>					



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION**

Division of Administration
312 Rosa L. Parks Avenue
SUITE 2000, WRS TENNESSEE TOWER
NASHVILLE, TENNESSEE 37243-0294

Larry B. Martin
COMMISSIONER

Buddy Lea
ASSISTANT COMMISSIONER

MEMORANDUM

TO: Mike Perry, Chief Procurement Officer
FROM: Buddy Lea, Asst. Commissioner
DATE: March 7, 2014
RE: Special Contract Request 31701-20001

Attached, please find a Special Contract Request for a Sole Source Contract with Planview, Inc. for provision of Planview SaaS (Software as a Service) and Consulting Services. This is to provide a statewide solution for Project and Portfolio Management.

The body of the request outlines the justification and procedure followed to source this contract and determine the provider and pricing.

This memo is to serve notice that the attached Request is signed by Assistant Commissioner Buddy Lea on behalf of Commissioner Larry B. Martin due to exigent circumstances that has Commissioner Marin unavailable for signature at the time needed.

Respectfully,

A handwritten signature in cursive script that reads "Buddy Lea".

Robert E. (Buddy) Lea, III
Assistant Commissioner, Division of Administration

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER	DATE
COMPTROLLER OF THE TREASURY	DATE

Request Tracking #	31701-20001
1. Contracting Agency	Finance and Administration
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Debbie Knox, 741-4099, Debbie.C.Knox@tn.gov
4. Brief Goods or Services Caption	Planview SaaS (Software as a Service) and Consulting Services
5. Description of the Goods or Services to be Acquired	The subject contract involves the provision of SaaS (software as a service), including use of Planview Enterprise application, application environment hosting by Planview, Inc., and related application training, and documentation and best practices repository. Additional services to be provided include traditional technical support and problem resolution, as well as consulting services to assist with the implementation and configuration of the Planview Enterprise application for State use, and the integration with several State applications (E.G., Edison, SharePoint, FileNet, and Remedy).

Request Tracking #	31701-20001
6. Proposed Contractor	Planview, Inc.
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Gregory S. Gilmore, President and CEO 8300 North MoPac, Suite 300 Austin, Texas 78759
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
9. Office for Information Resources Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 3,750,000
14. Was there an initial government estimate? If so, what amount?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$4,195,000
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	A technology research project co-sponsored by the Office for Information Resources and Business Solutions Delivery was completed to identify the product within the market sector for Project and Portfolio Management (PPM) tools that best meets the State's requirements. During this process, each vendor was asked to provide MSRP pricing for their product. This information was used to develop the cost estimates.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	As stated above, each vendor was asked to provide MSRP pricing for their product. The product identified as best meeting the State's requirements has been established as a State standard technology solution. The final pricing is discounted from MSRP.

Request Tracking #	31701-20001
<p>17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation to this request as applicable.</p>	<p>Documentation of the technology research project, including the vendor provided documentation and documentation of the evaluation results are archived on the OIR Enterprise Architecture SharePoint site.</p>
<p>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</p>	<p>The State of Tennessee does not have a standard for PPM for use in managing technology projects (IT PPM). Agencies currently employ multiple approaches and a variety of tools to meet their needs. Most lack sufficient maturity with IT PPM to consistently reap the potential benefits offered by the use of these tools. The adoption of a standard IT PPM solution will enable the use of standard frameworks and allow for offering education and training that promotes increased IT PPM maturity.</p> <p>The goals to be met through the adoption of a standard IT PPM solution are to enable the State and its agencies:</p> <ul style="list-style-type: none"> • To improve project management practices such that scarce resources and limited project funding are applied to those efforts that are most strategic and beneficial to the delivery of services to the citizenry, • To improve communications about projects and their status at all stages of their life-cycle, and • To realize efficiencies through increased standardization.
<p>19. Proposed contract impact on current State operations</p>	<p>State agencies will make use of the Planview Enterprise application to prepare and submit their annual Information System Plan, and any mid year proposed projects for IT-ABC approval. Agencies will also use the application for managing their projects and tracking the allocation of resources and spending, both at the project level and across all projects.</p>

Request Tracking #	31701-20001
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	A technology research project co-sponsored by the Office for Information Resources and Business Solutions Delivery was completed to identify the product within the market sector for Project and Portfolio Management (PPM) tools that best meets the State's requirements. The product identified as best meeting the State's requirements has been established as a State standard technology solution. Planview, Inc. is the sole provider of the services that are the subject of this contract.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Explanation of Need for or requirement placed on the State to acquire the goods or services	Refer to item 18 above.
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	The technology research project made use of Gartner reports for determining leaders in the PPM market sector. In Gartner's <u>MarketScope for IT Project and Portfolio Management Software Applications</u> , published in May 2013, Gartner rated Planview "Strong Positive", which is the highest ranking provided. Over the past 23 years, Planview, Inc. has established a proven track record for success in the market sector.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	X NO <input type="checkbox"/> YES, Method: N/A Name/Address: N/A

Request Tracking #	31701-20001
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	A technology research project co-sponsored by the Office for Information Resources and Business Solutions Delivery was completed to identify the product within the market sector for Project and Portfolio Management (PPM) tools that best meets the State's requirements. The product identified as best meeting the State's requirements has been established as a State standard technology solution.
Signature Required for all Special Contract Requests	
Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented circumstances</i>	
Signature: 	Date: 3/2/04



OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Contracts
Department of Finance & Administration
E-mail : Jane.Chittenden@tn.gov

FROM : Debbie Knox
E-mail : Debbie.C.Knox@tn.gov

DATE : 3/6/2014

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 31701-20001

OIR Endorsement Signature & Date:

Mark Bengel (Signature)
Chief Information Officer

3/7/14

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Office for Information Resources (OIR) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

Please indicate OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

Contracting Agency	Department of Finance and Administration
Agency Contact (name, phone, e-mail)	Debbie Knox, 741-4099, Debbie.C.Knox@tn.gov
Attachments Supporting Request (mark all applicable)	
<p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to OIR. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. OIR is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	

Information Systems Plan (ISP) Project Applicability

To avoid delay of OIR pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to OIR. If necessary, agency IT staff should contact OIR Planning with questions concerning the need for an ISP project.

IT Director/Staff Name Confirming (required): Jamie Etheridge and Stephanie Dedmon

Applicable – Approved ISP Project#

X Not Applicable

Subject Information Technology Service Description

Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract or solicitation sections related to the IT services.

The subject contract involves the provision of SaaS (software as a service), including use of Planview Enterprise application, application environment hosting by Planview, Inc., and related application training, and documentation and best practices repository. Additional services to be provided include traditional technical support and problem resolution, as well as consulting services to assist with the implementation and configuration of the Planview Enterprise application for State use, and the possible integration with several other State applications (I.E., Edison, SharePoint, FileNet, and Remedy). Refer to Section A, Scope of Services, within the contract document for further detail.



February 25, 2014

State of Tennessee

To whom it may concern:

This letter is to provide notification that Planview, Inc. (the "Company") is the sole source provider of Planview Enterprise, Planview RPM Implementation Solutions and Prisms Enablement in the United States of America. The software and all related services are designed, enhanced, sold, implemented, delivered and supported exclusively by the Company.

The Company, or one of its subsidiaries, maintains all copyright privileges for their products and these products must be purchased directly from the Company. There are no agents or dealers authorized to represent these products in the State of Tennessee and no division of the Company has any right of sub-license to make a similar or competing product in the State of Tennessee.

Planview Enterprise is the market-leading portfolio and resource management solution that integrates planning and execution of a broad range of portfolios: including investments, projects, applications, products, and services. Organizations are able to prioritize their portfolios, optimize their organizational capacity, link their plans to project and resource execution, and manage the underlying financials of this end-to-end process. The result is a centralized platform that establishes enterprise-wide visibility into the use of resources, against demands.

Planview Inc. warrants that no other items or products are available for purchase that would serve the same complete purpose or function and there is only one price for the above-named product because of exclusive distribution and marketing rights.

As a result of our investment in innovation (methodology, principles and processes, techniques, tools, Protocols, documentation and educational programs) we have created a portfolio of intellectual property rights that include:

- Patented Technology
- Trademarks
- Copyrights

If you desire additional information, please contact me at the toll-free number above or by e-mail, ehurley@planview.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric S. Hurley".

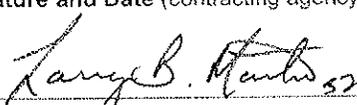
Eric S. Hurley
VP, Legal Affairs

Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: AGSDRS.AGSDRS@tn.gov

APPROVED
<hr/> CHIEF PROCUREMENT OFFICER <small>(Required for all Rule Exception Requests)</small>

APPROVED
<hr/> COMPTROLLER OF THE TREASURY <small>(ONLY for applicable statutorily required approvals e.g., records, annual report and audit, or monitoring provisions)</small>

Request Tracking #	31701-20001
1. Contract #	
2. Goods or Services Caption	Planview SaaS (Software as a Service) and Consulting Services.
3. Contractor	Planview, Inc.
4. Contract Period (with ALL options to extend exercised)	60 months
5. Contract Maximum Liability (with ALL options to extend exercised)	\$ 3,750,000
6. Rule(s) (for which the exception is requested) Please include citation and written explanation of Rule(s) to be excepted.	<p>Rule 0690-03-01-.17 NECESSARY OR PROHIBITED CONTRACT CLAUSES AND RULE EXCEPTIONS, Subsection 1:</p> <p>“The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.”</p> <p>The language deviations in question are attached to this form.</p>
7. Explanation of Rule Exception Requested	Requesting rule exception approval for deviations from prescribed contract clauses as reflected in the attached.
8. Justification	Deviations necessitated to properly reflect agreed upon terms by both the State and the Contractor, and as approved by legal counsel of both parties.
Agency Head Signature and Date (contracting agency head or authorized signatory)	
	

- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least **sixty (60)** days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its **material** obligations under this Contract in a timely or proper manner, or if the Contractor violates any **material** terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
- b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

E.7. Ownership of Software and Work Products.

- a. Definitions.
- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (3) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (4) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources. **"Work Product" does not include Contractor-Owned Software.** If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document;
- b. any attachments or exhibits (other than the items listed at subsections c. through f., which have the priorities specified below);
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract;
- f. the Contractor's proposal seeking this Contract.

E.11. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of negligent acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable

cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.13. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorney's fees, caused by attempts to enforce such provisions.

Debbie C. Knox

From: Mark Cherpack
Sent: Thursday, February 27, 2014 1:18 PM
To: Debbie C. Knox
Subject: RE: Agency Legal Counsel Recommendation RE Contract with Planview, Inc.

Debbie,

Based on our negotiations with the contractor and our discussions about the business needs of the program, I have no legal objections to the modifications and additions to the contract language.

Mark

Mark S. Cherpack
Deputy General Counsel
Tennessee Department of Finance and Administration
20th floor, 312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
(615) 253-4706
Mark.Cherpack@tn.gov

From: Debbie C. Knox
Sent: Thursday, February 27, 2014 11:10 AM
To: Mark Cherpack
Subject: Agency Legal Counsel Recommendation RE Contract with Planview, Inc.

Copied below are the modified and/or added terms for inclusion in the contract with Planview, Inc. Please reply indicating approval for these modifications and/or additions.

Thanks,
Debbie

- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least **sixty (60)** days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its **material** obligations under this Contract in a timely or proper manner, or if the Contractor violates any **material** terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to

perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.

- b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.7. Ownership of Software and Work Products.

- a. Definitions.

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (3) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (4) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources. "Work Product" does not include Contractor-Owned Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

- b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns,

transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.
- E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.10. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.11. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which

may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of negligent acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.12. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.13. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorney's fees, caused by attempts to enforce such provisions.
- E.14. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.15. Transfer of Contractor's Obligations.
- a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the New Entity.
 - b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include
 - i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
 - ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,

- (1) Debt;
 - (2) Assets;
 - (3) Liabilities;
 - (4) Cash flow
 - (5) Percentage of the total revenues of the company that are represented by this Contract;
 - (6) The most recent annual financial reports;
 - (7) The most recent annual financial reports filed with government agencies, if applicable.
- iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
- (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the New Entity and,
 - (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
- iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
- c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.
- d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
- i. has been debarred from State or Federal contracting in the past five years
 - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.
- The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Annotated Section 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.



Debbie Knox, CPA, CGFM

Project Controller

Department of Finance & Administration

Office: (615) 741-4099 | Mobile: (615) 979-3499

William R. Snodgrass Tennessee Tower | 312 Rosa L. Parks Ave., 16st Fl. | Nashville, TN 37243

Debbie C. Knox

From: Mark Cherpack
Sent: Thursday, March 06, 2014 4:51 PM
To: Debbie C. Knox
Subject: Re: One additional edit to Special Terms and Conditions language

Debbie,

I approve this change.

Mark

Sent from my iPhone

On Mar 6, 2014, at 4:34 PM, "Debbie C. Knox" <Debbie.C.Knox@tn.gov> wrote:

<image001.jpg>

Understood. Here is the language as modified now:

- E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. **this Contract document;**
 - b. **any attachments or exhibits (other than the items listed at subsections c. through f., which have the priorities specified below);**
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract;
 - f. the Contractor's proposal seeking this Contract.

Please let me know if you approve of this additional modification to model language.

Thanks,
Debbie

<image002.png> **Debbie Knox, CPA, CGFM**

Project Controller

Department of Finance & Administration

Office: (615) 741-4099 | Mobile: (615) 979-3499

William R. Snodgrass Tennessee Tower | 312 Rosa L. Parks Ave., 16th Fl. | Nashville, TN 37243

From: Mark Cherpack
Sent: Thursday, March 06, 2014 4:15 PM

To: Debbie C. Knox

Subject: RE: One additional edit to Special Terms and Conditions language

Debbie,

I was confused at first, but then interpreted it as meaning that the items specifically listed in c through f are ranked lower than those in "b" even though they could be classified as attachments or exhibits. I made a proposed change in "b" which attempted to clarify it. If you do not find that sufficiently clarifying, or if I have misunderstood the entire thing, please let me know.

Mark

From: Debbie C. Knox

Sent: Thursday, March 06, 2014 3:51 PM

To: Mark Cherpack

Subject: One additional edit to Special Terms and Conditions language

Importance: High

Because we are including Planview's Customer Care Description as an attachment, Travis Johnson recommended that we make the following adjustment to ensure that there is no question that the contract document takes precedence over the attachment.

Please let me know if you approve of this additional modification to model language.

- E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document;
 - b. any attachments or exhibits (other than the items listed at subsections c. through f. which have the priorities specified below);
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract;
 - f. the Contractor's proposal seeking this Contract.

<image002.png> **Debbie Knox, CPA, CGFM**

Project Controller

Department of Finance & Administration

Office: (615) 741-4099 | Mobile: (615) 979-3499

William R. Snodgrass Tennessee Tower | 312 Rosa L. Parks Ave., 16th Fl. | Nashville, TN 37243



CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date March 31, 2014	End Date March 30, 2019	Agency Tracking # 31701-20001	Edison Record ID		
Contractor Legal Entity Name Planview, Inc.			Edison Vendor ID 0000012084		
Service Caption (one line only) Planview SaaS (Software as a Service) and Consulting Services.					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	200,000				200,000
2015	1,071,356				1,071,356
2016	550,933				550,933
2017	550,933				550,933
2018	681,201				681,201
2019	695,577				695,577
TOTAL:	3,750,000				3,750,000
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input checked="" type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>OCR USE - FA</i>		
Speed Chart (optional)		Account Code (optional)			

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
AND
PLANVIEW, INC.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, hereinafter referred to as the 'State' and Planview, Inc., hereinafter referred to as the "Contractor," is for the provision of Planview SaaS (Software as a Service) and Consulting Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: Austin, Texas

Contractor Edison Registration ID # 0000012084

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

A.2. Planview SaaS Services. Planview SaaS Services refers to the collection of online web-based business application software hosted and provided by the Contractor.

There are three primary components within this collection:

- Planview Enterprise – the portfolio and resource management solution that integrates planning and execution of a range of portfolios including investments, projects, applications, products and services.
- Analytics and Reporting Portal – includes all reporting assets, including but not limited to Reporting Services, Insight Analytics, Business Objects reporting, and the Outlook plug-in, and provides access to data sources within the Planview Enterprise database and related data marts, the Business Objects universes, Insight Analytics OLAP cubes and In-memory tabular models (BISM).
- Planview PRISMS – includes enablement programs, best practices, education and social learning.

The Contractor may update the content, functionality and user interface thereof with error corrections, improvements and other modifications from time to time at its discretion and at no additional cost to the State. The Contractor additionally will make available to the State the online user manuals, as updated from time to time, that describe the functions, operation, and use of the Planview SaaS Services.

The Contractor will make the Planview SaaS Services available to the State pursuant to the terms and conditions set forth in this Contract and any and all Statements of Work which may be executed hereunder from time to time (refer to section A.9. for further information regarding Statement of Work processing). During the term of this Contract, the Planview SaaS Services will perform materially in accordance with the documentation, and the functionality of the Planview SaaS Services will not be materially decreased from that available as of the beginning of the Contract Period.

Upon purchase of the enterprise user subscriptions for the Planview SaaS Services, the Contractor grants the State a non-exclusive, non-transferable, non-sub-licensable, and terminable license to access and use the Planview SaaS Services, together with the documentation, solely for the State's internal business operations during the Contract Period. Such license to access and use the Planview SaaS Services and the documentation will be granted on an annual basis, the anniversary of which will be each March 31st within the Contract Period.

The State will not (and will not allow any third party to) copy, modify, create a derivative work or, reverse engineer, disassemble, decompile, translate, discover any source code, modify the Planview SaaS Services in any manner or form, or use unauthorized modified versions of the Planview SaaS Services, including for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Planview SaaS Services.

All material and information, regardless of form, medium or method of communication, provided to the State by the Contractor or acquired by the State on behalf of the Contractor shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the State to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The State will authorize certain employees, consultants, and contractors to use the Planview SaaS Services by supplying them with user identifications and passwords (hereafter referred to as State Users). State User subscriptions to the Planview SaaS Services cannot be shared or used by more than one user. State User subscriptions may be reassigned to new users replacing former users who no longer require ongoing use of the Planview SaaS Services. Additional State User subscriptions can be added in increments as described section C.3.b. The term of the additional State User subscriptions will be coterminous with the expiration of the then current subscription term. Pricing for the additional State User subscriptions will be as defined in section C.3.b., prorated for the remainder of the then current subscription term.

A.3. Planview Technical Environment. The Contractor is responsible for securing the Planview technical environment from unauthorized access or exploits by employing all measures and controls deemed reasonable and appropriate by industry accepted best practices. Authorized access is limited to State Users and to those persons authorized by the Contractor for the purpose of carrying out work in support of this Contract. The Planview technical environment includes that environment accessed by State Users for the purpose of making use of the Planview SaaS Services, and/or any physical or virtual location where State Data is stored. State Data includes all pre-existing or electronic data or information submitted by the State in the process of making use of the Planview SaaS Services. Further, all State Data, including data stored in databases and data backups will be stored on-shore within the United States of America.

The Contractor is also responsible for maintaining the environment's compliance with applicable technology standards as documented in the Tennessee Technology Architecture – Standard Products document. Generally, applicable technology standards include, although not limited to, those standards related to:

- the operating systems for the desktop and mobile devices used to access the Planview technical environment,
- the web browsers used to access the Planview SaaS Services,
- the personal computing applications (E.G., Microsoft Word and Excel, Adobe Acrobat, etc.) used to prepare documents and other files to be saved in the Planview technical environment, and
- other technologies, the applicability of which arises as a result of the work conducted under a Statement of Work (E.G., identity federation).

The availability target for the Planview SaaS Services is twenty-four (24) hours per day, seven (7) days per week (99.8% of the time, as measured monthly), with allowance for pre-planned times of unavailability necessary for the Contractor to perform regularly scheduled maintenance. The Contractor will provide its plan for regularly scheduled maintenance to the State on a quarterly basis. For all unscheduled maintenance that will result in unavailability (I.E., not regularly scheduled maintenance), the Contractor will make reasonable effort to provide the State a minimum of seven days advance notification. All reasonable effort will be made by Contractor to schedule periods of unavailability (scheduled and unscheduled) during non-peak work hours (I.E., Monday through Friday, between 6:00 PM and 6:00 AM CST/CDT or on weekends).

The Contractor is responsible for ensuring the capability to recover from a disaster. In the event of a disaster, the recovery objective for the ability of State Users to have restored access to the Planview SaaS Services is forty-eight (48) hours from the disaster event; the recovery objective for the point in time to which State Data and other updates to the Planview SaaS Services are restored is twenty-four (24) hours prior to the disaster event.

A.4. Planview Customer Care. The Contractor will provide Planview Customer Care Services to the State at no additional cost and according to the “Description of Support Services 2014” included in its entirety as Attachment B. Therein is described the Software Maintenance and Support Services provided by the Contractor including:

- Standard practices in providing updates, including new releases, to software products;
- Process by which the Contractor receives and responds to State submitted requests for software support;
- Standard service level targets in providing software support and availability;
- Software defect escalation processes; and
- Software release processes.

Planview Customer Care is not intended to be the means for providing other services outlined within this Contract’s Scope of Services which require the execution of a Statement of Work. Refer to section A.9. for further information regarding Statement of Work processing.

If the State so chooses, the Contractor will provide Planview Platinum Customer Care for an additional fee as defined in section C.3.b. Planview Platinum Customer Care provides additional support beyond that provided with the Planview Customer Care, including, but not limited to, an assigned Customer Care Manager, an assigned Customer Relationship Manager, and access to remote services and product roadmap briefings conducted periodically.

A.5. Installation, Setup, and Performance Tuning. The Contractor will establish and set up the Planview technical environment for the State’s use upon payment of the Planview Technical Environment Set-up Fee and the Planview OpenSuite Platform Fee as defined in section C.3.b. The Contractor will further configure the component solutions within the Planview SaaS Services as specified in and through the conduct of work under the relevant Statement of Work executed. Additionally, the Contractor will system test such configurations to confirm that they appropriately meet the agreed to, in scope capabilities and provide appropriate response times, as specified in and through the conduct of work under the relevant Statement of Work executed.

A.6. Training Services. The Contractor will provide training services to the State related to the use of the Planview SaaS Services. Specification and delivery of training services will be requested and accomplished through the execution of a Statement of Work as described in section A.9.

Upon execution of the relevant Statement of Work, the Contractor will develop a Training Enablement Plan that details a specific training plan for each role type that will interact with the Planview SaaS Services. The Enablement Plan, and ongoing training activities, will make use of a variety of training approaches as described below.

- On-site training: Classroom training led by the Contractor’s training professionals. Class can be selected from the course catalog, or developed specifically to the State’s needs.
- Virtual Classroom: Classroom training delivered virtually by the Contractor’s training professionals.
- PRISMS E-Learning: Self-service role-based learning available through Planview PRISMS.
- Instructor-led Methodology and Concept Classes: Interactive classes on a variety of topics.
- Interactive On-Demand Training Modules: Formal, scripted courses and informal materials such as recorded online training, presentations, and webcasts.
- Ask the Planview Expert sessions: Monthly sessions that offer access to Planview experts on a variety of topics.
- Role-Based Enablement Paths: Groups of learning assets organized according to the State’s specifications to deliver information specific to the functionality supporting each user role.

The Contractor will also offer a certified train-the-trainer program. It is the State’s intent to certify in-house trainers. The Contractor will provide training materials for the State’s certified trainers, including unlimited right to copy, for an additional fee as defined in section C.3.b.

A.7. Integration and Migration Services. The Contractor will provide assistance to the State to accomplish the integration of the applicable component of the Planview technical environment with other State owned technology assets, up to and including, but not limited to the following:

- PeopleSoft HCM and FSCM, as implemented by the State (known as Edison) for the purpose of integrating project staff time reporting and project expenditure reporting;
- Microsoft SharePoint and IBM FileNet for the purpose of utilizing these environments as supplemental document repository and work flow management;
- Remedy BMC for the purpose of integrating demand and change management;
- Active Directory for the purpose of implementing identity federation.

Further, at such time as may be beneficial to the State, and given that the Contractor continues to offer support for an on premises platform, the Contractor will provide assistance to the State to migrate the installation of Planview Enterprise, and other applicable Planview components to the State's technical environment.

Specification and delivery of integration and migration services will be requested and accomplished through the execution of a Statement of Work as described in section A.9.

A.8. Consulting Services. The Contractor will provide consulting services to the State for the purpose of implementing and configuring the components of the Planview SaaS Services. Consulting services will also be provided for the purpose of integrating the Planview SaaS Services with other State owned technology assets as described in section A.8. Specification of implementation, configuration and integration requirements will be as requested and accomplished through the execution of a Statement of Work as described in section A.9.

A.9. Statement of Work Processing. A Statement of Work will be executed to define and describe the scope of work and terms under which any use of training or consulting services will occur. The Statement of Work will specify, among other things and as appropriate, the services to be provided, the scope of work, and the applicable costs.

The State will initiate a Statement of Work with the Contractor by creating a ticket as described within the document, "Description of Support Services 2014", included as Attachment B to this Contract. For those tickets typed as Enhancement or Customization, or for those typed Documentation for the purpose of requesting enhancements to any Planview documentation, a Statement of Work must be executed and approved by both the State and the Contractor before any action is taken by either party to perform the work involved. In the case where the Contractor has identified the need for a Statement of Work, the Contractor will notify the State's contact identified in section E.2. by email of the identified need, so that the State may evaluate and create a ticket if deemed appropriate.

The Statement of Work will consist of the following information at a minimum, and generally is completed as the process progresses:

- 1) Description of service requested (provided by the State), including any and all deliverables; specification of the configuration, programming, customization, etc., as applicable; conditions for acceptance; and the desired completion date;
- 2) Contractor's detail estimate of the effort required to deliver the service requested;
- 3) Assertion from the Contractor of the maximum cost to deliver the service requested;
- 4) Authorization to proceed from the State indicated by signature from the State's contact identified in section E.2.

The detailed estimate prepared by the Contractor will be based upon the description of the service requested, and the units and per unit costs as described in section C.3.b. The Contractor will also sign the Statement of Work indicating the maximum cost to the State to have the Contractor deliver the service requested.

The State will either authorize the Contractor to proceed with the service requested, confirming a start date for the delivery of the service requested, or cancel the Statement of Work with no further action on the part of the Contractor required. Should the State choose to cancel the Statement of Work, the Contractor will be provided a minimum notification of ten (10) business days prior to the planned start date.

Once work has commenced under an authorized Statement of Work, any changes to the scope of services will be documented in a change order as agreed to and executed by both the Contractor and the State.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning March 31, 2014, and ending on March 30, 2019. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three million, seven hundred and fifty thousand dollars (\$3,750,000). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

- a. The Contractor’s compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Planview SaaS Services based on profile of 650 total enterprise users and as described in Section A.2. Due July 31, 2014	697,865.00
Planview SaaS Services based on profile of 650 total enterprise users and as described in Section A.2. Due July 31, 2015	348,933.00
Planview SaaS Services based on profile of 650 total enterprise users and as described in Section A.2. Due July 31, 2016	348,933.00
Planview SaaS Services based on profile of 650 total enterprise users and as described in Section A.2. Due July 31, 2017	479,201.00
Planview SaaS Services based on profile of 650 total enterprise users and as described in Section A.2. Due July 31, 2018	493,577.00

Service Description	Amount (per compensable increment)
Planview SaaS Services - Additional Enterprise Users. Per block of 50 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added prior to March 31, 2017.	35,400.00
Planview SaaS Services - Additional Enterprise Users. Per block of 50 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added after March 30, 2017 and prior to March 31, 2018.	36,462.00
Planview SaaS Services - Additional Enterprise Users. Per block of 50 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added after March 30, 2018 and prior to contract termination date.	37,556.00
Planview SaaS Services - Additional Enterprise Users. Per block of 250 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added prior to March 31, 2017.	162,000.00
Planview SaaS Services - Additional Enterprise Users. Per block of 250 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added after March 30, 2017 and prior to March 31, 2018.	166,860.00
Planview SaaS Services - Additional Enterprise Users. Per block of 250 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added after March 30, 2018 and prior to contract termination date.	171,866.00
Planview SaaS Services - Additional Enterprise Users. Per block of 1,000 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added prior to March 31, 2017.	588,000.00
Planview SaaS Services - Additional Enterprise Users. Per block of 1,000 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added after March 30, 2017 and prior to March 31, 2018.	605,640.00
Planview SaaS Services - Additional Enterprise Users. Per block of 1,000 users per year; coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.2. Added after March 30, 2018 and prior to contract termination date.	623,809.00

Service Description	Amount (per compensable increment)
Planview Platinum Customer Care per year, coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.4. Total licensed enterprise users 100 or greater, up to 1,000.	40,000.00
Planview Platinum Customer Care per year, coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.4. Total licensed enterprise users greater than 1,000, up to 2,000.	65,000.00
Planview Platinum Customer Care per year, coterminous with the expiration of the then current subscription term and prorated for the remainder of the then current subscription term and as further described in Section A.4. Total licensed enterprise users greater than 2,000, up to 5,000.	90,000.00
Planview Technical Environment Set-up Fee. One time upon initial access as described in Section A.5.	25,000.00
Planview OpenSuite Platform Fee. One time upon initial access as described in Section A.5.	10,000.00
Training Services as described in Section A.6. On Site per day. March 31, 2014 through March 30, 2015	2,550.00
Training Services as described in Section A.6. On Site per day. March 31, 2015 through March 30, 2016	2,601.00
Training Services as described in Section A.6. On Site per day. March 31, 2016 through March 30, 2017	2,653.00
Training Services as described in Section A.6. On Site per day. March 31, 2017 through March 30, 2018	2,706.00
Training Services as described in Section A.6. On Site per day. March 31, 2018 through March 30, 2019	2,760.00
Training Services as described in Section A.6. Off Site (Virtual) per student per day. Minimum ten (10) students per class. March 31, 2014 through March 30, 2015	225.00
Training Services as described in Section A.6. Off Site (Virtual) per student per day. Minimum ten (10) students per class. March 31, 2015 through March 30, 2016	230.00
Training Services as described in Section A.6. Off Site (Virtual) per student per day. Minimum ten (10) students per class. March 31, 2016 through March 30, 2017	235.00
Training Services as described in Section A.6. Off Site (Virtual) per student per day. Minimum ten (10) students per class. March 31, 2017 through March 30, 2018	240.00
Training Services as described in Section A.6. Off Site (Virtual) per student per day. Minimum ten (10) students per class. March 31, 2018 through March 30, 2019	245.00
Training Materials. Editable, electronic copy for the version implemented, with full rights to edit and copy as described in Section A.6.	50,000.00

Service Description	Amount (per compensable increment)
Consulting Services. Per day as described in Section A.8. On Site (Per Eight Hour Day, prorated for partial days). March 31, 2014 through March 30, 2015	2,250.00
Consulting Services. Per day as described in Section A.8. On Site (Per Eight Hour Day, prorated for partial days). March 31, 2015 through March 30, 2016	2,295.00
Consulting Services. Per day as described in Section A.8. On Site (Per Eight Hour Day, prorated for partial days). March 31, 2016 through March 30, 2017	2,341.00
Consulting Services. Per day as described in Section A.8. On Site (Per Eight Hour Day, prorated for partial days). March 31, 2017 through March 30, 2018	2,388.00
Consulting Services. Per day as described in Section A.8. On Site (Per Eight Hour Day, prorated for partial days). March 31, 2018 through March 30, 2019	2,436.00
Consulting Services. Per day as described in Section A.8. Off Site (Per Eight Hour Day, prorated for partial days) March 31, 2014 through March 30, 2015	1,950.00
Consulting Services. Per day as described in Section A.8. Off Site (Per Eight Hour Day, prorated for partial days) March 31, 2015 through March 30, 2016	1,989.00
Consulting Services. Per day as described in Section A.8. Off Site (Per Eight Hour Day, prorated for partial days) March 31, 2016 through March 30, 2017	2,029.00
Consulting Services. Per day as described in Section A.8. Off Site (Per Eight Hour Day, prorated for partial days) March 31, 2017 through March 30, 2018	2,070.00
Consulting Services. Per day as described in Section A.8. Off Site (Per Eight Hour Day, prorated for partial days) March 31, 2018 through March 30, 2019	2,112.00

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

Deborah C. Knox, Project Controller
Department of Finance and Administration
312 Rosa L. Parks Avenue, 16th Floor
Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Department of Finance & Administration, Business Solutions Delivery

- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its material obligations under this Contract in a timely or proper manner, or if the Contractor violates any material terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
- b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from

the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Deborah C. Knox, Project Controller
Department of Finance and Administration
312 Rosa L. Parks Avenue, 16th Floor
Nashville, TN 37243
Debbie.C.Knox@tn.gov
Telephone # (615) 741-4099
FAX # (615) 782-0200

The Contractor:

Eric Hurley, Vice President, Legal Affairs
Planview, Inc.
8300 North MoPac, #300
Austin, Texas 78759
EHurley@Planview.com
Telephone # (512) 349-8268
FAX # (512) 346-9180

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any

local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5 Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.7. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (3) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (4) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources. "Work Product" does not include Contractor-Owned Software. If the system solution includes Rights

Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document;
- b. any attachments or exhibits (other than the items listed at subsections c. through f., which have the priorities specified below);
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract;
- f. the Contractor's proposal seeking this Contract.

E.9. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

- E.10. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.11. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of negligent acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.12. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.13. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions

which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorney's fees, caused by attempts to enforce such provisions.

- E.14. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.15. Transfer of Contractor's Obligations.
- a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity. The entity that is proposed to assume the Contractor's duties under this Contract, whether through merger, acquisition, sale or other transaction, will be hereinafter described as the New Entity.
 - b. The Contractor (or, if the Contractor no longer exists as a legal entity, the New Entity) will provide to the State within a reasonable time, information that the State may require about the merger, acquisition or sale, which may include
 - i. the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed New Entity
 - ii. evidence of financial solvency and adequate capitalization of the proposed New Entity which may consist of,
 - (1) Debt;
 - (2) Assets;
 - (3) Liabilities;
 - (4) Cash flow
 - (5) Percentage of the total revenues of the company that are represented by this Contract;
 - (6) The most recent annual financial reports;
 - (7) The most recent annual financial reports filed with government agencies, if applicable.
 - iii. a complete description of the relationship of any New Entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, including:
 - (1) the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be

used to provide any personal or other services under the Contract by the New Entity and,

- (2) an organizational chart clearly describing the organizational structure of the New Entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
- iv. such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as the State determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
- c. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN). The Contractor shall comply with State requests for copies of any documents that have been filed with state corporate records officials or other officials in the state of its incorporation that verify the name change and a narrative description of the reasons for the name change. If a New Entity has succeeded to the interest of the original Contractor, it shall immediately provide the State written notification of its Federal Employer Identification Number (FEIN), its complete corporate name, State of incorporation, and other documentation required to effectuate the transfer.
- d. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the New Entity
 - i. has been debarred from State or Federal contracting in the past five years
 - ii. has had a contract terminated for cause by the State of Tennessee within the past five years.

The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor or New Entity for compensation for any service which has not been rendered. Upon such termination, the Contractor or New Entity shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- e. The New Entity shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the New Entity certifying that all liabilities and obligations incurred by the former Contractor are assumed by the New Entity.
- f. If the New Entity owes money to the State of Tennessee, it acknowledges that Tennessee Code Annotated Section 9-4-604 requires repayment of these funds and will enter into a legally binding agreement for repayment.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE AGENCY NAME:

NAME & TITLE

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

Customer Care

Description of Support Services 2014



ATTACHMENT B

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Introduction

This document describes the Software Maintenance and Support Services provided by Planview, Inc to all customers who either purchase Support Services from Planview or are a SaaS licensed customer, including:

- Standard practices in providing updates (for example, new releases and updates) to software products
- Process by which Planview receives and responds to Customer-submitted requests for Software Support from defined Application Administrators
- Standard service level targets in providing Software Support and SaaS Availability
- Software defect escalation processes
- Software release processes

General Philosophy

Full Support

Planview provides Support Services for each Software release after general availability (GA) (see Software Version Policy for explanation of Major and Minor Release). This includes:

- Unlimited calls to Planview Customer Care
- Ticket submission via web, chat, e-mail or phone
- Scheduled updates to the Software (Maintenance Releases)
- Scheduled updates to Released Documentation

On-Going Support

Once Full Support ends for a given release, Planview provides support services, as follows:

- Unlimited calls to Planview Customer Care
- Ticket submission via web, chat, e-mail or phone

The Function of Planview Customer Care

Customer Care services cover software product issues encountered by users of the Planview Enterprise application and submitted to Customer Care by a defined Application Administrator (Customer Care does not provide support services to the end-user community). Software product issues are classified as one of the following:

- Software Defect – A software defect ("bug") is an error, flaw, mistake, failure, or fault in the application that prevents it from behaving as intended (e.g., producing an incorrect result, error message encountered, etc.) according to release documentation for the version of software in use. Software Defects can be categorized by Severity and Priority and are then escalated to Product Development accordingly.
- Software functionality does not behave as defined per released Planview documentation.
- Software error occurs resulting in a displayed or logged error message.
- Software execution time is beyond normal tolerance levels based on the size and complexity of the database in which the information utilized by the Planview Software is stored; assuming the hardware in use is properly sized and configured. Customer Care will analyze the reported performance issues, accordingly, and test internally to confirm the reported performance issue(s).

SaaS Support Services

Customer Care provides unique support services to Planview SaaS Customers, upon request:

- Database backups and restores
- Application Service Restarts
- Database Progressing Engine runs
- Application of Planview Software Releases, including Controlled-Releases, Maintenance, Minor and Major Releases
- Access to Customer Care via support.planview.com for ticket submission from Sunday, 5 pm Central Time thru Friday, 7 pm Central Time (24 hours a day).

Requests for these services and others will be routed to Hosting Operations.

Additional Services – Outside of the Scope of Customer Care

Functional Support

Functional questions submitted to Customer Care may be directed to Planview Consulting via a Regional Services Director. Services provided by Planview Consulting are typically billable. Alternately, customers may leverage the Remote Advisory Service (RAS) for short-duration consulting or Q&A sessions delivered and tracked in 15-minute increments (usually up to 2 hours). To learn more about the RAS service offering and how it works, please login to PlanviewPRISMS.com.

Customer-Created Reports, Views, Interfaces, etc.

Customer Care will provide up to one cumulative hour of assistance for issues or questions related to customer-created Business Objects Reports, Insight Analytics Cubes/Views, Custom Table Portlets, On-Demand Reports or customer-developed interfaces, per instance. The one-hour of support is not provided for self-migration from Financial Management 9 to 10. Support beyond one hour is considered billable and will be referred to Planview Technical Services, Planview Consulting or the above mentioned Remote Advisory Service, if applicable.

On-Site Support Services

In the event Customer Care cannot resolve a reported technical issue through telephone support or other remote diagnostic methods in a reasonable timeframe with reasonable customer assistance, then Planview, at its discretion, may make arrangements to provide on-site technical support services to address the reported issue. Planview Enterprise Self-Install Support (On-Premise Installation – Not applicable to SaaS)

Customer Care will provide up to one cumulative hour of assistance for software product issues or questions related to the self-installation of a Major Release of the Planview Enterprise Software by a customer on the: Web Server, Application Server, Database Server, Insight Analytics Server, Planview Process Builder Server or Business Objects Server (sometimes collectively referred to as the “Planview Enterprise Servers”) or the install of any version of Planview Enterprise onto new servers (no previously installed version of Planview Enterprise). The one-hour limitation does not apply to the “Upgrade” from one Minor Version to the next sequential Minor Version on existing servers (e.g., 10.2 to 10.3). Planview will provide all technical documentation related to the upgrade process for Planview Enterprise via <http://support.planview.com>. Support beyond one hour is considered billable and will be referred to Planview Technical Services or the above mentioned Remote Advisory Service, if applicable.

Customer Care will provide assistance to customers who opt to self-install any Integration Services (PVLoader, Financial Repository, Planview OpenSuite, etc.) or Administration Tools on the Planview Servers and/or on the administrator workstations.

Customer-Request Submission Process

Customers may submit Ticket requests to Customer Care via the following methods:

- **Customer Care Portal** – Customers may login to the Planview Customer Care website and submit a Ticket report 24/7.

The Customer Care Portal may be accessed via an Internet browser at:

<http://support.planview.com>

When logging into the Customer Care Portal, users will be prompted to supply their e-mail address and password. A customer who does not have that information may contact Planview Customer Care at CustomerCare@Planview.com or 512-346-8460 so that the information may be emailed to the customer's designated Planview administrator by the Customer Care Dispatcher.

Submissions are stored as uniquely numbered Tickets in the system and automatically routed to a Customer Care Consultant. The Customer Care Portal is monitored **Monday through Friday from 7 a.m. to 7 p.m. Central Time** for Standard Maintenance Customers.

- **Telephone** – Customers may call Planview Customer Care (**512-346-8460 Monday through Friday from 7 a.m. and 7 p.m., Central Time**) to submit new Tickets, update existing tickets or close a ticket.
- **Internet email** – Customers may send requests via e-mail addressed to CustomerCare@Planview.com. Ticket requests are received by the Customer Care Dispatcher who will create a ticket, which is then automatically routed to a consultant. The Customer Care e-mail queue is monitored **Monday through Friday from 7 a.m. to 7 p.m., Central Time**.
- **Instant Chat** – Customers may contact Customer Care directly via a live Chat session accessible via the Customer Care Portal. Chat requests are accepted **Monday through Friday from 7 a.m. to 7 p.m. Central Time**. Chat requests can be easily be converted to a new Ticket, if needed.
- **APAC Regional Support** – Customers in the APAC Region (Australia, New Zealand) may contact Customer Care **Sunday through Thursday from 5 pm to 1 am Central Time** via:
 - Email: CustomerCare@planview.com
 - Phone: Australia - **61 2 80149318** New Zealand - **64 49 749422**
 - Customer Care Portal
 - For Contact information outside of the above hours, please refer to the Global and SaaS Support - Planview Customer Care Contact Information- 2014 document.
 - **SaaS Support** – SaaS/Hosted Customers may contact Customer Care via the Customer Care Portal (<http://support.planview.com>). Tickets will be dispatched immediately if received between **Sunday, 5 pm Central Time and Friday, 7 pm Central Time (24 X 5)**. Please see the Global and SaaS Support - Planview Customer Care Contact Information- 2014 document for more information.
- **Platinum Support – 24x7 Coverage** – Customers who have elected to purchase an upgrade to Platinum Service and Support may contact an on-call Back-Line Customer Care Consultant during off-hours via the on-call cell phone for Urgent Priority Tickets.

Ticket Closure Policy

All tickets will be marked as “Solution Provided” upon delivery of a resolution or fix. This includes, but is not limited to:

- Answers to general questions
- Detailed steps/actions to address the reported issue
- Release of a Maintenance Release or Controlled-Release that addresses the reported issue
- Release of a new version that addresses the reported issue
- Customer advises that the issue can be marked as Solution Provided

Tickets will be moved to a status of “Closed” when the proposed solution is accepted by the customer via the Customer Care Portal or there is no response from a customer for 21 days (after 3 follow-up attempts via email). Any Closed tickets can be re-opened at the request of the customer or Planview, as needed.

Prioritization of Requests

Planview requires that a priority be set for each ticket submitted by a customer. Customers may set this priority when creating tickets via the Customer Care Portal. You may change the priority of any open ticket by adding a comment to the ticket and requesting the change or by contacting Customer Care via email or phone. Requests to raise the priority to Urgent will be reviewed by a Customer Care Manager to ensure that the reported issue meets the defined criteria. To make the best use of resources, Planview relies on the priority assigned to each ticket as a means of determining the order in which to act upon requests. These priority classifications are described in the following table:

Priority Assigned	Definition
Urgent	Down production system or training environment during scheduled training efforts. Critical user components are not functional impacting the ability to work. Issues encountered in a test or development environment and enhancement requests should not be listed as Urgent.
High	Impaired Planview Software. Critical user(s) or components are not functioning correctly and business/decision-making is affected.
Medium	Non-critical user(s) or components are not functioning correctly and business/decision-making is <i>not directly</i> affected.
Low	Little or no impact. Cosmetic problem or minor enhancement.

Response Policy – Service Targets

When responding to requests from customers, Planview makes every effort to meet the service level targets specified in the table which follows.

Please note the following exceptions:

- Issues outside of Planview’s control (on-premise only); e.g., network, hardware, server operating systems, database server issues
- Enhancement requests
- Request for customizations
- Support for customer-created customizations/custom reports/custom views/custom tiles/custom ribbons
- Questions about “how” to use the Software
- Software defects in an OEM software product:
 - Business Objects™
 - Microsoft SharePoint™
 - Microsoft™ Servers
 - RDBMS environments
 - Microsoft Reporting and Analysis Services™
 - Bright Idea™
 - Any Third-Party Software or Application Components not developed by Planview, Inc

Response Policy (cont.)

Priority of Request	Initial Response Time: Call Back or E-Mail	Target Resolution Time Note: The resolution may be provided in the form of a work-around
Urgent	Within 30 Minutes	<p>Within 2 Business Days*</p> <p>Some issues may require assistance from Product Development. In this case, Customer Care will work to provide a temporary work-around.</p> <p>* The 2-business day target resolution time is dependent upon when a customer responds to a request for information. Any time which elapses while waiting for such additional information will not count toward the target resolution time.</p>
High	Within 1 hour	<p>Targeted for Next Platform, Major or Maintenance Release (if reported prior to inclusion cutoff date)*</p> <p>Some issues may require assistance from Product Development. In this case, Customer Care will work to provide a temporary work-around.</p> <p>* Each Maintenance Release has an “Inclusion Cutoff Date” that is approximately 4 weeks before the scheduled release. In addition, not all reported issues will be addressed in the version in which the defect was discovered. Some issues may be addressed in a future Major or Minor release, at the discretion of Planview Product Management.</p>
Medium	Within 2 hours	<p>Targeted for Next Platform or Major Version Release*</p> <p>Some issues may require assistance from Product Development. In this case, Customer Care will work to provide a temporary work-around.</p> <p>* Not all reported issues will be addressed in the version in which the defect was discovered. Some issues may be addressed in a future release, at the discretion of Planview Product Management.</p>
Low	Within 4 hours	Time Permitting

Ticket Type

Each Ticket will be assigned a Ticket type based on the following table.

Type	Description
Functional	Tickets created to ask Customer Care a question about the Planview software. Examples include questions related to functionality, usage, administration, and implementation. Also, Tickets created to report issues with product functionality. Examples include issues where the application is not functioning per the provided documentation. Functional issues may not always be due to a software defect, but could be due to application configuration or data issues
Technical	Tickets created to ask Customer Care a technical question about Planview or to track issues encountered during the self-installation of Planview Software which is server-based. Examples include questions related to server configuration, security configuration, database questions, server\hardware sizing, operating system upgrades, etc. Also, Tickets created to report a technical problem with the application or the infrastructure supporting the application. Examples include errors seen in Application Event Logs or scheduled jobs failing to run.
Defect	Tickets created that clearly identify a defect in the software that can be reproduced. A software defect ("bug") is an error, flaw, mistake, failure, or fault in the application that prevents it from behaving as intended (e.g., producing an incorrect result).
Enhancement	Tickets created to track requests for application improvements or functionality modifications. Examples include requests to add additional functionality or to change the current behavior of the software.
Performance	Tickets created to report a server or client-side performance issue with the Planview application.
Customization	Tickets created related to a Planview-Provided Customization. Customizations can include application interfaces, code-level changes, custom reports and Data Mart extensions.
Hosting Support	Tickets created to report an issue or ask a question for a hosted implementation.
Documentation	Tickets created to report issues or request enhancements to Planview Documentation.

Ticket Status

Each Ticket will maintain a status based on the definitions below.

Status	Definition
New	Ticket has been created, but has not yet been assigned
Initial	Ticket has been assigned, but is waiting an initial response from the Customer Care Consultant
Active	Ticket is pending action by the assigned Customer Care Consultant
Pending Customer	We require additional information in order to resolve the reported issue
Reopened	Ticket has been reopened, and is pending action by the assigned Customer Care Consultant
Solution Provided	A proposed solution has been provided to you and Customer Care is awaiting a response to confirm or deny closure of the ticket
Closed	The ticket solution provided has been accepted is now closed
Pending Vendor	Ticket is pending action by a party other than Customer Care or you
In Task	Ticket is pending action by a party other than the Customer Care Consultant within Planview (i.e. Product Development, Product Management, Hosting Support, etc.)
In Development	Ticket has been forwarded to Product Development and is targeted for resolution in a future release.
In Products	Ticket has been forwarded to Product Management and is pending review for consideration in a future release

Escalation Process – Product Defect and Product Enhancements

All reproducible software defects, for any product version actively supported by Product Development will be transferred to Product Management for review and consideration for a future release.

The following describes the process used for the escalation of Planview Customer Care Tickets to Product Management (PM). Please note that PM will only consider providing fixes for the current major release and the previous major release (i.e. 10.x) according to the published Version Support Policy.

Priority	Escalation Process
<p>Urgent or High Priority Software Defects Must meet the following criteria: Software Defect – A software defect ("bug") is an error, flaw, mistake, failure, or fault in the application that prevents it from behaving as intended (e.g., producing an incorrect result).</p>	<p>Product Defect Escalation This process allows for the escalation of Urgent and High Priority defects to Product Management: The assigned Customer Care Consultant will first test and reproduce the reported issue internally. Once the issue can be reproduced and it meets the definition of a Software Defect, the consultant will submit the ticket to Product Management. Product Management will review the escalated product defects by product version periodically prior to each scheduled product release. Defects will be slotted for resolution in an upcoming release based on the product version, assigned priority, severity and frequency the issue occurs; at the discretion of Product Management. Each scheduled product release will have a published inclusion date for issue resolution consideration. Any ticket escalated after the inclusion date will be reviewed as part of the next scheduled product release for the identified version, unless escalated for consideration as a Controlled-Release Update*. Not all reported defects will be addressed in the next scheduled Uupdate or in the version that they are reported in. In some cases, the reported issue may be addressed in a future Platform or Major release. <i>*Response times for the issuance of a Controlled-Release Update will vary, depending on the complexity of the reported defect and the effort required for development and testing. Whenever possible, Product Management will provide a target date for the next release of a Controlled-Release Update.</i> NOTE: Customers should not apply software updates directly to production systems without first verifying the release in a test environment.</p>

Escalation Process – Product Defect and Product Enhancements – cont’d

<p>Medium and Low Priority Software Defects Must meet the following criteria: Software Defect – A software defect ("bug") is an error, flaw, mistake, failure, or fault in the application that prevents it from behaving as intended (e.g., producing an incorrect result).</p>	<p>Product Defect Escalation This process allows for the escalation of Medium and Low priority defects to Product Management: The assigned Customer Care Consultant will first test and reproduce the reported issue internally. Once the issue can be reproduced and it meets the definition of a Software Defect, the consultant will submit the issue to Product Management. Product Management will review the escalated product defects by product version, prior to each scheduled product release. Defects will be slotted for resolution in an upcoming release based on the product version, assigned priority, severity and frequency the issue occurs; at the discretion of Product Management. Each scheduled product release will have a published inclusion date for issue resolution consideration. Any ticket escalated after the inclusion date will be reviewed as part of the next scheduled product release for the identified version. Low and Medium Priority defects will not normally be reviewed for inclusion in scheduled Update releases. However, they will be reviewed for possible inclusion in Platform and Major version releases.</p>
<p>Enhancement Requests Requests for application improvements or functionality modifications. Examples include requests to add additional functionality or to change the current behavior of the software</p>	<p>Product Enhancement Consideration Enhancement Request tickets that are submitted to Customer Care will be logged internally and the Customer Care Ticket will be marked as Closed. Planview Product Management reviews Enhancement Requests periodically in conjunction with the planning of future releases. Direct feedback will not be provided to customers via Customer Care or Product Management for submitted Enhancement Requests. Approved enhancement requests will be slotted for consideration in a future release and will be reflected in the Software Release Notes.</p>

Software Updates and Releases

Customers who purchase Planview Annual Maintenance and Support or are a SaaS licensed customer receive new Planview software releases to the software products which they license. Planview will ship each new software release to any such customer or install the new release for SaaS Customers upon request. The general categories of releases are as follows:

- Platform
- Major
- Maintenance

Note: Planview recommends that customers not apply updates directly to production systems without first verifying the update in a test environment.

Software Versioning

Planview’s approach to Software releases is tied to its Software versioning policy. Planview uses a three number convention, “X.Y.Z”, which is used as follows: X denotes the Platform release; Y denotes the Major release; Z denotes a Maintenance Release.

#	Guideline
1.Y.Z	<u>Platform Release:</u> Significant technical change in the architecture; introduction of a new software product module; and/or a major functional change to an existing software product module.
X.1.Z	<u>Major Release:</u> Basic architecture of software remains the same with introduction of new functionality. Major Releases typically have an upgrade path from the immediate predecessor. Product Enhancements are typically introduced in Major Releases.
X.Y.1	<u>Maintenance Release:</u> Compilation of fixes to address reported defects. Maintenance Releases are designed to be cumulative in nature across each of the Planview tiers and do not typically include enhancements.

Description of Release Types and Support Timelines

Platform

Planview will make a Platform release available approximately every 24 to 36 months. When a Platform release is made available, Product Development will support the previous Platform and/or Major release for ~12 months with new Maintenance Releases and/or Controlled Release updates.

Major

Planview will make a Major release available approximately every 6 to 9 months. When a new Major release is made available, Product Development will support the previous Major release for ~12 months with Maintenance Releases and/or Controlled-Release updates.

Maintenance Release

Maintenance Releases are designed to address sets of specific product issues/defects.

- Planview issues new Maintenance Releases, as needed, for each fully supported Platform/Major version of the application.
- Maintenance Releases are cumulative and will include all previously released updates for a given version. A cumulative Maintenance Release includes fixes for all product functionality in one build, allowing customers to install only the latest Maintenance Release.
- Not all reported defects will be addressed within a Maintenance Release. In some cases, the reported issue may be addressed in a future Platform or Major release.
- Maintenance Release may include fixes for the Web tier, Application tier, Reporting Tier and Data tier. Fixes for other components will be scheduled in an update periodically, depending on need.

Requests for Support for Unsupported Versions

Once a software version is no longer covered under Full Support, a customer may still request that a fix be made to the unsupported version. Customer Care will escalate the request to the Product Management for review and consideration and Customer Care will provide a comprehensive response.

Other Types of Updates

Controlled-Release Update

Product Management may decide to release an update before the next general Maintenance Release, if the problem reported is causing the system to be inoperable, or is interrupting the customer's critical business processes and does not have a viable work-around. The decision to release a Controlled-Release Update (CR Update) will be made by representatives from Product Management, Product Development and Customer Care. The updates may contain one or more fixes, depending on what has been reported. Each Controlled-Release Update will be cumulative for a given Platform/Major/Maintenance Release version of the application. In addition, CR Updates are only unit tested by Product Development. As with any release, these fixes should not be applied directly to Production without proper testing.

Documentation Update

A Documentation update may include, but is not limited to, user manuals, training materials, product descriptions and specifications, technical manuals, and other printed information relating to the Software. Documentation updates may be distributed in print, electronically, CD-ROM or video format. Each Documentation update provides updated information on the Software. Documentation updates are made available via <https://www.PlanviewPRISMS.com/>, Intelligent Help files or on the Customer Care Portal.