

State of Georgia Statewide Standard Contract Form

Solicitation Title End-User Computing	Solicitation Number 99999-SPD0000161	Contract Number 99999-SPD-SPD0000161-00 ⁰⁴ ₁₁
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1. This Contract is entered into between the Agency and the Contractor named below:

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

Contractor's Name
Dell Marketing L.P. (hereafter called Contractor)

2. Contract to Begin: Date of Last Contract Signature	Date of Completion: June 2, 2021	Renewals: Five (5) One-Year Options to Renew
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3. Performance Bond, if any: NONE	Other Bonds, if any: NONE
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4. Authorized Person to Receive Contract Notices for Agency: Dr. Carl Hall Contract Management Manager Georgia Department of Administrative Services State Purchasing Division 200 Piedmont Avenue, SW, Suite 1308 West Tower Atlanta, GA 30334	Authorized Person to Receive Contract Notices for Contractor: Katherine Dunay Contract Program Manager Dell Marketing LP One Dell Way, RR1-33 Round Rock, TX 78682
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5. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Statewide Contract:

Attachment 1: Statewide Contract for Products and Ancillary Services
Exhibit 1A. Reserved
Exhibit 1B. Reserved
Attachment 2: Solicitation (referenced above)
Attachment 3: Contractor's Final Response

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

6.

Contractor

Contractor's Name (If other than an individual, state whether a corporation, partnership, etc.)
Dell Marketing L.P.

By (Authorized Signature) <i>Charlene L. Wilkinson</i>	Date Signed 4/29/2019
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Printed Name and Title of Person Signing
Charlene L. Wilkinson, Commercial Counsel

Address
One Dell Way, RR1-33
Round Rock, TX 78682

7.

Agency

Agency Name
Georgia Department of Administrative Services

By (Authorized Signature) <i>Lisa Eason</i>	Date Signed June 3, 2019
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Printed Name and Title of Person Signing

Lisa Eason, Deputy Commissioner, State Purchasing Division
Address
200 Piedmont Ave., SE, Suite 1308, West Tower, Atlanta, GA 30334-9010

**STATE OF GEORGIA
STATEWIDE CONTRACT
Attachment 1**

Contract Terms and Conditions for Products and Ancillary Services

A. DEFINITIONS AND GENERAL INFORMATION

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

- (i) **"Agency"** means the Department of Administrative Services of the State of Georgia.
- (ii) **"Awarded Item Schedule"** means the summarizing document, if any, listing the software, products and services as awarded to the Contractor and any other awarded companies.
- (iii) **"Contract"** or **"Statewide Contract"** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
- (iv) **"Contractor"** means the provider(s) of the software, products and services under the Statewide Contract as identified in the Statewide Contract Form.
- (v) **"Purchase Instrument"** means the documentation issued by the User Agencies to the Contractor for a purchase of software, products and/or services in accordance with the terms and conditions of the Statewide Contract. The Purchase Instrument should reference the Statewide Contract and may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Agency or User Agencies.
- (vi) **"Response", "Contractor's Response" or "Final Response"** means the Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the Agency.
- (vii) **"RFX"** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the Statewide Contract Form that was issued to solicit the software, products and/or services that are subject to the Statewide Contract.
- (viii) **"State"** means the State of Georgia, the Agency, User Agencies, and any other authorized entities as identified by the RFX issuing Purchase Instruments against the Statewide Contract.
- (ix) **"Statewide Contract Form"** means the document that contains basic information about the Statewide Contract and incorporates by reference the applicable Contract Terms and Conditions, the RFX, Contractor's Response to the RFX, the final pricing documentation and any mutually agreed clarifications, modifications, additions and deletions resulting from final contract negotiations. No objection or amendment by a Contractor to the RFX requirements or the Statewide Contract shall be incorporated by reference into this Statewide Contract unless the Agency has accepted the Contractor's objection or amendment in writing. The Statewide Contract Form is defined separately and referred to separately throughout the Statewide Contract Terms and Conditions as a means of

identifying the location of certain information. For example, the initial term of the Statewide Contract is defined by the dates in the Statewide Contract Form.

(x) **"User Agency" or "User Agencies"** means any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to make purchases from this Statewide Contract.

2. **Certified Source of Supply and Ancillary Services.** Pursuant to Section 50-5-57 of the Official Code of Georgia Annotated (O.C.G.A.), the Agency hereby certifies the Contractor as a source of supply to the User Agencies of the equipment and the services identified in this Statewide Contract. Orders shall be placed individually and from time to time by the User Agencies. The execution of this Statewide Contract only establishes the Contractor as an authorized source of supply by the Agency and creates no financial obligation on the part of the Agency.
3. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void. The terms of this Statewide Contract shall supersede any contract terms and conditions included as part of delivered software, products and services including, but not limited to, license terms for any Contractor-branded software provided by Contractor pursuant to this Statewide Contract. Notwithstanding anything to the contrary in this Statewide Contract, Contractor as a reseller of third-party software is not authorized to modify the third-party license agreement or to directly license such software. All software will be licensed subject to the terms of the applicable license agreement provided with the software.
4. **Reporting Requirements.** Contractor shall provide all reports required by the RFX. In addition, unless otherwise provided in the RFX, Contractor shall keep a record of the purchases made pursuant to the Statewide Contract and shall submit a quarterly written report to the Agency.

B. DURATION OF CONTRACT

1. **Contract Term.** The Statewide Contract shall begin and end on the dates specified in the Statewide Contract Form unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Statewide Contract shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.
2. **Contract Renewal.** The Agency shall have the option, in its sole discretion, to renew the Statewide Contract for additional terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the Agency's election, in its sole discretion, to renew any part of this Statewide Contract, Contractor shall remain obligated to perform in strict accordance with this Statewide Contract unless otherwise agreed by the Agency and the Contractor.
3. **Contract Extension.** In the event that this Statewide Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified software, products and services, the Agency may, with the written consent of Contractor, extend this Statewide Contract for such period as may be necessary to afford the State a continuous supply of the identified products, software, and services.

C. DESCRIPTION OF SOFTWARE, PRODUCTS AND SERVICES

1. **Specifications in Bidding Documents.** Contractor shall provide all software, products, services, and other deliverables in compliance with the specifications contained in the RFX and the terms of the Statewide Contract, plus those software, products, services and deliverables as may additionally be described in the Response.
2. **Software Licenses.** For all Contractor-branded software and, to the extent allowed by applicable publisher's end user license agreement, all third party software, Contractor shall provide software licenses in compliance with the specifications contained in the RFX and the terms of the Statewide Contract. Subject to User Agency's compliance with the payment provisions of this Statewide Contract, Contractor shall grant User Agency a non-exclusive, non-assignable, royalty free license and/or sublicense to use, execute, maintain, reproduce, display, and perform copies of software and accompanying documentation in accordance with the licensing capacity (if any) and for the period of time specified in the Statewide Contract and/or applicable Purchase Instrument. If no time period is stated, then User Agency shall be granted a perpetual license. Without limiting the generality of the foregoing, such rights shall include copying rights granted to "owners of copies" under federal copyright laws of the United States, plus copying:
 - (i) For backup, archive or emergency restart purposes;
 - (ii) For disaster recovery and disaster recovery testing purposes;
 - (iii) To migrate the software for use on other computers and/or hardware;
 - (iv) In order to facilitate installation and distribution of the software; and
 - (v) To store the software at any off premise location which the User Agencies use for storage purposes.

As a reseller of third party software, Contractor is not authorized to modify the third party license agreement or to directly license such software. All third party software will be licensed subject to the terms of the applicable license agreement provided with the third party software.

3. **Exclusions.** Except as expressly permitted by this Statewide Contract, the User Agencies agree that they will not:
 - (i) Lease, loan, resell, sublicense or otherwise distribute the software to parties who are not State of Georgia government entities;
 - (ii) Create derivative works based on the software;
 - (iii) Reverse engineer, disassemble, or decompile the software; or
 - (iv) Remove any identification or notices contained on the software.

4. Bankruptcy.

- (i) **Notice of Insolvency.** Contractor shall provide DOAS and, if requested by DOAS, User Agencies, with written notice within five (5) business days of Contractor or Contractor's knowledge of a third-party licensor's petition in bankruptcy or insolvency or upon any other proceeding or action by or against a third-party licensor under the relevant law on

insolvency or bankruptcy, or after the making by third-party licensor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of third-party licensor's business or for the termination of its corporate charter.

(ii) **Rejection of Executory License.** The Parties agree that the Software is "intellectual property" as defined in Section § 101(35A) of the U.S. Bankruptcy Code. Upon the filing by Contractor or a third-party licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against the third-party licensor under the relevant law on insolvency or bankruptcy, this Statewide Contract shall be governed by Section 365(n) of the U.S. Bankruptcy Code. If any person seeks to reject this Statewide Contract pursuant to bankruptcy law, User Agencies shall have the option of using the Contractor-branded Software and, to the extent permitted by the applicable third-party software licensing terms, such third-party software, for either the original term of the applicable software license or a period of five years after rejection is requested.

5. **Ordering and Technical Assistance.** User Agencies may place orders individually from time to time in any manner permitted by applicable state purchasing policy and the terms of this Statewide Contract. Contractor shall provide technical assistance as reasonably required for the User Agencies to make purchases if online purchases are made utilizing the Contractor's website.

6. **Delivery and Acceptance.** Unless the RFX requires otherwise, all products shall be shipped F.O.B. destination Freight Prepaid. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All shipped items shall be at the Contractor's risk until they have been delivered and accepted by the User Agency. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the User Agencies, regardless of when the hidden damage is discovered.

(i) **Fixed Pricing Services.** Certain services as defined by Contractor's Response will be provided on a fixed price basis and will be delivered to User Agency in accordance with the schedule for delivering milestones as defined by the Purchase Instrument or such other written document mutually agreeable to User Agency and Contractor. Upon Contractor's completion and User Agency's acceptance of an identified milestone, Contractor may submit an invoice for payment in accordance with Section D "Compensation" of this Statewide Contract.

(ii) **Time and Materials Services.** Certain deliverables and services as defined by Contractor's Response may be provided on a time and materials basis in accordance with the hourly rates and fees identified in Contractor's Response. Such deliverables and services may be requested by User Agency on an "as needed" and "as budgeted" basis and must include a defined maximum pricing threshold that cannot be exceeded without the User Agency's prior written approval. In the event Contractor provides services to a User Agency on a time and materials basis, Contractor must provide work progress reports and copies of time cards to the User Agency on a weekly basis.

(iii) **Acceptance Process.** Upon completion of any deliverable or service, Contractor shall provide written documentation of completion of such deliverable and/or service to User Agency. Contractor will demonstrate to User Agency that the deliverable conforms to the requirements of the Statewide Contract. If the deliverable does not conform to the requirements of the Statewide Contract, User Agency must provide written notice to Contractor identifying the deliverable as nonconforming and providing a description of the deficiencies of the deliverable. User Agency must provide notice of the rejection of

a deliverable within a reasonable period of time as agreed between Contractor and User Agency, except that User Agency shall have thirty (30) days from the date of Contractor's submission of the deliverable or Contractor's demonstration of the deliverable, whichever occurs last. User Agency's failure to either accept or reject a deliverable within the acceptance time period shall not constitute automatic acceptance of the deliverable; however, the User Agency shall be in default of this Statewide Contract. Contractor shall use reasonable efforts to promptly cure any identified deficiencies in the deliverable. After completing such cure, Contractor shall resubmit the deliverable for User Agency's review and, if requested by User Agency, provide a demonstration that the resubmitted deliverable conforms to the requirements of the Statewide Contract. User Agency shall have thirty (30) days from the date of Contractor's resubmission of the deliverable or Contractor's demonstration of the resubmitted deliverable, whichever occurs last, to accept or reject the resubmitted deliverable. In the event Contractor has failed to cure the deliverable, the User Agency may, at its discretion, allow Contractor an additional opportunity to cure, proceed to terminate the Purchase Instrument for default, or pursue any other available remedy. Nothing contained herein shall limit the warranties and representations and the available remedies set forth in this Statewide Contract.

7. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. Agency reserves the right to select other contractors to provide products, software, and services similar to the products, software, and services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar products, software, and services from other contractors.
8. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level of purchases.

D. COMPENSATION

1. **Pricing and Payment.** The Contractor will be paid for the software, products and services sold pursuant to the Statewide Contract in accordance with the RFX and final pricing documents as incorporated into the Statewide Contract Form and the terms of the Statewide Contract. Unless clearly stated otherwise in the Statewide Contract, all discounts are firm and fixed and are not subject to variation for the duration of the Statewide Contract unless Agency agrees to a change during a contract renewal period as further described in the RFX. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. User Agencies are solely and individually financially responsible for their respective purchases. Agency shall not be responsible for payment of any amounts owed by other User Agencies.
2. **Billings.** If applicable, and unless the RFX provides otherwise, the Contractor shall submit, on a regular basis, individual invoices for the products, software, and services supplied to the User Agencies under the Statewide Contract at the billing addresses specified in the Purchase Instruments. The invoice shall be accompanied by a schedule which details the services, deliverables and/or milestones (if any) including the resources in support of those services, deliverables and/or milestones for which the Contractor is requesting payment. The invoice shall comply with all applicable rules concerning payment of such claims. User Agencies shall pay all approved invoices in arrears within thirty (30) days of the date of an undisputed invoice, subject to acceptance as specified in Section C(5)(iii) above, and in accordance with applicable provisions of State law.

Unless otherwise agreed in writing by the Agency and the Contractor, the Contractor shall not be entitled to receive any other payment or compensation from the User Agencies for any software, products or services provided by or on behalf of the Contractor under the Statewide

Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Statewide Contract.

3. **Retainage.** Notwithstanding Paragraph (D)(1) of this Statewide Contract, User Agency shall have the right to retain Fifteen Percent (15%) ("Retainage") of the total payment amount for any order of \$250,000.00 or more. User Agency shall release the Retainage to Contractor only upon final and complete delivery of all products, software and services as defined in the Purchase Instrument and upon full review and acceptance of the same by User Agency without any outstanding obligation pursuant to this Statewide Contract or any attendant agreements between the parties.
4. **Delay of Payment Due to Contractor's Failure.** If the User Agencies in good faith determine that the Contractor has failed to perform or deliver any product, software or service as required by the Statewide Contract, the Contractor shall not be entitled to any compensation which represents payment for such product, software or service under the Statewide Contract until such service or product is performed or delivered. In this event, the User Agencies may withhold that portion of the Contractor's compensation which represents payment for software, products, and/or services that were not performed or delivered. To the extent that the Contractor's failure to perform or deliver as required by the terms of the Statewide Contract and fails to correct such failure in accordance with the Notice of Default provisions under Section E, and such failure results in additional cost to the User Agencies to procure replacement products or services, then User Agencies may deduct from payments due to Contractor the difference between the contract price and the lesser of the current market price or actual price for such replacement product or alternative services. The User Agencies' authority to deduct such incurred costs shall not in any way affect the Agency's sole authority to terminate the Statewide Contract.
5. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the User Agency any sum or the User Agency must obtain substitute performance, the User Agency may set off the sum owed against any sum owed by the User Agency to the Contractor.
6. **Leasing and Financing.** For the products, software and services Contractor is authorized to provide pursuant to this Statewide Contract, Contractor (or a third party selected by Contractor and pre-approved in writing by Agency) is authorized to offer leasing or financing options to Authorized Users provided any such lease or finance transaction entered into shall be subject to the terms of this Statewide Contract and shall occur using a standard, pre-approved leasing or financing template, as applicable, mutually acceptable to Agency and Contractor.

E. TERMINATION

1. Termination of the Statewide Contract.

- (i) **Immediate Termination.** Agency may terminate the Statewide Contract for any one or more of the following reasons effective immediately without advance notice:
 - a. In the event the Contractor is required to be certified or licensed as a condition precedent to providing the software, products and/or services, the revocation or loss of such license or certification may result in immediate termination of the Statewide Contract effective as of the date on which the license or certification is no longer in effect;
 - b. Agency determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

- c. The Contractor fails to comply with confidentiality laws or provisions; and/or
- d. The Contractor furnished any statement, representation or certification in connection with the Statewide Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

(ii) **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the Agency to declare the Contractor in default of its obligations under the Statewide Contract:

- a. The Contractor fails to deliver or has delivered nonconforming software, products and/or services or fails to perform, to the Agency's satisfaction, any material requirement of the Statewide Contract or is in violation of a material provision of the Statewide Contract, including, but without limitation, the express warranties made by the Contractor;
- b. The Agency determines that satisfactory performance of the Statewide Contract is substantially endangered or that a default is likely to occur;
- c. The Contractor fails to make substantial and timely progress toward performance of the Statewide Contract;
- d. The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Agency reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
- e. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Statewide Contract;
- f. The Contractor has engaged in conduct that has or may expose the Agency or the State to liability, as determined in the Agency's sole discretion; or
- g. The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the Agency, the State, or a third party.

(iii) **Agency's Right to Terminate Upon Notice.** Following thirty (30) days' written notice, the Agency may terminate the Statewide Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation from the User Agency, upon submission of invoices and proper proof of claim, for software, products, and/or services provided under the Statewide Contract to the User Agencies up to and including the date of termination.

(iv) **Termination Due to Change in Law.** The Agency shall have the right to terminate this Statewide Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:

- a. The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or

b. The Agency's duties are substantially modified.

2. **Agency's Notice of Default.** If there is a default event caused by the Contractor, with the exception of Force Majeure event, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within thirty (30) days of Contractor's receipt of the Agency's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the Agency may:

- (i) Immediately terminate the Statewide Contract without additional written notice; and/or
- (ii) Procure substitute software, products and/or services from another source and charge the difference between the Statewide Contract and the substitute contract to the defaulting Contractor; and/or,
- (iii) Enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.

The State shall not be liable for any costs incurred by the Contractor in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.

3. **Termination of a User Agency's Transaction.**

- (i) **Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, any purchase, lease or financing purchase made pursuant to this Statewide Contract will terminate immediately and absolutely if the User Agency determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the User Agency cannot fulfill its obligations under the Statewide Contract, which determination is at the User Agency's sole discretion and shall be conclusive.
- (ii) **Termination for Cause.** User Agency shall have the right to terminate any purchase, lease or financing purchase in the event of Contractor's material breach, which breach is not cured within thirty (30) days' of Contractor's receipt of a written default notice from the User Agency.

In the event of termination of the Statewide Contract for any reason by the Agency, the User Agencies shall pay only those amounts, if any, due and owing to the Contractor for software, products and services actually rendered up to the date specified in the notice of termination for which the User Agencies are obligated to pay pursuant to the Statewide Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Statewide Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.

4. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:

- (i) Cease work under the Statewide Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Statewide

Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;

- (ii) Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
- (iii) Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Statewide Contract;
- (iv) Cooperate in good faith with the Agency, the User Agencies, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- (v) Immediately return to the User Agencies any payments made by the User Agencies for software, products and services that were not delivered or rendered by the Contractor.

5. **User Agency Leases and Financing Agreements Survive Termination of the Statewide Contract.** Upon expiration of the Statewide Contract or in the event of termination of the Statewide Contract for any reason by the Agency, User Agency leases and financing agreements, if any, entered into under this Statewide Contract shall survive and continue in accordance with the terms and conditions of this Statewide Contract and each User Agency's lease and financing agreement. Contractor shall continue to perform its obligations and honor the terms, conditions and pricing as set forth in the User Agency lease and financing agreements as applicable until the expiration or termination of such agreements. Upon expiration or termination of the Statewide Contract, User Agencies may, at their sole discretion, elect to exercise any remaining renewal options for existing lease or financing agreements, if any, in accordance with the terms of the agreements; however, no lease or financing agreement shall be extended beyond the total duration of the lease or financing agreement as established at the time the Statewide Contract expires or is terminated unless otherwise approved by the Agency.

F. CONFIDENTIAL INFORMATION

1. **Access to Confidential Data.** Each of the party's employees, agents and subcontractors may have access to confidential data of the other party, including, but not limited, personally identifiable information, maintained by the State to the extent necessary to carry out the Contractor's responsibilities under the Statewide Contract. The Contractor shall presume that all information received pursuant to the Statewide Contract is confidential unless otherwise designated by the State. Contractor information provided to Agency or User Agencies under this Statewide Contract will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. No later than ten (10) days from the date this Statewide Contract is fully executed, to the extent allowed by and subject to the requirements of the State of Georgia Open Records law and the State of Georgia Purchasing Act, each party shall comply with the following requirements:
- (i) Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Statewide Contract, and shared with employees, agents or contractors with a need to know such information to support that purpose.
 - (ii) Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for three (3) years from the date of receipt or (if longer) for such period as the information remains confidential.

- (iii) Contractor shall maintain and provide to the State, if requested, a written description of the Contractor's policies and procedures to safeguard confidential information;
- (iv) Each party's policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (v) The Contractor's designated Contractor Manager shall remain the single point of contact with respect to Contractor's compliance with the requirements of Section F, Confidential Information; and
- (vi) Each party shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Statewide Contract.

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

2. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Statewide Contract shall be disseminated except as required by law or with the written consent of the State, either during the period of the Statewide Contract or thereafter. Any data supplied to the Contractor for purposes of performing pursuant to this Statewide Contract shall remain the property of the Agency or User Agencies as applicable. Any data specifically created by the Contractor for Agency or User Agencies during the performance of this Statewide Contract and specifically identified in a Statement of Work shall be considered the property of the State. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Statewide Contract, in whatever form it is maintained, promptly at the request of the State.
3. **Subpoena.** In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the State and cooperate with the State in any lawful effort to protect the confidential information.
4. **Reporting of Unauthorized Disclosure.** Each party shall immediately report in writing to the other party any unauthorized disclosure of confidential information. In the event of unauthorized disclosure by Contractor of the State's confidential information, then Contractor, at no additional cost to DOAS or Agencies, shall be responsible for providing any and all notices required by law.
5. **Survives Termination.** Both parties' confidentiality obligation under the Statewide Contract shall survive termination of the Statewide Contract.

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and (collectively, "Indemnified Parties") from any and all third party costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:

- (i) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor resulting in personal injury or death or damage to real property or tangible personal property;
- (ii) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Contractor branded products or any parts thereof provided in Contractor branded products under the Statewide Contract;
- (iii) Claims, demands, or lawsuits that, with respect to the Contractor branded products or any parts thereof provided in Contractor branded products, allege product liability, strict product liability, or any variation thereof;
- (iv) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Statewide Contract;
- (v) Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
- (vi) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- (vii) Any failure by the Contractor to adhere to the confidentiality provisions of the Statewide Contract.

This indemnification shall apply notwithstanding the fact that the Indemnified Parties may be partially responsible for the situation giving rise to the claim. However, Contractor shall only be liable to the extent of Contractor's contribution to the situation giving rise to the claim. It will not be deemed Contractor's contribution if Contractor is performing as specifically directed by the Agency, except for criminal or obviously illegal acts or omissions. This indemnification shall not apply if the situation giving rise to the claim results solely from the act or omission of the Indemnified Parties.

Notwithstanding anything to contrary herein, non-Contractor branded software, products and services are provided subject to the third party manufacturer or licensor's applicable software license and warranty. For any non-Contractor branded software, products or services, Contractor agrees to flow down any indemnification protection, including indemnification for infringement of any intellectual property rights, that Contractor currently or subsequently has in place with the manufacturer or publisher.

2. **Duty to Reimburse State Tort Claims Fund.** To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.
3. **Litigation and Settlements.** The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or

compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.

4. Patent/Copyright Infringement Indemnification.

With respect to third party claims, Agency (or its representative) shall notify Contractor of the claim no later than thirty (30) days after the Indemnified Parties receive notice of the claim (or sooner if required by law). Notwithstanding the foregoing, the failure by Agency or its representatives to notify Contractor within thirty (30) days after the Indemnified Parties receive notice of the claim shall not relieve Contractor of its indemnification obligations unless Contractor demonstrates that it has suffered material prejudice to its defense of the claim as a result of the delay in notification.

With respect to third party claims, Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit instituted against the State and indemnify the State against any award of damages and costs made against the State by a final judgment of a court of last resort in such suit insofar as the same is based on any claim that any of the Contractor branded products or software constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the Agency shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

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

- (i) Procure for the State the right to continue using the software;
- (ii) Replace or modify the same so that it becomes non-infringing; or
- (iii) If neither (i) or (ii) is reasonably achievable, remove the same and cancel any future charges pertaining thereto.

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

- (i) Compliance with designs, plans or specifications furnished by or on behalf of the Agency as to the software;
- (ii) Use of the software or hardware in combination with apparatus or devices not supplied by Contractor;
- (iii) Use of an allegedly infringing version of the software, if the alleged infringement could have been avoided by use of a different version made available to the Indemnified Party at no additional cost;
- (iv) Use of the software or hardware in a manner for which the same was neither designed nor contemplated;

- (v) Any modification to hardware or software made by User Agency; or
- (iv) The claimed infringement of any patent or copyright in which the Agency or any affiliate or subsidiary of the Agency has any direct interest by license or otherwise.

For any non-Contractor branded software, products or services, Contractor agrees to flow down any indemnification protection and intellectual property rights that Contractor currently or subsequently has in place with the manufacturer or publisher, to the extent that the manufacturer or publisher has given Contractor warranties or indemnities that may be passed through to Agency or User Agencies.

- 5. **Survives Termination.** The indemnification obligation of the Contractor shall survive termination of the Statewide Contract.

H. INSURANCE

Contractor shall procure and maintain, until all of its obligations have been discharged (including any warranty periods under the statewide contract have been satisfied), insurance which shall protect the Contractor and the State of Georgia (as an additional insured) from any claims for bodily injury, property damage, or personal injury covered by the insurable indemnification obligations set forth in the Statewide Contract throughout the duration of the Statewide Contract. The Contractor shall procure and maintain the insurance policies described below at the Contractor's own expense and shall furnish DOAS an insurance certificate listing the State of Georgia as certificate holder and as an additional insured under the Commercial General Liability policy as respects insurable liabilities assumed by Contractor under this Statewide Contract. The insurance certificate must document that the Commercial General Liability insurance coverage purchased by the Contractor includes contractual liability coverage for insurable liabilities applicable to the Statewide Contract. In addition, the insurance certificate must provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability,

The Contractor is required to maintain the following insurance coverage's during the term of the Statewide Contract:

- 1) Workers Compensation Insurance (Occurrence) in the amounts of the statutory limits established by the General Assembly of the State of Georgia (A self-insurer must submit a certificate from the Georgia Board of Workers Compensation stating that the Contractor qualifies to pay its own workers compensation claims.) In addition, the Contractor shall require all subcontractors occupying the premises or performing work under the statewide contract to obtain an insurance certificate showing proof of Workers Compensation Coverage with the following minimum coverage:

Bodily injury by accident - per employee	\$100,000;
Bodily injury by disease - per employee	\$100,000;
Bodily injury by disease – policy limit	\$500,000.

- 2) Commercial General Liability Policy with the following minimum coverage:

Policy shall include bodily, property damage and broad form contractual liability coverage.

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000

General Aggregate Limit	\$2,000,000
Products/Completed Ops. Aggregate Limit	\$2,000,000

- 3) Automobile Liability
Bodily Injury and Property Damage for any owned, hired or non-owned vehicles used in the performance of the Statewide Contract

Combined Single Limit	\$1,000,000
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- 4) Errors and Omissions Limit \$2,000,000

- 5) Commercial Umbrella Limit \$2,000,000

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed or allowed to lapse for any reason until at least thirty (30) days prior written notice has been given to the named insured. Certificates of Insurance (ACORD form or equivalent approved by the State) showing such coverage to be in force shall be filed with Agency prior to commencement of any work under the statewide contract and remain in effect for the duration of the Statewide Contract. The foregoing policies shall be obtained from insurance companies authorized to do business in Georgia and shall be with companies acceptable to Agency, which must have a minimum A.M. Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

Within ten (10) business days of award, the Contractor must procure the required insurance and provide Agency with two (2) Certificates of Insurance. Certificates must reference the contract number. No contract performance shall occur unless and until the required insurance certificates are provided.

I. BONDS

The Contractor shall provide all required bonds in accordance with the terms of the RFX and as stated in the Statewide Contract Form.

J. WARRANTIES

1. Construction of Warranties Expressed in the Contract with Warranties Implied by Law.

All warranties made by the Contractor and/or subcontractors in all provisions of the Statewide Contract and the Contractor's Response, whether or not the Statewide Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the software, products and services to be provided, or by provision of samples to the State shall not be construed as limiting or negating any warranty provided by law. The warranties expressed in the Statewide Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Contractor branded software, products and services provided by the Contractor. If permissible under the applicable third party manufacturers' and third party software publishers' agreement, Contractor shall assign and pass through to the State all applicable third party product manufacturers' and third party software publishers' warranties, covenant and indemnification provisions to the extent permissible under Contractor's agreement with the applicable third party. The provisions of this section apply during the term of the Statewide Contract and any extensions or renewals thereof.

2. **Warranty – Nonconforming Software, Products or Services.** All Contractor-branded software, products and services delivered by Contractor to the User Agencies shall be free from any defects in design, material, or workmanship. If any software, products or services offered by the Contractor are found to be defective in material or workmanship, or do not conform to manufacturer's or publisher's warranty, the User Agencies shall have the option of returning, repairing, or replacing the defective software, products or services at Contractor's expense in accordance with the terms of the applicable warranty or Dell Return Policy in effect at the time of purchase. Payment for such defective software, products or services shall not constitute acceptance. Acceptance by the User Agencies shall not relieve the Contractor of its warranty or any other obligation under the Statewide Contract.
3. **Compliance with Federal Safety Acts.** Contractor warrants and guarantees to the State that the Contractor branded products provided under the Statewide Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A; and the Anti-Kickback Act of 1986, to the extent such requirements are applicable to the subject product.
4. **Originality and Title to Concepts, Materials, and Products Produced.** Contractor represents and warrants that all the concepts, materials, software, products and services produced, or provided to the State pursuant to the terms of the Statewide Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, software, products and works. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, products and services contemplated by the Statewide Contract.

Notwithstanding anything to the contrary in the foregoing, to the maximum extent permitted by law, Non-Contractor branded products and services are provided subject to the third party manufacturer's or licensor's applicable software license and warranty. Contractor agrees to pass through to purchaser any indemnification or warranty provided by the manufacturer or licensor with respect to intellectual property infringement or indemnification to the extent permissible under Contractor's agreement with the applicable third party.

5. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the software, products and services provided in accordance with the Statewide Contract will appear and operate in conformance with the terms and conditions of the Statewide Contract.
6. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Statewide Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
7. **Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Statewide Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.
8. **Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or

encumbrance. Title to any supplies, materials, or equipment shall remain in the Contractor until fully paid for by the User Agencies.

9. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the software, products and services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Statewide Contract, which shall take precedence.
10. **Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform services under this Statewide Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency as specified in the RFX. All of Contractor or any subcontractor's personnel shall comply with the confidentiality requirements of the Statewide Contract and the security requirements of the applicable Agency or User Agencies while on state property. In the event that any of Contractor or subcontractor's personnel do not comply with such confidentiality and security requirements, the Agency or User Agencies may have the personnel removed from the premises.

All persons assigned to perform services under this Statewide Contract shall be qualified to perform such services. Personnel assigned by Contractor shall have all professional licenses required to perform the services. If the Agency or User Agencies believes that the performance or conduct of any person employed or retained by Contractor to perform any Services hereunder is unsatisfactory for any reason or is not in compliance with the provisions of this Statewide Contract, the Agency or User Agencies shall notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the Agency or User Agency's request, immediately replace such person (provided the request is not illegal under the circumstances) with another person acceptable to the Agency or User Agency and with sufficient knowledge and expertise to perform the Services in accordance with this Statewide Contract.

11. **State Security.** Agency requires that a criminal background investigation be made of any and all Contractor personnel utilized to provide services to the State. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Statewide Contract if such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the State. The Contractor's employees, agents and subcontractors may be granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the Statewide Contract. Such access may be terminated at the sole discretion of the State. The Contractor shall provide immediate notice to Agency of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor represents and warrants that Contractor shall provide notice to Agency of the changed status of any employee, agent or subcontractor granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.
12. **Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of services under this Statewide Contract. Contractor shall be responsible for providing transportation necessary to perform all services.

K. PRODUCT RECALL

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

L. CONTRACT ADMINISTRATION

1. **Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of the Statewide Contract Terms and Conditions (including Exhibits 1A and 1B and any amendments accepted by both the Agency and the Contractor attached hereto and the Awarded Item Schedule, if any), the RFX (including any subsequent addenda and written responses to bidders' questions), and the Contractor's Response, any inconsistency or conflict shall be resolved as follows:
 - (i) First, by giving preference to the Statewide Contract Terms and Conditions.
 - (ii) Second, by giving preference to the specific provisions of the RFX.
 - (iii) Third, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a Contractor that have not been explicitly accepted by the Agency in writing shall not be included in this Statewide Contract and shall be given no weight or consideration.
2. **Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFX and the Contractor's Response. The failure of the parties to make reference to the terms of the RFX or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFX and the Contractor's Response. The contractual obligations of the Agency cannot be implied from the Contractor's Response.
3. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Statewide Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors.

Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States or any other country. Contractor shall be responsible for complying with all export and re-export laws and regulations, including without limitation:

- (i) Local license or permit requirements;

- (ii) Export, import and customs laws and regulations, which may apply to certain equipment, software and technical data provided hereunder; and
- (iii) All applicable foreign corrupt practices acts.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Statewide Contract. Contractor and Contractor's personnel shall also comply with all State, Agency, and User Agency policies and standards in effect during the performance of the Statewide Contract, including but not limited to the Agency and User Agencies' policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Statewide Contract. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §50-5-85.

Contractor shall obtain and maintain, and shall cause its subcontractors to obtain and maintain all approvals, permissions, permits, licenses, and other documentation required to comply with all applicable laws, rules or regulations. Contractor agrees that any failure by Contractor or Contractor's employees to comply with any of the obligations of this section may be treated by the Agency as a material breach of this Statewide Contract by the Contractor.

4. **Drug-free Workplace.** The Contractor hereby certifies to items (i) and (ii) below and Contractor will use commercially reasonable efforts to ensure processes are in place to obtain requested certifications under item (iii) below from subcontractors. In addition, Contractor requires all its subcontractors to comply with all applicable Federal and state laws and regulations and to self-certify such compliance:

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

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

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

5. **Amendments.** The Statewide Contract may be amended in writing from time to time by mutual consent of the parties and upon approval by the Agency. All amendments to the Statewide Contract must be in writing and fully executed by duly authorized representatives of the Agency and the Contractor.
6. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Statewide Contract. The Statewide Contract is intended only to benefit the State and the Contractor.
7. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Statewide Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Statewide Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.
8. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** In addition to any dispute resolution procedures otherwise required under this Statewide Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Statewide Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

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

9. **Assignment and Delegation.** The Statewide Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

10. **Use of Third Parties.** Except as may be expressly agreed to in writing by the Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Statewide Contract or any of the work subsequently assigned under this Statewide Contract. The Agency's designated contract administrator shall have the right to approve the addition of any new subcontractors. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Statewide Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Statewide Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Statewide Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Agency. The Agency shall have the right to request the removal of a subcontractor from the Statewide Contract for good cause.
11. **Integration.** The Statewide Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Statewide Contract.
12. **Headings or Captions.** The paragraph headings or captions used in the Statewide Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
13. **Not a Joint Venture.** Nothing in the Statewide Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for software, products and services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Statewide Contract.
14. **Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Statewide Contract, and for any default of activities and obligations.
15. **Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Statewide Contract, this Statewide Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the software, products and services provided in connection with the Statewide Contract.
16. **Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Statewide Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
17. **Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and

reliable carrier which shall be addressed to the person who signed the Statewide Contract on behalf of the party at the address identified in the Statewide Contract Form. Each such notice shall be deemed to have been provided:

- (i) At the time it is actually received; or,
- (ii) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
- (iii) Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

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

- 18. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Statewide Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 19. Severability.** If any provision of the Statewide Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Statewide Contract. Further, if any provision of the Statewide Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Statewide Contract shall not affect any other part of this Statewide Contract, and the remainder of this Statewide Contract shall continue to be of full force and effect.
- 20. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Statewide Contract. Contractor shall ensure that all personnel providing software, products and services to the State are responsive to the State's requirements and requests in all respects.
- 21. Authorization.** The persons signing this Statewide Contract represent and warrant to the other parties that:
- (i) It has the right, power and authority to enter into and perform its obligations under the Statewide Contract; and
 - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Statewide Contract and the Statewide Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 22. Successors in Interest.** All the terms, provisions, and conditions of the Statewide Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

- 23. Record Retention and Access.** The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The Contractor should maintain separate accounts and records for the Agency and the User Agencies. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
- 24. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Statewide Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
- 25. Public Records.** The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.
- 26. Clean Air and Water Certification.** Contractor certifies that none of the facilities it uses to produce products provided under the Statewide Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the Agency of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.
- 27. Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the Agency if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.
- 28. Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.
- 29. Taxes.** User Agencies are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. User Agencies are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Statewide Contract, which verification is incorporated herein by reference.

- 30. Certification Regarding Sales and Use Tax.** By executing the Statewide Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Statewide Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.
- 31. Delay or Impossibility of Performance.** Neither party shall be in default under the Statewide Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Statewide Contract.
- 32. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Statewide Contract, Contractor's liability to the State for any claim of damages arising out of this Statewide Contract shall be limited to direct damages and shall not exceed \$10,000,000.00 (Ten Million U.S. Dollars) or the total amount paid to Contractor for its performance under this Statewide Contract, whichever amount is greater, but not to exceed 125% of the total amount paid to Contractor during the prior 12 months of this Statewide Contractor for its performance under this Statewide Contract.

No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other tangible property due to Contractor's negligent or intentional and willful wrongful act or omission while such equipment or other tangible property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor further agrees that equipment transported by Contractor personnel in a vehicle belonging to Contractor (including any vehicle rented or leased by Contractor or Contractor's personnel) shall be deemed to be in the sole care, custody, and control of Contractor's personnel while being transported. Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.

NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS, SOFTWARE, OR SERVICES PROVIDED HEREUNDER. NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING: (1) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS; (2) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM OR NETWORK OR THE RECOVERY OF SUCH, PROVIDED THAT (i) THIS LIMITATION SHALL NOT APPLY TO DAMAGES ARISING DIRECTLY FROM A PARTY'S INTENTIONAL WRONGFUL ACTS OR A PARTY'S FAILURE TO BACK-UP DATA IF SUCH PARTY SPECIFICALLY AGREES WITHIN A STATEMENT OF WORK TO BE RESPONSIBLE FOR BACKING-UP DATA AND (3) LOSS OF BUSINESS OPPORTUNITY (4) BUSINESS INTERRUPTION OR DOWNTIME.

- 33. Obligations Beyond Contract Term.** The Statewide Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Statewide Contract. All obligations of the Contractor incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Statewide Contract.

34. **Counterparts.** The Agency and the Contractor agree that the Statewide Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
35. **Further Assurances and Corrective Instruments.** The Agency and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered; such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Statewide Contract.
36. **Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Statewide Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to perform services for the State. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to the State or to another contractor.

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



**EXHIBIT 1A
GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES
STATEWIDE CONTRACT FOR END USER COMPUTING**

User Agency Leasing Agreement

RESERVED



EXHIBIT 1B
GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES
Standard Amendment to End User License Agreements for Commercial Off-the-Shelf Software

RESERVED



Statewide Contract Information Sheet

Statewide Contract Number	99999-SPD-SPD0000161-0004	NIGP Code	20410, 20442, 20448, 20453, 20454, 20455, 20460, 20468, 92007, 92031, 92047, 93921
Name of Contract	End-User Computing		
Effective Date	June 3, 2019	Expiration Date	June 2, 2021
Contract Table of Contents			
Suppliers Awarded	8	Contract Information:	Convenience
Contract Information for Supplier			Page Number
<u>Dell Marketing, LP</u>			2
Additional Contract Information			
<u>General Contract Information</u>			3-4
<u>Contract Renewals/ Extensions/ Changes</u>			5
<u>DOAS Contact Information</u>			6



Supplier Information Sheet

Contract Information	
Statewide Contract Number	99999-SPD-SPD0000161-0004
PeopleSoft Supplier Number	0000015689
Supplier Name & Address	
<p>Dell Marketing L.P. One Dell Way Round Rock, TX 78682</p>	
Contract Administrator	
<p>Katherine Dunay Contract Program Manager Katherine_Dunay@dell.com Phone: (512) 723-0818</p>	
Contact Details	
Ordering Information	<p>Donna Crim Account Executive Donna.crim@dell.com Phone: (404) 731-4824</p>
Remitting Information	<p>P. O. Box 534118 Atlanta, GA 30353-4118</p>
Discounts	See Supplier Percentage Discount sheet
Payment Terms	Net 30 Days
Bid Offer includes	State and Local Government
Acceptable payment method	Supplier will accept Purchase Orders and the Purchasing Card under this contract as permitted by current



	policies governing the Purchasing Card program.
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General Contract Information

The purpose of this contract is to provide a Statewide source of supply and services for End-User Computing. The equipment and services pursuant to this contract have been awarded the following four Categories:

Category A	Desktops, Laptops, Tablets (including associated accessories and peripherals for each).
Category B	Ruggedized Computing Devices (including associated accessories and peripherals).
Category C	Thin Client (including associated accessories and peripherals)
Category E	PC Peripherals and Accessories (Printers are not within the scope of this contract award).

Please Note the following is not available:

Category D	Virtual Reality (was not awarded under this statewide contract).
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See the Percentage Discount Off List Price document for Category pricing. All discounts shown are minimum discounts, and Suppliers may provide additional or deeper discounts to State and Local agencies under the Statewide Contract.

State entities should ask for “Academic Pricing” if obtaining quotes for schools, colleges or administrative offices of educational organizations. The discounts available may differ depending on the type of academic organization. Academic organizations receive significantly lower prices or significantly deeper discounts from many hardware manufacturers.

State entities must place a purchase order prior to acquiring hardware or services.



Awarded Category:

Dell Marketing L. P.B has been awarded the following Categories:

Category A – Desktops, Laptops, Tablets

Category B – Ruggedized Computing

Category C – Thin Clients

Category E – Peripherals and Accessories

Ordering Instructions:

Statewide Contract Number: 99999-SPD-SPD0000161-0004 – Dell Computers

How to Purchase

1. Review the Supplier's Percentage Discount (applicable to product and awarded category). For Percentage Discount Off List Price, see attachment. All percentage discounts shown are minimum discounts. Supplier may provide additional or increased discount % to State and Local agencies under the Statewide Contract.
2. Contact Supplier directly for possible bulk pricing/discounts.
3. You may view the Supplier products and pricing by accessing Team Georgia Marketplace.
4. You may order the Supplier products by accessing Team Georgia Marketplace. You may also order by contacting the Supplier directly, or if applicable, by contacting their approved Reseller.
5. Purchase Orders must reflect the Supplier and contract number.
6. Payments are to be remitted to the Supplier referencing the contract number.

How to Lease:

1. Complete the MANDATORY User Agency Lease Agreement, located on Team Georgia Marketplace (**This is the only approved Lease Agreement**). Lease Options Available: 24 months, 36 months, 48 months, 60 months.
2. Contact the awarded statewide supplier.



Supplier Name	Awarded Category	TGM Catalog	Order Direct	Reseller as of 06/17/2019	Leasing
ByteSpeed Computers	Category A: Desktops and Laptops, Category E: PC Peripherals and Accessories	Information Only	Yes	No	Yes
CDW Government, LLC	Category E: PC Peripherals and Accessories	Information Only	Yes	No	No
Dell Marketing. L.P	Category A: Desktops and Laptops, Category B: Ruggedized Computing Devices Category C: Thin Client Category E: PC Peripherals and Accessories	Information Only	Yes	No*	No
GovConnection, Inc.	Category E: PC Peripherals and Accessories	Information Only	Yes	No	No
HP, Inc.	Category A: Desktops and Laptops, Category E: PC Peripherals and Accessories	Information Only	Yes	No*	No
Lenovo - United States, Inc.	Category A: Desktops and Laptops, Category E: PC Peripherals and Accessories	Information Only	Yes	No*	No
Panasonic Corporation of North America	Category B: Ruggedized Computing Devices	Information Only	Yes	No*	Yes
Howard Industries, Inc.	Category A: Laptops	Information Only	Yes	No	Yes
* Reseller certification in progress. Details will be provided.					

How to Pay:

The items on this contract should be purchased using either a Purchase Order or a Procurement Card (P-card). For more information regarding how to obtain or use a P-card, Contact the State Cards Program manager at cardprograms@doas.ga.gov.

For detailed P-card Information, visit the State's P-card web site at: <http://doas.ga.gov/state-purchasing/statewide-card-programs/purchasing-cards>



Changes/Renewals/Extensions

First Renewal to be executed and announced on or before June 2, 2021.

DOAS Contact Information

Latrice Njee

Contract Management Specialist

Latrice.njee@doas.ga.gov

(404) 656-5452

For Team Georgia Marketplace questions

Procurement Help Desk

(404) 657-6000

procurementhelp@doas.ga.gov