



Statewide Contract Information Sheet

Revised and Effective: November 18, 2024

Statewide Contract Number	99999-SPD-T20120501-0004	NIGP Code	Networking Equipment-20664 Networking Software-20928 Networking Support and Services-92037 Network Consulting Svcs-91830 Network Equipment Leasing-98419 NaaS/Cloud-92005
Name of Contract	Network Equipment		
Effective Date	06/01/2012	Expiration Date	09/30/2025
Contract Table of Contents			
Suppliers Awarded	13 as of 06/30/2016	Contract Information:	Convenience
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Supplier Information Sheet

Contract Information	
Statewide Contract Number	99999-SPD-T20120501-0004
PeopleSoft Supplier Number	0000139075
Supplier Name & Address	
Avaya, Inc. 211 Mt. Airy Rd. Basking Ridge, NJ 07920	
Contract	
Tom Holloway Account Manager Email: taholloway@avaya.com Phone: 678-421-5146	
Contact Details	
Ordering Information	Please refer to the Ordering Instructions on page 3. Avaya sales contacts are:
Remitting Information	Payments are to be mailed to authorized servicing partners/resellers.



Delivery Days	To be defined by authorized purchaser at the time of the PO issuance
Discounts	Please see the Manufacturer’s State of Georgia webpage at: https://www.avaya.com/en/contract-georgia/#1
Payment Terms	Net 30 Days
Bid Offer includes	State Entities, Local Governments (County/City/Authorities) and Education (Universities/Colleges/BOEs K-12)
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.

General Contract Information:

This is a Convenience Statewide Contract available to all eligible State entities and political subdivisions.

The Contract is administered by the Department of Administrative Services (DOAS).

Item Schedule

Effective November 18, 2024, customers may continue to purchase Unified Communications Products (Category 5) via Statewide Contract SPD-T20120501-0004 (through September 30, 2025).

Avaya’s contract award covers the following networking product category:

- Category 5 – Unified Communications Products (including VoIP)
- Installation
- Configuration
- Maintenance & Support
- Consulting
- Integration
- Network Assessments

Ordering Instructions

Purchase Orders are permitted for the items and services on the contract that do not require payment until delivery. However, Purchase Orders are not authorized on any times or services that require prepayment.

Orders are to be faxed/emailed to authorized partners.



Please see the Manufacturer’s State of Georgia webpage at:
<https://www.avaya.com/en/contract-georgia/#1>

This SWC covers networking equipment, software and services (installation, engineering, site assessment, configuration, training, etc.). This Networking Equipment Manufacturer sells its products via a group of authorized resellers. Customer may choose a certified reseller from the State APPROVED RESELLER LIST. Reseller's quotation must include the Statewide Contract #. Customer will be invoiced by the Reseller.

For questions, regarding equipment specifications/details, warranty, features, etc., Customer can contact the Manufacturer directly. Please contact Jacob Caffee for technical assistance and sales information.

Please see the State Approved Reseller List for Networking Equipment Manufacturers for an updated list of Avaya’s resellers and partners.

Initial Term: June 1, 2012 – May 31, 2013

Contract Renewals

Renewal Period 1	June 1, 2013 – June 30, 2014
Renewal Period 2:	July 1, 2014 – June 30, 2015
Renewal Period 3:	July 1, 2015 – June 30, 2016
Renewal Period 4:	July 1, 2016 – December 2017

- Extension 1: January 1, 2018 - September 30, 2018
- Extension 2: October 1, 2018 - September 30, 2019
- Extension 3: October 1, 2018 - September 30, 2020
- Extension 4: October 1, 2019 - September 30, 2021
- Extension 5: October 1, 2021 - September 30, 2022
- Extension 6: October 1, 2022 - September 30, 2023
- Extension 7: October 1, 2023 - September 30, 2024
- Extension 8: October 1, 2024 - September 30, 2025

DOAS Contact Information

Duane Tomlinson
Contract Management Specialist
Email: duane.tomlinson@doas.ga.gov
Telephone: 404-850-4075

For Team Georgia Marketplace question(s)

Procurement Help Desk
Telephone: (404) 657-6000
Fax: (404) 657-8444
Email: procurementhelp@doas.ga.gov



Networking Equipment & IT Infrastructure Products Awarded Categories

Effective 07/01/2016

	Category 1	Category 2	Category 3	Category 4	Category 5	Contract Number
Aerohive Networks			Y			99999-SPD-T20120501-0001
Aruba Networks	Y	Y	Y			99999-SPD-T20120501-0003
Avaya	Y	Y	Y	Y	Y	99999-SPD-T20120501-0004
Brocade Communications	Y	Y	Y	Y		99999-SPD-T20120501-0005
Cisco Systems	Y	Y	Y	Y	Y	99999-SPD-T20120501-0006
Dell	Y	Y	Y	Y		99999-SPD-T20120501-0007
Extreme Networks (acquired Enterasys)	Y	Y Incl Legacy Enterasys	Y	Y Incl Legacy Enterasys		99999-SPD-T20120501-0009
F5 Networks		Y				99999-SPD-T20120501-0010
Fortinet (acquired Meru Networks)		Y	Y Incl Legacy Meru	Y		99999-SPD-T20120501-014A (Changed)
Hewlett-Packard Enterprise Company	Y	Y	Y	Y		99999-SPD-T20120501-011A (Changed)
Juniper Network	Y	Y	Y	Y		99999-SPD-T20120501-0013
Polycom					Y	99999-SPD-T20120501-0015
ShoreTel					Y	99999-SPD-T20120501-0017

Category 1 = Wired LAN/WAN

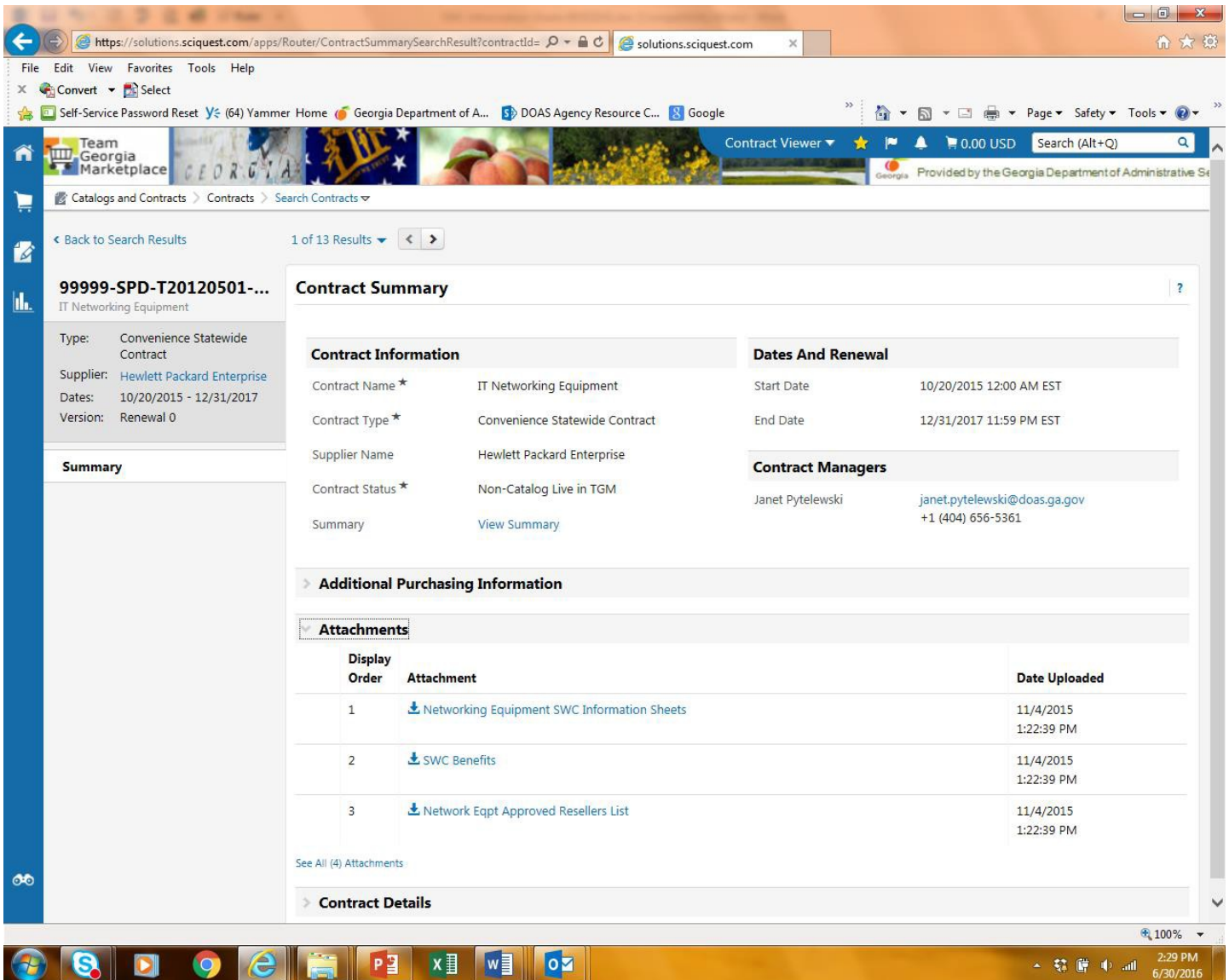
Category 2 = Network Management & Optimization Products

Category 3 = Wireless Networking Products

Category 4 = Security Products

Category 5 = Unified Communications (including VoIP)

State Approved Reseller List for Networking Equipment Manufacturers Posted on Team Georgia Marketplace



The screenshot shows a web browser window displaying a contract summary page. The browser's address bar shows the URL: <https://solutions.sciquest.com/apps/Router/ContractSummary/SearchResult?contractId=...>. The page title is "99999-SPD-T20120501-..." and the contract is for "IT Networking Equipment".

Contract Summary

Contract Information		Dates And Renewal	
Contract Name *	IT Networking Equipment	Start Date	10/20/2015 12:00 AM EST
Contract Type *	Convenience Statewide Contract	End Date	12/31/2017 11:59 PM EST
Supplier Name	Hewlett Packard Enterprise	Contract Managers	
Contract Status *	Non-Catalog Live in TGM	Janet Pytelewski	janet.pytelewski@doas.ga.gov +1 (404) 656-5361
Summary	View Summary		

Additional Purchasing Information

Attachments

Display Order	Attachment	Date Uploaded
1	Networking Equipment SWC Information Sheets	11/4/2015 1:22:39 PM
2	SWC Benefits	11/4/2015 1:22:39 PM
3	Network Eqpt Approved Resellers List	11/4/2015 1:22:39 PM

See All (4) Attachments

Contract Details



**CONTRACT AMENDMENT #14
EXTENSION #9**

This amendment by and between the Contractor and State Entity defined below shall be effective as of the date this Amendment is fully executed.

STATE OF GEORGIA CONTRACT	
State Entity's Name:	Department of Administrative Services
Contractor's Full Legal Name:	Avaya, Inc.
Contract No.:	99999-SPD-T20120501-0004
Solicitation Title/Event Name:	Networking Equipment and IT Infrastructure Products
Contract Award Date:	June 1, 2012
Current Contract Term:	10/1/2024 – 9/30/2025

WHEREAS, the Contract is in effect through the Current Term provided above. The parties hereto now desire to amend the contract to extend for an additional term of twelve months. This amendment is designed to extend Category #5: Unified Communications Products (including VoIP) for this statewide contract. With the award of the Networking Equipment contract (99999-SPD-SPD0000219), all categories under this statewide contract are terminated, except for Category #5: Unified Communications Products (including VoIP).

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

- CONTRACT EXTENSION.** The parties hereby agree that the contract will be extended for an additional period of time as follows:


NEW CONTRACT TERM	
Beginning Date of New Contract Term:	10/1/2025
End Date of New Contract Term:	09/30/2026

The parties agree the contract will expire at midnight on the date defined as the "End Date of the New Contract Term" unless the parties agree to extend the contract for an additional period of time.


- 2. **SUCCESSORS AND ASSIGNS.** This Amendment shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
- 3. **ENTIRE AGREEMENT.** Except as expressly modified by this Amendment, the contract shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Amendment and the contract (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto. Should the State of Georgia (DOAS) enter into a new contract for these products and/or services during the term of this Extension, the new contract shall supersede this Extension.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed by their authorized representatives.

CONTRACTOR

Contractor's Full Legal Name: (PLEASE TYPE OR PRINT)	AVAYA LLC
Authorized Signature:	
Printed Name and Title of Person Signing:	Tom Holloway RSL Avaya
Date:	9/10/2025
Company Address:	

STATE ENTITY

Authorized Signature:	
Printed Name and Title of Person Signing:	Jim Barnaby Deputy Commissioner, State Purchasing
Date:	9/22/2025
Company Address:	200 Piedmont Avenue, S.E., Suite 1302, West Tower Atlanta, Georgia 30334-9010

State of Georgia
Statewide Standard Contract Form

Solicitation Title
Networking Equipment and IT Infrastructure Products

Solicitation Number
eRFP 99999-SPD0000071

Contract Number
99999-SPD-720120501-0004

1. This Contract is entered into between the Agency and the Contractor named below:

Agency's Name
Georgia Department of Administrative Services

Contractor's Name
Avaya Inc.

(hereafter called Agency)

(hereafter called Contractor or Avaya)

2. Contract to Begin: **June 1, 2012** Date of Completion: **May 31, 2013** Renewals: **4**

3. Performance Bond, if any: **Not Applicable** Other Bonds, if any: **Not Applicable**

4. Authorized Person to Receive Contract Notices for Agency: **Janet Pytalewski** Vice President, Law
Authorized Person to Receive Contract Notices for Contractor: **Vice President, Law**

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 Software, Products and Ancillary Services
- Exhibit 1A. Approved User Agency Leasing Agreement
- Exhibit 1B. Approved User Agency Financing Agreement
- Attachment 2: Solicitation (referenced above)
- Attachment 3: Contractor's Final Response

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

Contractor's Name (If other than an individual, state whether a corporation, partnership, etc.)
Avaya Inc. - corporation

By (Authorized Signature) **Darren Barnes** Date Signed **June 20, 2012**

Printed Name and Title of Person Signing
Darren Barnes - Area Sales Vice President

Address
211 Mt. Airy Rd. Basking Ridge, NJ 07920

Agency Name
Georgia Department of Administrative Services

By (Authorized Signature) **[Signature]** Date Signed **June 21, 2012**

Printed Name and Title of Person Signing
Jeffrey A. Rolsten, Group Category Manager

Address
200 Piedmont Ave., SE, Suite 2000, West Tower, Atlanta, GA 30334-9010

**STATE OF GEORGIA
STATEWIDE CONTRACT
Attachment 1**

Contract Terms and Conditions for Software, Products and Ancillary Services

A. DEFINITIONS AND GENERAL INFORMATION

1. **Definitions.** The following words shall be defined as set forth below:
 - (i) **"Affiliate"** of a party means an entity controlling, controlled by, or under common control with, that party.
 - (ii) **"Agency"** means the Department of Administrative Services of the State of Georgia.
 - (iii) **"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.
 - (iv) **"Contract"** or **"Statewide Contract"** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
 - (v) **"Contractor"** means the provider(s) of the software, products and services under the Statewide Contract as identified in the Statewide Contract Form.
 - (vi) **"Contractor Reseller"** means a third party authorized by Contractor in a certain geography or group of geographies to purchase certain Products and Support as a first tier reseller directly from Contractor for resale to the State and User Agencies, subject to the terms, conditions, and pricing of this Statewide Contract.
 - (vii) **"Deliverable"** means the tangible work product resulting from the performance of Services excluding Products and Custom Products.
 - (viii) **"Hardware"** means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
 - (ix) **"HP Branded"** means Products and Services bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
 - (x) **"Other Service(s)"** means consulting, integration, training, or other technical services performed by Contractor under a Statement of Work or other Transaction Document.
 - (xi) **"Personally Identifiable Information (PII)"** means information, which can be used to distinguish or trace an individual's identity – either alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual.
 - (xii) **"Product"** means Hardware and Software listed in Contractor's standard price list at the time of Contractor's acceptance of User Agency order, and including products that are modified, altered, or customized to meet User Agency requirements ("Custom Products").
 - (xiii) **"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.

- (xiv) **"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.
- (xv) **"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.
- (xvi) **"Service(s)"** means Support and Other Services.
- (xvii) **"Software"** means machine-readable instructions and data (and copies thereof), and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- (xviii) **"Software License Information (SLI)"** is license information that is specific to a Software Product. SLI may be found in a file in the Software Product's directory or as information that accompanies the Software Product or in Contractor quotations. SLI is available upon request.
- (xix) **"Specification"** means technical information about Products published in Contractor Product manuals, user documentation, and technical data sheets in effect on the date Contractor delivers Products to User Agency.
- (xx) **"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.
- (xxi) **"Statement of Work"** means an executed document so titled that describes the Services to be performed by Contractor under the Other Services Terms, Support Terms, or Education Services Terms sections.
- (xxii) **"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.
- (xxiii) **"Support"** means Hardware maintenance and repair, Software maintenance, training, installation and configuration, and other standard support services provided by Contractor and include "Custom Support," which is any agreed non-standard Support as described in a Statement of Work.
- (xxiv) **"Transaction Document(s)"** means an accepted User Agency Purchase Instrument

(excluding pre-printed terms) and in relation to that Purchase Instrument, valid Contractor quotations, Contractor published technical data sheets or service descriptions, Contractor limited warranty statements delivered with or otherwise made available to User Agency with Products, and mutually executed Statements of Work, all as provided by Contractor, or other mutually executed documents that reference this Statewide Contract.

(xxv) **"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.

(xxvi) **"Version"** means a release of Software that contains new features, enhancements, and/or maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by Contractor to its customers (also called a "Release").

2. **Certified Source of Supply.** 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 software, products and 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 or Purchase Instruments of Agency or User Agencies 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 software provided by Contractor pursuant to this Statewide Contract whether or not Contractor is the publisher of such software.
4. **Reporting Requirements and Administrative Fees.** Contractor shall pay all Administrative Fees and provide reports to this Statewide Contract, as set forth in Exhibit 1A (Administrative Fees and Reporting). The Quarterly Sales Report format will be provided in the format included in Exhibit 1B (except for the NIGP code), or as may be modified by mutual agreement.

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. Pricing for renewals will be by mutual agreement. 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 software, products 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 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.

2.1 License Grant. Contractor shall provide Software licenses in compliance with the Specifications 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, non-transferable (except to successor in interest and subject to the terms of section C.2.4 – License Transfer), royalty-free license and/or sublicense to "Use," in object form, the Version or Release of HP Branded Software delivered from a Contractor accepted Purchase Instrument. For purposes of this Statewide Contract, unless otherwise specified in the SLI, "Use" means to install, store, load, execute, and display one (1) copy of Software and accompanying documentation on one (1) device at a time for User Agency's internal business purposes or as otherwise specified in accordance with the licensing capacity (if any) and for the period of time specified in the Statewide Contract. User Agencies' Use of such Software is subject to these license terms, the applicable Use restrictions and authorizations, and applicable licensed locations for the Software specified in SLI. The usage terms specified in the SLI for HP Branded Software will not be materially more restrictive than the Use defined in this section C.2.1. For non-HP Branded Software, the third party supplier's license terms and use restrictions found in the SLI will solely govern its use.

2.2 License Term and Termination. Unless a different time period is stated in the applicable SLI or quotation, then User Agency shall be granted a perpetual license., provided, however that Contractor may terminate the Software license upon notice for failure to comply with this Statewide Contract. Immediately upon termination of the Software license or upon expiration of any individual limited term license, User Agency will destroy the Software and all copies of the Software subject to the termination or expiration or return them to Contractor. User Agency shall remove and destroy or return to Contractor any copies of the Software that are merged into adaptations, except for individual pieces of data in User Agency's database. User Agency may retain one copy of the Software subsequent to termination solely for archival purposes only. At Contractor's request, User Agency will certify in writing to Contractor that User Agency has complied with these requirements.

2.3 Copy and Adaptation. User Agency may copy or make adaptations of the Software for archival purposes or as necessary for the authorized Use of the Software. 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; and
- (ii) For disaster recovery and disaster recovery testing purposes (one (1) copy only); and
- (iii) To store the Software at any off premise location which the User Agencies use for storage purposes.

If User Agency makes a copy for backup purposes and installs such copy on a backup device, unless otherwise provided in the SLI, User Agency may not operate such backup installation of the Software without paying an additional license fee, except in cases where the original device becomes inoperable. If a copy is activated on a backup device in response to failure of the original device, the Use on the backup device must be discontinued when the original or replacement device becomes operable. User Agency may not copy the Software onto or otherwise Use or make it available on, to, or through any public or external distributed network. Licenses that allow Use over User Agency's intranet require restricted access by authorized users only.

- 2.4 License Transfer.** User Agency may not sublicense, assign, transfer, rent, or lease the Software or the Software License to any other party except as permitted in this section. Except as provided in section C.3.2(iii) (Designated System) below, HP Branded Software licenses are transferable subject to Contractor's prior written authorization and payment to Contractor of any applicable fees or compliance with applicable third party terms. Upon transfer of the Software License User Agency's rights under the License will terminate and User Agency will immediately deliver the Software and all copies to the transferee. The transferee must agree in writing to the terms of the Software License, and, upon such agreement, the transferee will be considered the "Customer" for purposes of the license terms. User Agency may transfer firmware only upon transfer of the associated Hardware.
- 2.5 Compliance.** State agrees that Contractor may audit User Agency's compliance with the Software License terms. Any such audit would be at Contractor's expense, require reasonable notice, and would be performed during normal business hours.
- 2.6 Implied License.** There are no implied licenses.
- 2.7 Ownership.** The Software License confers no title or ownership and is not a sale of any rights in the Software. Third-party suppliers are intended beneficiaries under this Statewide Contract and independently may protect their rights in the Software in the event of any infringement. All rights not expressly granted to User Agency are reserved solely to Contractor or its suppliers.
- 2.8 Acceptance.** User Agency and Contractor will agree upon any necessary acceptance process.
- 2.9 Upgrades.** Software Versions or maintenance updates, if available, may be ordered separately or may be available through Software Support. Contractor reserves the right to require additional licenses and fees for Software Versions or separately purchased maintenance updates or for Use of the Software in conjunction with upgraded Hardware or Software. When User Agency obtains a license for a new Software Version, through Software Support or purchases an upgrade license to a new Version, User Agency's Software License for the earlier Version shall terminate. Software Versions are subject to the license terms in effect on the date that Contractor delivers or makes the Version available to User Agency.

3. Software Exclusions and Restrictions.

- 3.1 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) Permit third-party access to, or use of, the Software, except as permitted in section 3.2(vii) (Consultant Use and Access);
- (iv) ~~Reverse engineer~~, modify, disassemble, decrypt, make derivative works of, or decompile the Software; or
- (v) Remove any identification or notices contained on the Software.

3.2 Software License Restrictions.

- (i) **Use Restrictions.** User Agencies may not exceed the number of licenses, agents, tiers, nodes, seats, or other Use restrictions or authorizations agreed to and paid for by User Agencies. Some Software may require license keys or contain other technical protection measures. User Agencies acknowledge that Contractor may monitor User Agencies' compliance with Use restrictions and authorizations remotely, or otherwise. If Contractor makes a license management program available which records and reports license usage information, User Agencies agrees to appropriately install, configure and execute such license management program beginning no later than one hundred and eighty (180) days from the date it is made available to User Agencies and continuing for the period that the software is used.
- (ii) **Copyright Notice.** User Agencies must reproduce all copyright notices that appear in or on the Software (including documentation) on all permitted copies or adaptations. Copies of documentation are limited to internal use.
- (iii) **Designated System.** Notwithstanding anything to the contrary herein, the Software License for certain Software, as identified in SLI, is non-transferable and for Use only on a computer system owned, controlled, or operated by or solely on behalf of User Agencies and may be further identified by Contractor by the combination of a unique number and a specific system type ("Designated System") and such license will terminate in the event of a change in either the system number or system type, an unauthorized relocation, or if the Designated System ceases to be within the possession or control of User Agencies.
- (iv) **OS Software.** Operating system Software may only be used when operating the associated Hardware in configurations as approved, sold, or subsequently upgraded by Contractor.
- (v) **Changes.** Regarding modification, reverse engineering, disassembly, decryption, decompilation, or making derivative works of the Software, where User Agencies has other rights mandated under statute, User Agencies will provide Contractor with reasonably detailed information regarding any intended modifications, reverse engineering, disassembly, decryption, or decompilation and the purposes therefore.
- (vi) **Use for Service Provision.** Extending the Use of Software to any person or entity other than User Agencies as a function of providing services, (i.e.; making the Software available through a commercial timesharing or service bureau) must be authorized in writing by Contractor prior to such use and may require additional licenses and fees.
- (vii) **Consultant Use and Access.** Subject to the terms and conditions of this Statewide Contract, User Agencies may permit a consultant or subcontractor to Use Software at the licensed location for the sole purpose of providing services to User Agencies. User Agencies will be responsible and directly liable to Contractor for consultants' compliance with this Statewide Contract.

3.3 Software Warranty.

- (i) **General.** HP Branded Software will materially conform to its Specifications. If a

warranty period is not specified for HP Branded Software, the warranty period will be ninety (90) days from the delivery date.

- (ii) **Virus Warranty.** Contractor warrants that any physical media containing HP Branded Software will be shipped free of viruses.
- (iii) **Warranty Limitation.** Contractor does not warrant that the operation of Software will be uninterrupted or error free, or that Software will operate in Hardware and Software combinations other than as expressly required by Contractor in the Product Specifications or that Software will meet requirements specified by the State.
- (iv) **Exclusive Remedies.** If notified of a valid warranty claim during the warranty period, Contractor will, at its option, correct the warranty defect for HP Branded Software, or replace such Software. If Contractor is unable, within a reasonable time, to complete the correction, or replace such Software, User Agency will be entitled to a refund of the purchase price paid upon prompt return of such Software to Contractor. Contractor Agency will pay expenses for return of such Software to Contractor. Contractor will pay expenses for shipment of repaired or replacement Software to User Agency. This section C.3.3 states Contractor's entire liability for Software warranty claims.

4. 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.

5. Delivery and Acceptance. All Software shall be made available either by enabling electronic transmission to, or electronic access from online download by User Agency, or Software and Products shall be shipped F.O.B. destination Freight Prepaid for standard delivery. Destination shall be the location(s) specified in the Purchase Instrument. All shipped items shall be at the Contractor's risk until they have been delivered to the User Agency. Title to Hardware will pass to User Agency upon delivery to the "ship to" address or, if special shipping arrangements are agreed to, upon delivery to User Agency's carrier or designee, unless otherwise agreed by User Agency and Contractor. User Agency and Contractor shall agree to any necessary acceptance procedures for Hardware and Software. 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, subject to the warranty terms herein.

- (i) **Fixed Pricing Services.** Certain Other Services as defined by Contractor's Response will be provided on a fixed price basis, subject to the discounts and fees identified in Contractor's Response, and will be delivered to User Agency in accordance with the schedule for delivering milestones and acceptance criteria, as defined by the Purchase Instrument or such other written Transaction Document and 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 Other 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

Other Services to a User Agency on a time and materials basis, Contractor must provide work progress reports to the User Agency on a weekly basis.

- (iii) **Acceptance Process.** User Agency and Contractor shall agree to any necessary acceptance procedures for Other Services, which are subject to the warranty in subsection (v) below. Any necessary acceptance process for Deliverables shall be agreed by the User Agency and Contractor, and Deliverables are subject to the warranty in subsection (iv) below.
- (iv) **Deliverable Warranty.** Contractor warrants that the final Deliverable provided to User Agency will substantially conform to the requirements set forth in the applicable Transaction Document for such Deliverable for a period of thirty (30) days following the date of acceptance. If User Agency provides written notice to Contractor, within thirty (30) days after acceptance of the Deliverable, of any non-conformance with this warranty, Contractor will attempt to correct any non-conformance confirmed by Contractor within a reasonable time. User Agency will provide Contractor with sufficient information to permit Contractor to confirm such non-conformance, and will provide assistance and cooperation as reasonably requested by Contractor to permit Contractor to attempt to correct such non-conformance. If Contractor, at its commercially reasonable discretion, is unable to comply with the foregoing obligations, Contractor will refund a reasonable portion of the price stated in the Transaction Document applicable to that Deliverable upon User Agency's prompt return of the affected Deliverable to Contractor. This Deliverables warranty and associated remedies do not apply to Products or Custom Products, even if they can be used in connection with the Other Services or Deliverables.

Contractor will not be responsible for a breach of warranty that would not have occurred but for:

- (a) changes to a Deliverable that were implemented by User Agency or a third party without Contractor's prior written authorization;
- (b) changes to software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or the Other Services otherwise rely, made by User Agency or a third party, including the vendors of such software or hardware without Contractor's prior written authorization;
- (c) errors or defects in software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or Other Services otherwise rely (excluding Contractor Branded Hardware and Software provided in connection with the Deliverable); or
- (d) improper use or operation of a Deliverable or any portion thereof.

Disclaimer. CONTRACTOR DOES NOT WARRANT THAT DELIVERABLES WILL BE ERROR FREE OR THAT THEY WILL BE COMPATIBLE WITH PRESENT OR FUTURE PRODUCTS OF CONTRACTOR OR OTHER VENDORS.

- (v) **Other Services Warranty.** Contractor warrants that the Other Services will be performed in a professional and workmanlike manner. Contractor will re-perform any Other Services not performed in accordance with the warranty in this subsection (v), provided that Contractor receives written notice from User Agency within thirty (30) days after such Other Services were performed.
- (vi) **Acceptance Procedure.** The User Agency and Contract will agree upon any necessary acceptance procedure is set forth in the relevant Transaction Document, though such procedure and associated remedies do not apply to Products or Custom Products, even if they can be used in connection with the Other Services or Deliverables.

6. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. Agency reserves the right to select other contractors to provide software, products and services similar to the software, products and services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar software, products and services from other contractors.
7. **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 prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. 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 Software, Products, and Services purchased by the User Agencies under the Statewide Contract at the billing addresses specified in the Purchase Instruments. If applicable, the invoice for Other Services shall be accompanied by a schedule which details the Other 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. User Agencies shall pay all approved invoices in arrears and in accordance with applicable provisions of State law. Unless otherwise agreed in writing by the User 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, and Services provided by or on behalf of the Contractor under the Statewide Contract. Except as otherwise set forth in a Statement of Work, the Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Statewide
3. **Retainage.** Notwithstanding Paragraph (D)(1) of this Statewide Contract, User Agency may have the right to retain Fifteen Percent (15%) ("Retainage") of the total payment amount for 1) any HP Other Services as defined in a SOW-based Purchase Instrument, or 2) HP's authorized Reseller services either of which is \$250,000.00 or more. User Agency shall release the Retainage to HP or HP's authorized Reseller only upon final and complete delivery of all services 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. This section does not apply to purchases of Products or Software.
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 Software, Products, and Services as required by the Statewide Contract, 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 contractually required, or as included in a Transaction Document or Purchase Instrument, causes the User Agencies to incur costs, the User Agency may procure substitute goods or services from another source as termination damages only, charge the difference between the Statewide Contract and the substitute contract ("Additional Costs") to the defaulting Contractor to the extent that the breach causing re-procurement is Contractor's and the User Agencies may deduct the Additional Costs from any amounts payable to Contractor. 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.

In the event that Contractor provides an invoice containing inaccurate charges, the User Agency agrees to pay the portion of the invoice that is accurate within the thirty (30) day period and provide to Contractor in writing a description of the inaccurate charges within such period. Contractor will provide a corrected invoice to the State after the discussion, and the State will pay such invoice promptly thereafter.

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, after written notice to Contractor and a reasonable opportunity to cure.
6. **Leasing/Financing.** Contractor is authorized to offer leasing and/or financing arrangements to User Agencies. Contractor has not agreed to Agency's leasing/financing documents as included in the RFX. Any leasing/financing documents will be negotiated between the User Agency and the Contractor or the Contractor's designated third party.
7. **Payment Terms.** Except as otherwise provide by Georgia law and section D.4 (Delay of Payment Due to Contractor's Failure), User Agency agrees to pay, all invoiced amounts within thirty (30) days from Contactor's invoice date. In the event a User Agency fails to make payment on one or more Purchase Instruments for which the User Agency has received an undisputed invoice, Contractor may, upon written notice to Agency, refuse to accept any additional Purchase Instruments from that User Agency until such time as the User Agency has paid all outstanding undisputed invoices.

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 and provide Contractor with written notification, though not with advance for any one or more of the following reasons:
 - 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 Contractor furnished any written statement, representation or certification in connection with the Statewide Contract or the bidding process that is reasonably determined to be materially: (1) false, (2) deceptive, (3) incorrect, or (4) incomplete.
- (ii) **Termination for Cause.** The occurrence of any one or more of the following "Default 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 in accordance with the Specifications, 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 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;
 - c. 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; or
 - d. 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, only if such infringement pertains to this Contract and Contractor has failed or refused to resolve such infringement claim in accordance with section G.4 (Patent/Copyright Infringement Indemnification).
- (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 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.
- (v) **Effect.** For any termination under this section E.1, Contractor shall be entitled to compensation from User Agencies upon submission of invoices and back-up documentation (if requested), for Products, Support, and/or Services provided under the Statewide Contract to User Agencies up to and including the date of termination.

2. **Agency's Notice of Default.** If there is a Default Event caused by the Contractor, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within a reasonable period of time (not to exceed thirty (30) days) as specified in 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 Services from another source and, as termination damages only, charge the difference between the Statewide Contract and the substitute contract to the defaulting Contractor to the extent that the breach causing re-procurement is Contractor's. The Agency shall mitigate the damages by using reasonable efforts to re-procure similarly scoped and priced Software and Services; 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.** Subject to the terms of section E.3.(ii)(b) and 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.**

a. 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.

b. 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 back-up documentation (if requested). 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, for which the User Agency has paid, 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.

F. CONFIDENTIAL INFORMATION

1. Access to Confidential Data. The Contractor's employees, agents and subcontractors may

have access to confidential data, 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. No later than ten (10) days from the date this Statewide Contract is fully executed, Contractor shall comply with the following requirements:

- (i) The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
- (ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;
- (iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Statewide Contract; and
- (iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Statewide Contract.

The 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, the terms of which the parties may agree to negotiate. Contractor understands and agrees that its unreasonable 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 authorized by law and with the written consent of the State, either during the period of the Statewide Contract or thereafter. Any data supplied to or created by the Contractor shall be considered the property of the State. The Contractor must return any and all confidential 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.** The Contractor shall immediately report in writing to the State any unauthorized disclosure of confidential information and, 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 obligations under the Statewide Contract shall survive termination of the Statewide Contract.
6. **Contractor Confidential Information.**
 - (I) In connection with providing performing this Statewide Contract Contractor may provide to the State or User Agency technical information, information about product plans and strategies, promotions, customer lists and related technical, financial or business information. Subject to the exclusions in section F.6.(iv) below, such information will be treated as "HP Confidential Information" if one of the following apply:
 - a. If tangible and directly provided by Contractor to the State, the information is marked as confidential at the time of disclosure, or
 - b. If disclosed orally, electronically, or visually, but the Contractor states or otherwise indicates that the information is confidential.
 - c. If, considering the nature of the information and circumstances of its disclosure, a reasonable person would understand it to be confidential.

- (ii) Confidential Information may be used by the State or User Agency only with respect to the performance of its obligations under this Statewide Contract, and only by the employees of the State or User Agency and their employees, agents or contractors who have a need to know such information for purposes of this Statewide Contract. The State or User Agency will protect, and cause its employees, agents, and contractors to protect, the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the State or User Agency uses to protect its own confidential information of a like nature.
- (iii) The confidentiality obligation will be for a period of three (3) years after the date of disclosure.
- (iv) The confidentiality obligations of the State or User Agency will not extend to information that:
 - a. was in the State or User Agency 's possession before receipt from the disclosing party;
 - b. is or becomes publicly known without breach by the receiving party;
 - c. is rightfully received by the State or User Agency from a third party without a duty of confidentiality;
 - d. is independently developed or learned by the receiving party;
 - e. is disclosed by the State or User Agency with Contractor's prior written approval; or
 - f. is required to be disclosed by the State or User Agency by a governmental agency or law.

Notwithstanding any provision to the contrary, all business information with respect to any unpublished or future Contractor, State, or User Agency products or services is deemed Confidential Information for purposes of this section F.6.

G. INDEMNIFICATION

1. **Contractor's Indemnification Obligation.** Subject to the approval of Contractor's counsel by the Attorney General of Georgia, which shall not be unreasonably withheld or delayed, the Contractor agrees to defend and settle and indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from all third party claims against Indemnified Parties and, in connection with such claims, Contractor will pay all defense costs, court-awarded damages, settlement amounts (including court costs and reasonable attorneys' fees) for bodily injury or death of any person or direct damages to tangible property to the extent caused by:

- (i) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor in the performance of this Statewide Contract;
- (ii) Claims, demands, or lawsuits that, with respect to the products or any parts thereof, allege product liability, strict product liability, or any variation thereof; or
- (iii) Any failure by the Contractor to comply with the laws applicable to Contractor's business.

This indemnification is conditioned upon the following: the Indemnified Parties shall give Contractor prompt notice of any claim or potential claim covered by this section and shall give Contractor reasonable evidentiary assistance and, complete control of the defense thereof; provided, however, that failure to give such notice shall not limit Contractor's obligations hereunder except to the extent Contractor is prejudiced thereby. The foregoing shall not apply to the extent such liability, injuries, claims, damages, or loss was caused by the acts or omissions of the Indemnified Parties.

2. **Duty to Reimburse State Tort Claims Fund.** To the extent Contractor fails to pay any damage or loss as covered by this indemnification and therefore, such damage or loss is covered by the State of Georgia Tort Claims Fund ("the Fund"), and payment is made from the Fund, the Contractor agrees to reimburse the Fund.
3. **Litigation and Settlements.** Subject to the approval by the Attorney General of Georgia on behalf of the State, which shall not be unreasonably withheld or delayed, no settlement or compromise of any claim, loss or damage entered into by one party shall be binding upon the other party unless approved in writing by the other party. 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, subject to the approval by the Attorney General of Georgia on behalf of the State, which shall not be unreasonably withheld or delayed.
4. **Patent/Copyright Infringement Indemnification – Products and Support.** Subject to the approval of Contractor's counsel by the Attorney General of Georgia, which shall not be unreasonably withheld or delayed, Contractor shall, at its own expense, be entitled to and shall have the duty to defend or settle any third party claim or suit instituted against the State alleging that the HP Branded Products or Support provided under this Statewide Contract infringes intellectual property rights in the country where they were sold, provided: (a) the State gives the Contractor immediate notice in writing of the institution of such claim or suit except that failure to give such notice shall not limit Contractor's obligations hereunder except to the extent that Contractor is prejudiced thereby, (b) grants Contractor sole control of the defense of the claim or suit, and (c) gives Contractor all available information, assistance and authority to enable Contractor to do so. Contractor will pay infringement claim defense costs, Contractor-negotiated settlement amounts (State-negotiated settlement amounts in the event Contractor's accepts such settlement), and court-awarded damages.

In case a claim appears likely, Contractor shall, at its option and expense:

- (i) Procure for the State the right or license to continue using the affected item;
- (ii) Replace the affected item with one that is functionally equivalent; or
- (iii) ~~Modify the HP Branded Software or Support so that it becomes non-infringing.~~

If Contractor determines that none of these alternatives is reasonably available, then Contractor will issue a refund equal to:

- (i) the purchase price paid for the affected item if within one year of delivery, or the State's net book value thereafter, or
- (ii) if the claim relates to infringing Support, the lesser of twelve (12) months charges for the claimed infringing Support or the amount paid by the State for that Support.

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) Contractor's compliance with State, User Agency, or third party designs, plans, specifications, instructions, or technical information including Custom Products or Custom Support modified, altered, or customized to meet User Agency requirements;
- (ii) State's or Agency's use with products or services that are not HP Branded;
- (iii) State's or User Agency's non-compliance with the Specifications or the Transaction Documents;
- (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;
- (v) Modifications made by State, User Agency, or a third party; or
- (vi) Any open source or freeware software.

This section G.4 provides the Indemnified Parties' exclusive remedy for third party claims of intellectual property infringement pursuant to this Statewide Contract.

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

H. INSURANCE

Contractor shall provide all insurance as required by Exhibit 1C (Standard Insurance Requirements).

I. BONDS

The terms of the RFX and this Statewide Contract do not require Contractor to provide bonds.

J. WARRANTIES

1. **Reserved.**
2. **Reserved.**
3. **Compliance with Federal Safety Acts.** Contractor warrants and guarantees to the State that the 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.
4. **Originality and Title to Concepts, Materials, and Products Produced.** Contractor represents 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 that it is the owner of or otherwise has the right to use, license, and distribute the Software, Products, and Services contemplated by the Statewide Contract.
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 Contractor's Specifications.
6. **Authority to Enter into Contract.** The Contractor represents 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 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 Hardware assigned or conveyed to the State or Software licensed to the State is good and that transfer of title or license to the State is rightful and that all Products, Software, or Services shall be delivered free of any security interest or other lien or encumbrance. Risk of loss or damage, and title to any Hardware shall transfer to User Agencies upon delivery to the "ship to" address or, if special shipping arrangements are agreed to, upon delivery to User Agencies' carrier or designee. User Agency and Contractor will agree to any necessary acceptance procedures.
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, as set forth in RFX Attachment A, eRFP Document, section 3 (General Business Requirements). 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 represents that all persons assigned to perform Services under this Contract are either lawful employees of Contractor (or any Affiliate thereof) or lawful employees of a subcontractor authorized by the State Entity as specified in the RFX. All persons assigned to perform Services under this Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services.

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 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.** State Entity requires that a criminal background investigation be made of any and all Contractor personnel utilized to provide Services to the State. Contractor's standard pre-employment background checks will meet the following minimum criteria, where legally permissible and culturally acceptable, for all Contractor personnel that provided Services hereunder: (a) five-year criminal check (includes felony and misdemeanor); (b) employment history (confirmation of last two jobs); (c) education (confirmation of highest degree); and (d) Sex Offender registry included. Contractor represents that Contractor shall refrain from assigning personnel to any task under this Contract if such investigation 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 Contract. Such access may be terminated at the sole discretion of the State. The Contractor shall provide immediate notice to State Entity of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor represents that Contractor shall provide notice to State Entity 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. Nothing in this section will prevent User Agencies' from removing Contractor personnel based upon reasonable security concerns.

12. Reserved.

13. General Warranty Provisions.

- (i) Warranty Statements. Contractor limited warranty statements for Software and Support are contained in their respective sections of this Statewide Contract. The limited warranties in this Statewide Contract are subject to the terms, limitations, and exclusions contained in the limited warranty statement provided for the Product in the country where that Product is located when the warranty claim is made. A different limited warranty statement may apply and be quoted if the Product is purchased as part of a system.
- (ii) Transfer. Warranties are transferable to another party for the remainder of the warranty period subject to Contractor license transfer policies and any assignment restrictions.
- (iii) Delivery Date. Warranties begin on the date of delivery.
- (iv) Exclusions. Contractor is not obligated to provide warranty services or Support for any claims resulting from:
 - a. improper site preparation, or site or environmental conditions that do not conform to Contractor's site specifications;
 - b. User Agency's non-compliance with Specifications or Transaction Documents;
 - c. improper or inadequate maintenance or calibration;
 - d. User Agency or third-party media, software, interfacing, supplies, or other products;
 - e. modifications not performed or authorized by Contractor;
 - f. virus, infection, worm or similar malicious code not introduced by Contractor; or
 - g. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by User Agency, or other causes beyond Contractor's control. This does not relieve Contractor of its responsibility or liability for loss or damage that occurs in transit.
- (v) Non-HP Branded Products and Support. Contractor provides third-party products, software, and services that are not HP Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.
- (vi) Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THIS STATEWIDE CONTRACT ARE EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY CONTRACTOR OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW, CONTRACTOR DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ~~ANY IMPLIED WARRANTIES OF~~ MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

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 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 Software License Information (also known as Additional License Authorizations), attached as Exhibits 1D (Software License Information For Data Center Management Software) and 1E (Software License Information For Network Management Software);
 - (ii)** Second, by giving preference to Attachment 1 – the Statewide Contract Terms and Conditions for Software, Products, and Ancillary Services.
 - (iii)** Third, by giving preference to the specific provisions of the RFX.
 - (iv)** Fourth, 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 Contractor personnel conduct, security, safety, confidentiality, and ethics while performing onsite work. Further, the provisions of O.C.G.A. Section 45-1 0-20 et seq., have not and must not be violated under the terms of this Statewide Contract.

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 as follows:

- (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this 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 that may occur between the State and 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 Contractor may elect to submit the matter for non-binding mediation. Either the State or 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 if the cost to either party exceeds five thousand dollars (\$5,000.00), either party may cancel the non-binding mediation by written notice.

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.*, and the Georgia Trade Secrets Act of 1990, O.C.G.A. § 10-1-760 *et seq.*

No party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial non-binding 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. Notwithstanding the foregoing, no consent shall be required for Contractor's use of its authorized reseller/agents and its authorized Service providers in the performance of 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, which are applicable to the work performed by 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. Contractor shall not be deemed to be in breach of this Statewide

Contract for any performance delays by Contractor due to Agency's or User Agency's request for replacement of a subcontractor under this section L.10 provided Contractor completes such replacement within thirty (30) days of the Contractor's receipt of such request.

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 applicable laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. 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. **Reserved.**
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 Statewide Contract requirements 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. 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, at its cost, any orders from the State to Contractor for Software and Services, including invoices and State payment records associated with such orders 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 appropriate reimbursement for overcharges and Contractor reserves the right to charge the State for appropriate reimbursement of underpayments. Evidence of criminal conduct will be turned over to the proper authorities.

Such audits may be conducted only in accordance with the following:

- (i) State will provide Contractor with thirty (30) days prior written notice of each audit;
- (ii) The parties will work together in good faith to establish an audit process that does not interfere with Contractor's ability to perform its obligations under this Statewide Contract

or any other agreement, or compromise any reasonable security processes or procedures;

- (iii) The parties agree to negotiate in good faith to enter into a confidentiality agreement to reasonably protect Contractor's confidential information, which is subject to the Georgia Open Records Act, O.C.G.A. Section 50-18-70 *et seq.*, and the Georgia Trade Secrets Act of 1990, O.C.G.A. Section 10-1-760 *et seq.*, except that failure to reach agreement shall not void Agency's right to conduct an audit;
- (iv) In the event the parties agree that information disclosed to the State during the audit should not have been disclosed to the State, the State agrees to promptly return such information to Contractor without publicly disclosing such information.

In no event will Contractor be required to provide User Agency, the State, or Federal Government (subject to the laws applicable to the State, the Federal Government, or their auditors) with access to Contractor's internal cost and resource utilization data, or data related to employees or other customers of Contractor. For avoidance of doubt, this section L.23 does not to limit the Federal's Government's statutory audit rights.

- 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 ("Force Majeure"). 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 unless such delay is due to a Force Majeure event.
32. **Limitation of Contractor's Liability to the State.** Contractor's liability to the State under this Statewide Contract is limited to the greater of \$1,000,000 or the amount payable by the User Agency to Contractor for the relevant order (per occurrence). Neither the State nor Contractor will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Statewide Contract; nor any liability which may not be excluded or limited by applicable law.

Except as provided in this section L.32 no limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor 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.

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. Any terms of this Statewide Contract, which by their nature extend beyond the date of expiration, termination or cancellation of this Statewide Contract will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
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. **Reserved.**

M. GENERAL TERMS

1. **Intellectual Property Rights.** No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted by either party to the other except as expressly provided under this Statewide Contract. State will not register or use any mark or internet domain name that

contains Contractor's trademarks (e.g., "HP," "hp," or "Hewlett-Packard").

2. **Contractor Business Partners and Resellers.** Subject to the terms and pricing of this Statewide Contract, Contractor Business Partners and Contractor Resellers may participate as follows:

(i) **Agents.** In order for Contractor Business Partners to receive "credit" for the sale, User Agencies' purchase orders shall be issued to Contractor, deliveries shall be fulfilled by Contractor, and the Contractor Business Partner's identification number must be included on the purchase order(s).

(ii) **Resellers.** Contractor Resellers are eligible to accept and fulfill orders received from User Agencies and issue corresponding invoices for the Products and Support purchased hereunder. Orders for Products and Services will be accepted by Contractor from Contractor Reseller(s) subject to local availability of the Products and Services. Contractor will use commercially reasonable efforts to deliver Products to Contractor's Resellers within the quoted availability for such Products. User Agencies' right to purchase Products and Services from any particular Contractor Reseller under this Statewide Contract will terminate automatically upon the expiration or termination of this Statewide Contract, Contractor Reseller ceases to be an authorized Reseller of Contractor Products and/or Services, Contractor's termination of the Contractor Reseller's agreement specific to this Statewide Contract, or the State rescinds its approval of the Contractor Reseller for this Statewide Contract.

3. **Termination.** Contractor may terminate this Statewide Contract on written notice if the Agency fails to comply with the terms of this Statewide Contract after it has been notified in writing of the nature of the failure and been provided with a reasonable time to cure the failure.

4. **Bankruptcy.** If the State becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Contractor may terminate this Statewide Contract without notice and may cancel any unfulfilled obligations.

N. **Contractor-User Agency Terms.** The terms and conditions of Exhibit 1E (Contractor-User Agency Terms), shall also apply to orders between Contractor and User Agencies under this Statewide Contract.

EXHIBIT 1A
ADMINISTRATIVE FEES AND REPORTING

Pursuant to O.C.G.A. Section 50-5-51(10), DOAS has the authority to collect moneys, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to O.C.G.A. Section 50-5-57. These administrative fees are used by DOAS to fund various initiatives, including the administration of existing and new statewide contracts, training, and technology. For this statewide contract, DOAS requires each supplier to pay to DOAS an administrative fee on all sales pursuant to this Statewide Contract. The administrative fee amount for this statewide contract is **1.5%**. **EACH SUPPLIER MUST SUBMIT PRICING IN ITS COST PROPOSAL WHICH INCLUDES THE IDENTIFIED PERCENT ADMINISTRATIVE FEE (HEREINAFTER, "THE FEE") BUILT INTO THE SUBMITTED PRICING.** Contractor agrees that the Fee will not be identified separately from the product and/or service pricing offered to User Agencies wherever that pricing may appear (website, catalog, invoices, etc.). This Fee will be collected by Contractor and remitted to DOAS in accordance with the following paragraphs.

- a. **Quarterly Payment and Sales Reporting Requirements.** The parties agree that the Fees and the corresponding Quarterly Sales Report (Exhibit 1B), which identifies the total sales pursuant to this Statewide Contract for the corresponding fiscal quarter, shall be submitted by Contractor to DOAS. The total sales reported in the Quarterly Sales Report and the submission of the corresponding Fees should be limited to sales in which the Contractor has invoiced Authorized Users. The Fees and the Quarterly Sales Report must be received by DOAS on or before the Contractor's Payment Due Date as defined in the table below:

DOAS' Fiscal Quarters	Months	Contractor's Payment Due Date
Quarter 1	July 1 st – September 30 th	November 15 th
Quarter 2	October 1 st – December 31 st	February 15 th
Quarter 3	January 1 st – March 31 st	May 15 th
Quarter 4	April 1 st – June 30 th	August 15 th

At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report. In the event no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating no sales have occurred. No later than the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, Contractor shall remit a check payable to DOAS for the Fees, which check shall include the note "administrative fee" and the contract number. Contractor shall send the completed report electronically to the e-mail address identified by DOAS and remit the check to:

Department of Administrative Services
Finance & Administration Division
 Finance and Administration Division Director
 Sloppy Floyd Building
 200 Piedmont Avenue, S.E.
 Suite 1820, West Tower
 Atlanta, Georgia 30334-9010

- b. **Auditing and Contract Close Out.** All sales reports and Fee payments shall be subject to audit in accordance with the audit terms of the Statewide Contract, specifically section L.23 (Record Retention and Access). In no event shall Contractor retain any amount of money in excess of the

