



Statewide Contract Information Sheet

Statewide Contract Number	99999-SPD-SPD0000060	NIGP Code	See page 5
Name of Contract	Statewide Contracts for Software and Ancillary Services		
Effective Date	August 2012	Expiration Date	April 30, 2025
Contract Table of Contents			
Suppliers Awarded	6	Contract Information:	Categories 1, 2, 3, 4 Convenience
Contract Information for Supplier			Page Number
Dell Marketing, LP (Categories 1, 2 and 3)			2, 3
Additional Contract Information			
General Contract Information			2
Category Description			4
DOAS Contact Information			5



Supplier Information Sheet

Contract Information	
Statewide Contract Number	99999-SPD-SPD0000060-006
Contract Name	Statewide Contracts for Software and Ancillary Services
PeopleSoft Supplier Number	0000015689
Supplier Name & Address	
Dell Marketing, LP (Categories 1, 2 and 3) One Dell Way Round Rock, TX 78682	
Contract Administrator	
Jennifer Sherman Contract Program Manager Dell Legal 512-723-0818 Jennifer.Sherman@Dell.com	
Contact Details	
Ordering Information	To place an order: 1. Obtain a new quote from: Mike Stynda Solutions Account Executive AL/GA/MS Dell, Inc. 727-365-6618 Mike.Stynda@dell.com (DOAS recommends obtaining quotes from more than one supplier.) 2. Verify %age discount matches contract 3. Submit order to vendor per instructions provided on vendor quote according to your preferred payment method (PO, Pcard or other).



Remitting Information	Dell Marketing, L.P. c/o Dell USA L.P. P.O. Box 534118 Atlanta, GA 30353-4118
Delivery Days	Purchase Order must be placed prior to download or installation of each copy of software and prior to each subsequent renewal term.
Discounts	See minimum discounts on cost sheet.
Payment Terms	Net 30 Days
Bid Offer Includes	State and Local Government
Acceptable payment method	Supplier will accept Purchase Orders and the Purchasing Card under this Contract as permitted by current policies governing the Purchasing Card program.

General Contract Information

DOAS competed and awarded the Statewide Contracts for Software by Category. The Categories of Software that each supplier's contract award includes are identified on the Information Sheet for the Supplier.

Suppliers submitted proposals to provide software from specific publishers at certain discounts from publisher's standard price (equivalent to an MSRP) as shown on the cost sheet for the relevant supplier and category.

All discounts shown are minimum discounts, and suppliers may provide additional or deeper discounts to state and local agencies under the Statewide Contracts for Software.

Agencies should ask for "Academic pricing" if they are obtaining quotes for schools, colleges or administrative offices of educational organizations. The discounts available may differ depending on the type of academic organization; academic



organizations receive significantly lower prices or significantly deeper discounts from many software publishers.

Agencies must place purchase orders prior to downloading or using software. Unless the agency acquires a perpetual license and does not incur charges for maintenance, the agency must also place a purchase order each year prior to incurring software renewal fees or maintenance or other charges.

For Category 3, Microsoft Reseller Services, the State has three (3) authorized resellers: CDWG, Dell and SHI. Each reseller may deliver software under any of the State of Georgia master agreements with Microsoft. These include the Enterprise Agreement, the Select Plus Agreement for State and Local Government, the Select Plus Academic Agreement, and an EES Agreement. Each supplier that holds a contract that includes Category 3 has certified Microsoft licensing specialists who are trained to provide assistance on the various Microsoft licensing programs.

The Statewide Contracts for Software include training, assessment and installation services. The contracts do not include implementation services or project work. Please see the Exhibit A to each supplier's contract for details of the services permitted to be provided through that contract.

PURCHASE OF CLOUD PRODUCTS UNDER THE SWC FOR SOFTWARE

The Purchase of new Cloud Products and the renewal of existing Cloud Products, under the Statewide Contract for Software requires an Acknowledgement by the requesting entity that the Software SWC did not contemplate terms to cover Cloud purchases and may not protect the State's interest related to Software as a Service, Platform as a Service and infrastructure as a Service Products.

Please find the **required** "Acknowledgement Form Cloud Solution Purchases Under the Statewide Contract for Software" as an attachment in Team Georgia Marketplace and PeopleSoft.



CATEGORY DESCRIPTION

Category 1: End User Software. Generally, these are desktop software products.

Category 2: Enterprise Software. These are server-based systems.

Category 3: Microsoft Reseller Services. See above for more detail about State’s Agreements for Microsoft software.

Category 4: Oracle Software and Databases(including PeopleSoft). Category

4 contracts are Convenience contracts.

NIGP CODES FOR SOFTWARE:

20429, 20447, 20529, 20547, 20655, 20800, 20811, 20812, 20815, 20818, 20819, 20820, 20830, 20832, 20836, 20841, 20842, 20844, 20845, 20846, 20851, 20853,20854, 20856, 20857, 20858, 20859, 20860, 20861, 20864, 20865, 20867, 20870,20872, 20877, 20880, 20881, 20882, 20883, 20885, 20886, 20888, 20900, 20912, 20913, 20914, 20922, 20924, 20937, 20942, 20943, 20945, 20946, 20947, 20949, 20952, 20954, 20958, 20959, 20960, 20962, 20966, 20970, 20973, 20978, 20982, 20984, 20986, 20987, 91829, 92000, 92004, 92007, 92014, 92015, 92016, 92027, 92032, 92044, 92045, 92046, 92049, 92056, 92063, 92091, 92094, 92095, 92096, 96728, 98574

Amendments/Renewals/Extensions

Extension 2: July 1, 2018 - May 30, 2019

Extension 3: June 1, 2019 – April 30, 2020

Extension 4: June 1, 2020 – April 30, 2021

Extension 5: MAY 1, 2021 - APRIL 30, 2022

Extension 6: May 1, 2022 – April 30, 2023

Extension 7: May 1. 2023 – April 30, 2024

Extension 8: May 1, 2024 - April 30, 2025



DOAS CONTACT INFORMATION:

Name: Donnie Treadway

Contract Management Specialist

Phone: 404-463-0824

email: donnie.treadway@doas.ga.gov

Procurement Help Desk

Telephone: 404 -657-6000

Email: procurementhelp@doas.ga.gov

State of Georgia Statewide Standard Contract Form

Solicitation Title Statewide Contracts for Software	Solicitation Number RFP 99999-SPD-SPD0000060 <i>sub 99999-SPD-SPD0000060-0006</i>	Contract Number SPD0000060-0006
---	---	---

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

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

Contractor's Name
Dell Marketing LP (hereafter called Contractor)

2. Contract to Begin: *August 24, 2012* Date of Completion: **June 30, 2012** Renewals: **Four (4) one-year options to renew**

3. Performance Bond, if any: **N/A** Other Bonds, if any: **N/A**

4. Authorized Person to Receive Contract Notices for Agency: **Elizabeth Eason, Category Manager - IT** Authorized Person to Receive Contract Notices for Contractor: **Public Contract Manager with cc to Dell General Counsel**

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 and Ancillary Services
Attachment 2: Solicitation (referenced above)
Attachment 3: Contractor's Final Response

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

6. **Contractor**

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

By (Authorized Signature) <i>Lauren Newberry</i>	Date Signed 8/24/2012
--	---------------------------------

Printed Name and Title of Person Signing
Lauren D. Newberry, Contracts Consultant

Address
One Dell Way, MS RR8-07, Round Rock, Texas 78682

7. **Agency**

Agency Name
Georgia Department of Administrative Services

By (Authorized Signature) <i>Leslie Lowe</i>	Date Signed 8/24/2012
--	---------------------------------

Printed Name and Title of Person Signing
Leslie Lowe, Deputy Commissioner for Procurement

Address
200 Piedmont Ave., SE, Suite 1308, West Tower, Atlanta, GA 30334-9010

**STATE OF GEORGIA
STATEWIDE CONTRACT
Attachment 1**

Contract Terms and Conditions for Software and Ancillary Services

A. DEFINITIONS AND GENERAL INFORMATION

1. **Definitions.** The following words shall be defined as set forth below:
 - (i) **"Agency"** means the Department of Administrative Services of the State of Georgia.
 - (ii) **"Awarded Item Schedule"** means the summarizing document, if any, listing the Software and Services as awarded to Contractor.
 - (iii) **"Contract"** or **"Statewide Contract"** means the agreement between the Agency and Contractor as defined by the Statewide Contract Form and its incorporated documents.
 - (iv) **"Contractor"** means the provider(s) of the Software and Services under the Statewide Contract as identified in the Statewide Contract Form.
 - (v) **"Facilities Manager"** means one or more of any persons in the business of providing computer facilities management and/or Outsourcing services.
 - (vi) **"Intellectual Property Rights"** means rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, or applications
 - (vii) **"Outsourcing"** means obtaining computing or related services from a source outside of the State. Computing or related services may include programming and/or executing the State's Software (including Software the State licenses from Contractor or third parties) on the State's CPUs, programming and/or executing the State's Software on an Outsourcing company's CPUs, or any mix thereof.
 - (viii) **"Purchase Instrument"** means the documentation a User Agency issues to Contractor for an acquisition of Software 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 Software and/or Services to be acquired, the delivery date and location at which the Software is to be installed and/or that the Services are to be delivered, the address where Contractor should submit the invoices, and any other requirements that the Agency or User Agency deem necessary.
 - (ix) **"Response", "Contractor's Response" or "Final Response"** means Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the Agency.
 - (x) **"RFX"** means the Request for Proposals, Request for Bids, or other solicitation document (and any amendments or addenda thereto) specifically identified in the Statewide Contract Form that was issued to solicit the Software and/or Services that are subject to the Statewide Contract.
 - (xi) **"Services"** means the services and deliverables described in the RFX including

administration, distribution, installation, configuration, support and training services as further described by the Response and the Statewide Contract.

- (xii) **"Software"** means the computer programs described in the RFX Category or Categories for which Contractor is awarded a Statewide Contract, as further described in Exhibit A to this Statewide Contract for Software and Ancillary Services, together with all documentation (both hard copy and online) for the described computer programs, and all updates to the computer programs and the documentation during the term of a license for Software under this Statewide Contract.
 - (xiii) **"State"** means the State of Georgia of the United States of America, the Agency, User Agency, and any other authorized entities identified by the RFX issuing Purchase Instruments against the Statewide Contract.
 - (xiv) **"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 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.
 - (xv) **"User Agency" or "User Agencies"** means any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to or required to make purchases from this Statewide Contract.
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 Contractor as a source of supply to the User Agencies of the Software 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 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 (whether in hard copy or electronic format) or invoices shall be null and void. The terms of this Statewide Contract shall supersede any contract terms and conditions included as part of delivered software, products and services. Notwithstanding anything to the contrary herein, as a reseller of Third Party software, Dell is not authorized to modify the third party license agreement or to directly license such software. All software will be licensed subject to the terms of the applicable License Agreement provided with the software.
 4. **Reporting Requirements.** Contractor shall provide all reports required by the RFX. In addition, unless otherwise provided in the RFX, Contractor shall keep a record of the purchases made pursuant to the Statewide Contract and shall submit a quarterly written report to the Agency.

B. DURATION OF CONTRACT

1. **Contract Term.** The Statewide Contract shall begin and end on the dates specified in the

Statewide Contract Form unless terminated earlier in accordance with the applicable terms and conditions. Pursuant to O.C.G.A. Section 50-5-64, this Statewide Contract shall not be deemed to create a debt of the State for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

2. **Contract Renewal.** The Agency shall have the option, in its sole discretion, to renew the Statewide Contract for additional terms on a year-to-year basis by giving Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the Agency's election, in its sole discretion, to renew any part of this Statewide Contract, Contractor shall remain obligated to perform in strict accordance with this Statewide Contract unless otherwise agreed by the Agency and 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 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 and Services.

C. DESCRIPTION OF SOFTWARE AND SERVICES

1. **Specifications in Bidding Documents.** Contractor shall provide all Software, Services, and other deliverables in compliance with the specifications contained in the RFX and the terms of the Statewide Contract,
2. **Software Licenses.** Contractor shall provide Software in compliance with the specifications contained in the RFX and the terms of the Statewide Contract. Subject to User Agency's compliance with the payment provisions of this Statewide Contract, Contractor shall deliver to User Agency the Software, which shall be licensed to User Agency under the following terms.

To the extent allowed by the applicable publisher's end user license agreement, Contractor shall cause the publisher of the Software to grant User Agency a non-exclusive license and/or sublicense to use, execute, maintain, reproduce, modify, display, test copy (as set forth herein) and perform the Software and accompanying documentation in accordance with the licensing capacity (if any) and for the period of time specified in the Statewide Contract and/or applicable Purchase Instrument. If no time period is stated, then User Agency shall be granted a perpetual license. User Agency may copy the Software as necessary to efficiently use the Software. Without limiting the generality of the foregoing, User Agency's rights shall include copying rights for the following purposes:

- a. for backup, archive or emergency restart purposes;
- b. for disaster recovery and disaster recovery testing purposes;
- c. to migrate the software for use on other computers and/or hardware; and
- d. to store the software at any off premise location that the User Agency uses for storage purposes.

If the Contractor is acting as a reseller of the Software, Contractor must provide the Licenses, as required by the Software publishers, to the User Agencies and shall use commercially reasonable efforts to cooperate with any negotiations of such Licenses as may be conducted

among the Agency, User Agencies and the Software publishers. All licenses provided hereunder shall remain in effect perpetually unless otherwise stated in writing.

To the extent allowed by the applicable publisher's license agreement, User Agencies that are part of the Georgia Enterprise Services Contract (sometimes referred to as the "GETS" agencies) shall be granted permission for the State's Facilities Manager(s) to use, execute, maintain, copy (as set forth herein), test and perform the Software and accompanying documentation and exercise all other license rights on behalf of the User Agencies.

As a reseller of third party software, Dell is not authorized to modify the third party license agreement or to license directly such software to User Agencies. All software will be licensed subject to the terms of the applicable license agreement provided with the software. For any non-Contractor branded products, software or services, Contractor agrees to flow down any indemnification protection, including indemnification for infringement of any intellectual property rights that Contractor currently or subsequently has in place with the manufacturer or publisher. Notwithstanding anything to the contrary in this Contract, products, software and services are provided subject to the manufacturer, provider or publisher's applicable warranty and software license agreement subject to negotiations between the User Agency and the publisher.

3. **Exclusions.** Except as expressly permitted by this Statewide Contract, the license for the Software may require that the User Agency agree that it 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; or
 - (iii) reverse engineer, disassemble, or decompile the software
4. **Services and other Deliverables.** Contractor shall provide Services and other deliverables in compliance with the specifications contained in the RFX and the terms of the Statewide Contract. Contractor and all personnel of Contractor shall perform the Services on time, in a workmanlike manner, and consistent with the level of care and skill ordinarily exercised by other providers of similar services at the time the Services are provided.
5. **Ordering and Technical Assistance.** User Agencies may place orders individually from time to time in any manner permitted by applicable State purchasing policy and the terms of this Statewide Contract. Contractor shall provide technical assistance as reasonably required for the User Agencies to place online orders through Contractor's website.
6. **Product Shipment and Delivery and Acceptance.** Unless the RFX requires otherwise, all Software shall be made available either by online download or shall be shipped F.O.B. destination, freight prepaid. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All shipped items shall be at Contractor's risk until they have been accepted by the User Agency. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of Contractor to remedy without cost to the User Agency, regardless of when the hidden damage is discovered.
 - (i) Fixed Pricing Services. Certain Services as defined by Contractor's Response will be provided on a fixed price basis and will be delivered to User Agency in accordance with the Purchase Instrument.

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

- (iii) Acceptance Process. Upon completion of any deliverable or service, Contractor shall provide written documentation of completion of the deliverable and/or service to User Agency. Contractor will demonstrate to User Agency that the deliverable conforms to the requirements of the Statewide Contract. If the deliverable does not conform to the requirements of the Statewide Contract, User Agency must provide written notice to Contractor identifying the deliverable as nonconforming and providing a description of the deficiencies of the deliverable. Software and Services will be deemed accepted unless User Agency provides notice of the rejection of a deliverable within thirty (30) days from the date of Contractor's submission of the Software and Services or Contractor's demonstration of the Software and Services, if installed by Contractor, whichever occurs last; provided that, in limited circumstances, a longer reasonable period of time may be agreed to in writing between Contractor and User Agency. Contractor shall use reasonable efforts to promptly cure any identified deficiencies in the deliverable. After completing the cure, Contractor shall resubmit the deliverable for User Agency's review and, if requested by User Agency, provide a demonstration that the resubmitted deliverable conforms to the requirements of the Statewide Contract. User Agency shall have at least thirty (30) days from the date of Contractor's resubmission of the deliverable or Contractor's demonstration of the resubmitted deliverable, whichever occurs last, to accept or reject the resubmitted deliverable. In the event Contractor has failed to cure the deliverable, the User Agency may, at its discretion, allow Contractor an additional opportunity to cure, proceed to terminate the Purchase Instrument for default, or pursue any other available remedy. Nothing contained in this provision shall limit the warranties and representations or the available remedies set forth in this Statewide Contract. Notwithstanding anything to the contrary herein, acceptance does not waive warranty or return rights for any Software or other deliverables under this Contract.

- (iv) Return of Unused Software. Contractor shall comply with the return requirements stated in the RFP provided that, with respect to third party software, such return is allowed by the third party software publisher and then only in accordance with the terms of the state's master agreement with such software publisher, if there is one, or the documentation provided with the software. Dell agrees to work with state and make "Ordering and Return Instructions," consistent with the technical requirements of the RFP, available to Customer on the Contractor website established for this contract through a link on the home page of the website, or on the quote. Such instructions will direct the Customer to contact their sales representative for assistance with returns.

7. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. Agency reserves the right to select other contractors to provide Software and Services similar or identical to the Software and Services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar Software and Services from other contractors.

8. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level

of purchases or use of Software or Services.

D. COMPENSATION

1. **Pricing and Payment.** Contractor will be paid for the Software and Services licensed or sold pursuant to the terms of the Statewide Contract and in accordance with the RFX and final pricing documents as incorporated into the Statewide Contract Form and the terms of the Statewide Contract. All prices or discounts in accordance with the discount schedule provided in Dell's proposal are "not to exceed" prices or are minimum discounts. Contractor may negotiate more favorable prices with User Agency. 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, Contractor shall submit, on a regular basis, individual invoices for the Software and Services supplied to User Agencies under the Statewide Contract at the billing addresses specified in the Purchase Instruments. Each invoice shall be accompanied by a schedule that details the Services and deliverables provided (if any) including the resources in support of those Services and/or deliverables. The invoice shall comply with all applicable rules concerning payment of claims. User Agencies shall pay all approved invoices in arrears within forty-five (45) days of date of an undisputed invoice subject to acceptance as specified in Section (C)(6)iii) above, and in accordance with applicable provisions of State law.

Unless otherwise agreed in writing by the Agency and Contractor, Contractor shall not be entitled to receive any other payment or compensation from the User Agencies for any Software or Services provided by or on behalf of Contractor under the Statewide Contract. Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under the Statewide Contract.

3. Dell will communicate to all third party publishers that User Agencies generally cannot enter into multi-year agreements for maintenance. Instead, a User Agency will generally enter into a one year agreement that gives the User Agency options to renew for subsequent fiscal year periods – depending on availability of funds during those subsequent fiscal years.

A User Agency may, however, enter into a multi-year agreement with a term of more than one fiscal year if the User Agency has on hand at the time of signing the agreement available appropriated funds necessary to meet its entire obligation for that multi-year term. The general rule limiting User Agencies to contracting for one fiscal year at a time is based on the prohibition on pledging the state's credit or creating debt by agreeing to a payment obligation for which funds are not currently available. When the User Agency has on hand at the time of signing an agreement funds to meet the entire obligation for the term (whatever that term may be) and encumbers same, the state agency has not pledged the state's credit or created debt.

4. **Delay of Payment Due to Contractor's Failure.** If a User Agency in good faith determines that Contractor has failed to perform or deliver any Software or Service as required by the Statewide Contract, Contractor shall not be entitled to any compensation under the Statewide Contract until the Software or Service is delivered [or performed]. In this event, the User Agency may withhold the portion of Contractor's compensation that represents payment for Software and/or Services that were not delivered [or performed]. To the extent that Contractor fails to perform or deliver as required by the terms of the Agreement and fails to correct such failure in accordance with the Notice of Default provisions under Section E, and such failure results in additional cost to the User Agency to procure replacement Software or

Services, then User Agency may deduct from payments due to Contractor the difference between the contract price and the lesser of the current market price or actual price paid for such replacement Software or alternative Services. The User Agency's authority to deduct such incurred costs shall not in any way affect the Agency's sole authority to terminate the Statewide Contract.

5. **Set-Off Against Sums Owed by Contractor.** In the event that Contractor owes the User Agency any sum or the User Agency must obtain substitute performance, the User Agency may set off the sum Contractor owes User Agency against any sum User Agency owes Contractor.

E. TERMINATION

1. Termination of the Statewide Contract.

(i) **Immediate Termination.** Agency may terminate the Statewide Contract effective immediately without advance notice for any one or more of the following reasons:

- a. in the event Contractor is required to be certified or licensed as a [requirement for being awarded this Statewide Contract to provide Software and/or Services, the revocation or loss of the required 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 Contractor, its agents, employees or subcontractors have caused or reasonably could cause life, health or safety to be jeopardized;
- c. Contractor fails to comply with confidentiality laws or provisions; and/or
- d. Contractor furnished any statement, representation or certification in connection with the Statewide Contract or the bidding process that is materially false, deceptive, incorrect or incomplete.

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

- a. Contractor has delivered nonconforming Software or Services or fails to deliver or perform, to the Agency's satisfaction, any material requirement of the Statewide Contract or is in violation of a material provision of the Statewide Contract, including, but without limitation, the express warranties made by Contractor;
- b. Agency determines that satisfactory performance of the Statewide Contract is substantially endangered or that a default is likely to occur;
- c. Contractor fails to make substantial and timely progress toward performance of the Statewide Contract;
- d. to the extent allowed by applicable federal or state law, including bankruptcy laws, Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law; Contractor terminates or suspends its business; or Agency reasonably believes that Contractor has become insolvent or unable to

pay its obligations as they accrue;

- e. Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Statewide Contract;
 - f. Contractor has engaged in conduct that has exposed or may expose Agency or the State to liability, as determined in Agency's sole discretion; or
 - g. Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property right of Agency, the State, or a third party.
- (iii) **Termination upon Notice.** Following thirty (30) days' written notice, Agency may terminate the Statewide Contract in whole or in part without paying any penalty or incurring any further obligation to Contractor. Following termination upon notice, Contractor shall be entitled to compensation from User Agencies upon submission of invoices and proper proof of claims, for Software and/or Services provided under the Statewide Contract to User Agencies up to and including the date of termination.
- (iv) **Termination Due to Change in Law.** Agency shall have the right to terminate this Statewide Contract without penalty by giving thirty (30) days' written notice to Contractor as a result of any of the following:
- a. Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or
 - b. Agency's duties are substantially modified.

2. **Agency's Notice of Default.** If Contractor has caused or permitted a default event, with the exception of an emergency situation, Agency shall provide written notice to Contractor requesting that the breach or noncompliance be remedied within thirty (30) days of Contractor's receipt of Agency's written notice to 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 and/or Services from another source and charge the difference between the Statewide Contract and the lesser of the reasonable retail market price or actual price paid for such substitute Software and/or Services to the defaulting Contractor; and/or,
- (iii) enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.

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

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

- (i) **Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, any purchase [or license for a future period not yet paid] made pursuant to this Statewide Contract will terminate immediately and absolutely if a User Agency determines that adequate funds

are not appropriated or granted or funds are de-appropriated so that the User Agency cannot fulfill its obligations under the Statewide Contract; the determination shall be at the User Agency's sole discretion and shall be conclusive.

- (ii) **Termination for Cause.** User Agency shall have the right to terminate any purchase in the event of Contractor's material breach if the breach is not cured within thirty (30) days of Contractor's receipt of a written default notice from User Agency.

In the event of termination of the Statewide Contract for any reason by Agency, the User Agencies shall pay only those amounts, if any, due and owing to Contractor for Software and Services actually provided up to the date specified in the notice of termination as provided above. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. This provision in no way limits the remedies available to the State under the Statewide Contract in the event of termination.

4. Contractor's Termination Duties. Upon receipt of notice of termination or upon request of Agency, 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 Contractor;
- (iii) comply with the State's instructions for the timely transfer of any active files and work product produced by Contractor under the Statewide Contract;
- (iv) cooperate in good faith with the Agency, the User Agencies, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- (v) immediately return to the User Agencies any payments made by the User Agencies for Software or Services that were not delivered by Contractor.

Notwithstanding the provisions above, Software licenses that the State has obtained for Software delivered under this Statewide Contract and maintenance agreements that the State has entered directly with the publishers of Software delivered under this Statewide Contract when the publisher is not Contractor shall not terminate as the result of termination of the Statewide Contract.

F. CONFIDENTIAL INFORMATION

- 1. **Access to Confidential Data.** Contractor's employees, agents and subcontractors may, to the extent necessary to carry out Contractor's responsibilities under the Statewide Contract, have access to confidential data, including, but not limited, personally identifiable information, maintained by the State. 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) Contractor shall provide to the State a written description of 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's designated Contract Manager shall remain the single point of contact with respect to Contractor's compliance with the requirements of this Section F; and
- (iv) 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 discloser at all times. Some Services performed for Agency and/or User Agencies may require Contractor and its employees to sign a nondisclosure agreement. Contractor understands and agrees that refusal or failure to sign such a nondisclosure agreement, if required, may result in termination of the Statewide Contract.

- 2. **No Dissemination of Confidential Data.** No confidential data collected, maintained, or used in the course of performance of the Statewide Contract shall be disseminated except as authorized by law and with the written consent of the discloser, either during the period of the Statewide Contract or thereafter. Any data supplied to or created by Contractor uniquely and specifically for the User Agency during the performance of this Agreement shall be considered the property of the State. Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Statewide Contract, in whatever form it is maintained, promptly at the request of the State.
- 3. **Subpoena.** In the event that a subpoena or other legal process for records containing confidential information is served upon Contractor, 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.** Contractor shall immediately report in writing to the State any unauthorized disclosure of confidential information
- 5. **Survives Termination.** Contractor's confidentiality obligation under the Statewide Contract shall survive termination of the Statewide Contract.

G. INDEMNIFICATION

- 1. **Contractor's Indemnification Obligation.** Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:
 - (i) any breach of the Statewide Contract;
 - (ii) any negligent or wrongful act or omission of Contractor or any employee, agent or subcontractor utilized or employed by Contractor resulting in personal injury or death or damage to real property or tangible personal property;

- (iii) any failure of Software or Services to comply with applicable specifications, warranties, and certifications under the Statewide Contract;
- (iv) the negligence or fault of Contractor in design, testing, development, manufacture, installation, operation or otherwise with respect to the Software or Services provided under the Statewide Contract;
- (v) claims, demands, or lawsuits that, with respect to the Software or any parts thereof, allege product liability, strict product liability, or any variation thereof;
- (vi) any failure by Contractor to comply with the "Compliance with the Law" provision of the Statewide Contract;
- (vii) any infringement of any copyright, trademark, trade secret, patent, trade dress, or other intellectual property right; or
- (viii) any failure by Contractor to adhere to the confidentiality provisions of the Statewide Contract.

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

2. Duty to Reimburse State Tort Claims Fund. To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), Contractor agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, Contractor waives any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder to the full extent of this indemnification.

3. Litigation and Settlements. Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties. Subject to approval of the Attorney General of the State of Georgia, the Agency shall tender defense of any such action to Contractor upon request by Contractor.

4. Intellectual Property Infringement Indemnification.

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

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

In case any of the Contractor branded services or Software is in any suit held to infringe a third party's intellectual property right and its use is enjoined, Contractor shall, at its option and expense:

- (i) procure for the State the right to continue using the Software;
- (ii) replace or modify the same so that it becomes non-infringing; or
- (iii) remove the same and cancel any future charges pertaining thereto.

Contractor, however, shall have no liability to the State if any patent, copyright, trademark, trade secret or other intellectual property infringement or claim thereof is based upon or arises out of:

- (i) compliance with designs, plans or specifications furnished by or on behalf of the User Agency as to the software;
- (ii) use of the Software in combination with apparatus or devices not supplied by Contractor;
- (iii) use of the Software in a manner for which the same was neither designed nor contemplated; or
- (iv) the claimed infringement of any patent or copyright in which the Agency or any affiliate or subsidiary of the Agency has any direct interest by license or otherwise.

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

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

H. **INSURANCE**

The supplier shall procure and maintain insurance which shall protect the supplier and the State of Georgia (as an additional insured) from any claims for bodily injury, property damage, or personal and advertising injury in support of the indemnification obligations set forth in the statewide contract attached to this solicitation throughout the duration of the statewide contract. The supplier shall procure and maintain the insurance policies described below at the supplier's own expense and shall furnish DOAS an insurance certificate listing the State of Georgia as certificate holder and as an additional insured with respect to the commercial general liability

and automobile liability insurance policies. The Commercial General Liability insurance coverage purchased by the supplier shall include contractual liability coverage applicable to the statewide contract. In addition, the insurance certificate must provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, policy number, and limits of liability).

The supplier is required to maintain the following insurance coverage's during the term of the statewide contract:

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

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

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

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products/Completed Ops. Aggregate Limit	\$2,000,000

- 3) Automobile Liability

Combined Single Limit	\$1,000,000
-----------------------	-------------

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

Within ten (10) business days of award, the awarded supplier must procure the required insurance and provide DOAS with two (2) Certificates of Insurance. Certificates must reference the contract number. The supplier's submitted pricing must include the cost of the required insurance. No contract performance shall occur unless and until the required insurance certificates are provided.

I. BONDS

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

J. WARRANTIES

1. **Construction of Warranties Express in the Contract with Warranties Implied by Law.** All warranties made by Contractor and/or subcontractors in all provisions of the Statewide Contract and Contractor's Response, whether or not the Statewide Contract specifically denominates Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by Contractor's affirmation or promise, or is created by a description of the Software and Services to be provided, or by provision of samples to the State, shall not be construed as limiting or negating any warranty provided by law. The warranties express in the Statewide Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Software and Services provided by Contractor. Contractor shall assign and pass through to the State all applicable third party software publishers' warranties, covenants and indemnification provisions, to the extent that the manufacturer or publisher has given Contractor warranties or indemnities that may be passed through to customers. The provisions of this section apply during the term of the Statewide Contract and any extensions or renewals thereof.

2. **Warranty – Nonconforming Software or Services.** All Software and Services that Contractor delivers to User Agencies shall be free from any defects in design, material, or workmanship. Following acceptance, if any Software or Service offered by Contractor is found to be defective in material or workmanship or does not conform to manufacturer's or publisher's warranty, User Agency shall have the option of returning, repairing, or replacing the defective Software or Service at Contractor's expense in accordance with the terms of the applicable warranty.

Payment for the defective Software or Service shall not constitute acceptance. Acceptance by a User Agency shall not relieve Contractor of its warranty or any other obligation under the Statewide Contract.

3. **Compliance with Federal Acts.** To the extent such requirements are applicable to the subject Software, Contractor warrants and guarantees to State that the Software provided under the Statewide Contract is 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.

NOTHING IN THIS SECTION J SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO YOU IN YOUR JURISDICTION WILL APPLY TO YOU, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Notwithstanding any term to the contrary in this Agreement, to the maximum extent permitted by law, Non-Dell branded Software and Services are provided subject to the third party publisher or provider's applicable warranties and software license. Dell

agrees to pass through to purchaser any indemnification or warranty provided by the provider, publisher, licensor with respect to intellectual property, infringement or indemnification with respect thereto, to the extent that the manufacturer or publisher has given Contractor warranties or indemnities that may be passed through to customers.

- 4. Conformity with Contractual Requirements.** Contractor represents and warrants that the Software and Services provided in accordance with the Statewide Contract will appear and operate in conformance with the terms and conditions of the Statewide Contract.
- 5. Authority to Enter into Contract.** Contractor represents and warrants that it has full authority to enter into the Statewide Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
- 6. Obligations Owed to Third Parties.** Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by Contractor pursuant to the Statewide Contract are or will be fully satisfied by Contractor so that the State will not have any obligations with respect thereto.
- 7. Title to Property.** Contractor represents and warrants that for third party products, it is authorized by the publisher to deliver the third party Software provided under this Agreement; and for Dell-branded Software title to any Software or property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials, or equipment shall remain in the Contractor until acceptance by the User Agencies. The Software provided by Dell hereunder shall be sourced through only authorized distributors or providers. Except as otherwise expressly authorized by the Agency, all materials produced uniquely and specifically for the User Agency by Contractor personnel in performance of Services, including but not limited to software, charts, graphs, diagrams, video tapes and other project documentation shall be deemed to be works made for hire and shall be the property of the State of Georgia; subject to the following:
 - (i) Dell has received full payment for the deliverables and applicable Services, and
 - (ii) each party will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of this Agreement or that it develops or acquires from activities independent of the Services performed under this Agreement (“Background IP”),
- 8. Industry Standards.** Contractor represents and expressly warrants that all aspects of the Software and Services provided or used by it shall at a minimum conform to the standards in Contractor’s industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Statewide Contract, which shall take precedence.
- 9. Contractor’s Personnel and Staffing.** Contractor warrants that all persons assigned to perform Services under this Statewide Contract are either lawful employees of Contractor or lawful employees of a subcontractor authorized by the Agency as specified in the RFX. All of Contractor’s or any subcontractor’s personnel shall comply with the confidentiality requirements of the Statewide Contract and the security requirements of the applicable Agency or User Agencies while on State property. In the event that any of Contractor’s or subcontractor’s personnel do not comply with such confidentiality and security requirements, the Agency or User Agencies may have the personnel removed from the premises.

All persons assigned to perform Services under this Statewide Contract shall be qualified to

perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform the Services. If the Agency or a User Agency 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 Contract.

Contractor warrants that an adequate number of appropriately qualified personnel will be employed and available to provide the Services in accordance with the schedule and maintenance requirements set forth in the RFX and this Statewide Contract.

10. State Security. Agency requires that a criminal background investigation be made of any and all Contractor personnel used to provide Services to the State

Dell Marketing L.P. ("Dell") hereby affirms that a security background check ("SBC") is performed on each Dell employee, intern, and potential new hire. This SBC consists of criminal county searches, federal searches, and verification of personally identifying information. Dell's SBC standards require that an individual's SBC reflects:

- No felony conviction or "nolo contendere" or "no contest" plea within the preceding seven years;
- No conviction of or "nolo contendere" or "no contest" plea to a disqualifying misdemeanor offense within the preceding five years;
- No uncompleted deferred adjudication, probation, or parole for any felony or disqualifying misdemeanor offense (regardless of whether the conviction itself is within the preceding seven or five year period);
- No pending court date, charge, or warrant relating to any felony or any violent misdemeanor;
- No identification as an active sex offender using an available sex offender database;
- Provided that Dell generally will not disqualify an individual for employment if the individual's SBC reflects a single conviction, charge, or warrant for certain minor misdemeanor offenses related to gambling, alcohol, tobacco, licenses or moving violations, except in the instance of injury or damage to people or property or a second offense of DWI without injury.

Dell further affirms that a drug screen is performed on each Dell employee, intern, and potential new hire and all contractors. This drug screen checks for the presence of amphetamine metabolites (1000 ng/mL), cocaine metabolites (300 ng/mL), marijuana (50 ng/mL), opiate metabolites (2000 ng/mL) and phencyclidine metabolites (25 ng/mL).

Contractor agrees to comply with User Agency on-site safety and security requirements that are provided to Contractor prior to the provision of on-site services. Contractor represents and warrants that Contractor shall refrain from assigning personnel to any task under this Statewide Contract if Contractor's investigation or an investigation by the State reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the State. 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 Contractor's responsibilities under the Statewide Contract. Such access may be terminated at the sole discretion of the State. Contractor shall provide immediate notice to Agency of any employees, agents and/or

subcontractors suspected of abusing or misusing such access privilege. Contractor represents and warrants that Contractor shall provide prompt notice to Agency of the changed status of any employee, agent or subcontractor granted access to State computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship.

11. **Use of State Vehicles.** Contractor warrants that no State vehicles will be used by Contractor for the performance of Services under this Statewide Contract. Contractor shall be responsible for providing transportation necessary to perform all Services.

K. PRODUCT RECALL

In the event that any of the Software or materials are found by 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 Software be reworked or recalled, Contractor will promptly communicate all relevant facts to 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 Agency from taking such action as may be required of it under any such law or regulation. Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that 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 Agency and Contractor and the Awarded Item Schedule, if any), the RFX (including any subsequent addenda and written responses to bidders' questions), and Contractor's Response, any inconsistency or conflict shall be resolved as follows:
 - (i) First, by giving preference to this Statewide Contract.
 - (ii) Second, by giving preference to the specific provisions of the RFX.
 - (iii) Third, by giving preference to the specific provisions of Contractor's Response, except that objections or amendments by Contractor that have not been explicitly accepted by 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 in this document to the parties' obligations are intended to supplement or clarify the obligations as stated in the RFX and Contractor's Response. The failure of the parties to make reference to the terms of the RFX or Contractor's Response in this document shall not be construed as creating a conflict and will not relieve Contractor of the contractual obligations imposed by the terms of the RFX and Contractor's Response. The contractual obligations of the Agency cannot be implied from Contractor's Response.
3. **Compliance with the Law.** 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. Dell requires its subcontractors to self-certify to state law requirements. Dell will use commercially reasonable efforts to ensure legally required certifications are made.

Certain equipment, software and technical data that may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations, International Traffic in Arms Regulations, U.S. Department of Energy Regulations, U.S. Nuclear Regulatory Commission Regulations and/or similar laws and regulations of the United States or other countries. Contractor shall comply with all export and re-export laws and regulations, including without limitation laws and regulations that may apply to certain equipment, software and technical data provided hereunder.

Contractor shall also comply with all import and customs laws and regulations, with all local license and permit requirements, with the European Data Protection Directive, with the U.S. Foreign Corrupt Practices Act, and with all applicable foreign corrupt practices acts.

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

Contractor shall require its subcontractors to self-certify to state law requirements 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 Contractor.

4. Drug-free Workplace. Contractor hereby certifies as to items (i) and (ii) below and under item (iii) below Contractor will require all its subcontractors to comply with all applicable Federal and state laws and regulations and to self-certify such compliance:

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

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

- (i) Contractor has made false certification hereinabove; or
 - (ii) Contractor has violated the 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 Agency. All amendments to the Statewide Contract must be in writing and fully executed by duly authorized representatives of Agency and Contractor.
6. **Third Party Beneficiaries.** There are no third-party beneficiaries of the Statewide Contract. The Statewide Contract is intended only to benefit the State and 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 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 the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

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

9. **Assignment and Delegation.** The Statewide Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of Agency. For the purpose of construing this clause, a transfer of a controlling interest in Contractor shall be considered an assignment.
10. **Use of Third Parties.** Except as may be expressly agreed to in writing by 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. Agency's designated contract administrator shall have the right to approve the addition of any new subcontractors. No subcontract that 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 or for the act or omission of any subcontractor, agent, or employee. All restrictions, obligations and responsibilities of Contractor under the Statewide Contract shall also apply to each subcontractor. Any contract with a subcontractor must also preserve the rights of Agency. Agency shall have the right to request the removal of a subcontractor from the Statewide Contract for good cause.
11. **Integration.** The Statewide Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made that 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 and Services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Statewide Contract.
14. **Joint and Several Liability.** If Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Statewide Contract, and for any default of activities or obligations.
15. **Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Statewide Contract, this Statewide Contract supersedes all prior contracts or agreements between Agency and Contractor for the Software 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 Agency and 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 and 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 Agency and 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 and Services to the State are responsive to the State's requirements and requests in all respects.

21. Authorization. The persons signing this Statewide Contract represent and warrant to the other parties that:

- (i) the party on whose behalf it signs 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.** Contractor shall maintain books, records and documents that sufficiently and properly document and calculate all charges billed to the State throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Contractor should maintain separate accounts and records for Agency and the User Agencies. Records to be maintained include both financial records and service records. DOAS may audit contractor no more often than once per year, unless otherwise required by applicable law or agreed to by the parties, Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. Contractor shall not impose a charge for audit or examination of Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
- 24. Solicitation.** 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 provide Software or Services 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 is under consideration to be listed on the EPA List of Violating Facilities.
- 27. Debarred, Suspended, and Ineligible Status.** Contractor certifies that neither Contractor nor any of its subcontractors has been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulations (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify 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 express 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.

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

No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property due to Contractor's negligent or intentional wrongful act or omission 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.

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

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. All obligations of Contractor incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or

conclusion of the Statewide Contract.

34. **Counterparts.** Agency and 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.** Agency and Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, supplements hereto and further instruments as may reasonably be required for carrying out the express intention of the Statewide Contract.
36. **Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Statewide Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to deliver or run Software and to perform Services for the State. Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the Services to the State or to another contractor.

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

Exhibit A
AWARDED SOFTWARE CATEGORY DESCRIPTION

(Awarded Item Schedule)

The Georgia Department of Administrative Services ("DOAS" or "Agency") on behalf of the State of Georgia awards to Dell Marketing, L.P. ("Dell" or "Contractor") a Statewide Contract for Software in the following Categories:

Category 1: End User Software; and

Category 2: Enterprise Software; and

Category 3: Microsoft Reseller Services; and

Category 4: Oracle;

subject to the following:

The Services that Contractor provides as all or part of a User Agency acquisition through or under the Statewide Contract for Software may include support, maintenance, training, consulting and installation but not implementation services.

The Statewide Contract for Software does not offer services that are in the nature of project work. Accordingly, Services for Software consulting or installation that Contractor provides a User Agency through the Statewide Contract for Software shall not exceed (a) seven (7) days' or one calendar week's effort by a team of Dell professionals (including simultaneous concurrent efforts of multiple professionals that do not exceed one week's duration); or (b) eighty (80) hours (total) of billable work provided at the rates contained in Dell's proposal that forms part of the contract, whichever is greater.

Installation is defined for purposes of this Contact to include performing site surveys, installs, tests, and validating operational automation and communications equipment/software as specified by installation standards, manufacturer's guidance, and safety codes.

Although Dell's proposal may include products for hosted services and software as a service ("Saas"), **the Statewide Contract awarded does not currently include any product, software or service to be hosted on a server other than a server under the direct control of the State or the State's Facilities Manager (as that term is defined in this Contract); the Statewide Contract Award does not include SaaS or hosted Software.**

However, the State acknowledges that some hosted software or software as a service

may be within the scope of the RFP, and the State may amend the Contract Award to include these products after the State and Contractor agree upon additional terms and conditions for hosted services consistent with the GTA Enterprise Operational Environment standard (standard SO-10-003.02 – available at http://gta.georgia.gov/vgn/images/portal/cit_1210/3/62/148819638Enterprise%20Operational%20Environment,%20SO-10-003.02.pdf).