



STATE OF GEORGIA
Georgia Southern University

REQUEST FOR PROPOSALS

For

Electronic Learning System – LMS/LCMS

RFP Number: 383101

For all questions about this RFP,
please contact the Issuing Officer
identified in Section 1.5

RELEASED ON:
12/17/2009

DUE ON:
1/21/2010 at 3:00 p.m. EST

1. Introduction

1.1. Purpose of Procurement

Pursuant to the State Purchasing Act (Official Code of Georgia Annotated §50-5-50 et. seq.), this Request for Proposal (“RFP”) is being issued to establish a contract with one qualified Offeror who will provide a comprehensive Electronic Learning LMS/LCMS (learning management system/learning content management system) to Georgia Southern University (hereinafter, “the State Entity”) as further described in this RFP.

SCOPE:

This web-based system will provide a combination of courseware, simulations, and resources to deliver learning and performance support that is essential for the professional development of the State Entity's diverse community. In addition contractor must provide application and web hosting services for the selected software.

The courseware library will present the State Entity with a variety of leadership, professional effectiveness, IT, and compliance related topics that represent the critical skills and competency requirements of employees in increasingly dynamic and complex work environments. The application must also furnish scheduling, tracking, and reporting functionality of courseware and instructor-led training modules to the eLearning users and their supervisors.

1.2. RFP Certification

Pursuant to the provisions of the Official Code of Georgia Annotated §50-5-67(a), the State Entity (or the Department of Administrative Services (“DOAS”) in the event DOAS is conducting this RFP) certifies the use of competitive sealed bidding will not be practicable or advantageous to the State of Georgia in completing the acquisition described in this RFP.

1.3. Overview of the RFP Process

The objective of the RFP is to select one or more qualified Offerors (as defined by Section 1.1 “Purpose of Procurement”) to provide the goods and/or services outlined in this RFP to the State Entity. This RFP process will be conducted to gather and evaluate responses from Offerors for potential award. All qualified Offerors are invited to participate by submitting responses, as further defined below. After evaluating all Offeror responses received prior to the closing date of this RFP and following negotiations (if any) and resolution of any contract exceptions, the preliminary results of the RFP process will be publicly announced, including the names of all participating Offerors and the evaluation results. Subject to the vendor protest process, final contract award(s) will be publicly announced thereafter. NOTE TO OFFERORS: The general instructions and provisions of this document have been drafted with the expectation that the State Entity may desire to make one award or multiple awards. For example, this document contains phrases such as “contract(s)” and “award(s)”. Please refer to Section 1.1 “Purpose of Procurement” and Section 6.6 “Selection and Award” for information concerning whether the State Entity will make one award, multiple or split awards, or reserves the right to make either depending on the proposals received.

1.4. Schedule of Events

The schedule of events set out herein represents the State Entity's best estimate of the schedule that will be followed. However, delays to the procurement process may occur which may necessitate adjustments to the proposed schedule. If a component of this schedule, such as the close date, is delayed, the rest of the schedule may be shifted as appropriate. Any changes to the dates up to the closing date of the RFP will be publicly posted prior to the closing date of this RFP. After the close of the RFP, the State Entity reserves the right to adjust the remainder of the proposed dates, including

the dates for evaluation, negotiations, award and the contract term on an as needed basis with or without notice.

Description	Date	Time
Release of RFP	12/18/2009	
Deadline for written questions sent via email to the Issuing Officer referenced in Section 1.5.	1/06/2010	5:00 p.m. ET
Responses to Written Questions	1/13/2010	5:00 p.m. ET
Proposals Due/Close Date and Time	1/21/2010	3:00 p.m. ET
Proposal Evaluation Completed (on or about)	2/11/2010	N/A
Negotiations Invitation Issued (emailed) (on or about); discretionary process	2/17/2010	TBD
Negotiations with Identified Offerors (on or about); discretionary process	2/22/2010	TBD
Final Evaluation (on or about)	2/23/2010	N/A
Negotiation of Contractual Terms	2/25/2010	N/A
Notice of Intent to Award* [NOIA] (on or about)	2/26/2010	N/A
Notice of Award [NOA] (on or about)	3/11/2010	N/A

*In the event the estimated value of the contract is less than \$100,000, the State Entity reserves the right to proceed directly to contract award without posting a Notice of Intent to Award.

1.5. Official Issuing Officer (Buyer)

Terri Bickerton

tbickerton@georgiasouthern.edu

1.6. Definition of Terms

Any special terms or words which are not identified in this State Entity RFP Document may be identified separately in one or more attachments to the RFP.

1.7. Contract Term

The initial term of the contract is for three (3) calendar years from the execution date of the contract. The State Entity shall have two (2) one (1) year option(s) to renew, which options shall be exercisable at the sole discretion of the State Entity. Renewal will be accomplished through the issuance of Notice of Award Amendment. In the event that the contract, if any, resulting from the award of this RFP shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified products and/or services, the State Entity may, with the written consent of the Awarded Offeror, extend the contract for such period of time as may be necessary to permit the State Entity's continued supply of the identified products and/or services. The contract may be amended in writing from time to time by mutual consent of the parties. Unless this RFP states otherwise, the resulting award of the contract does not guarantee volume or a commitment of funds.

2. Instructions to Offerors

By submitting a response to the RFP, the Offeror is acknowledging that the Offeror:

1. Has read the information and instructions,

2. Agrees to comply with the information and instructions contained herein.

2.1. General Information and Instructions

2.1.1. Team Georgia Marketplace™ Registration System

DOAS requires all companies and/or individuals interested in conducting business with the State of Georgia to register in the State's web-based registration system, through Team Georgia Marketplace™. Registration is free and enables the Offeror to gain access to certain information, services and/or materials maintained in Team Georgia Marketplace™ at no charge to the registering supplier. All registering suppliers must agree to be bound by the applicable terms and conditions governing the supplier's use of Team Georgia Marketplace™. In the event DOAS elects to offer certain optional or premium services to registered suppliers on a fee basis, the registered supplier will be given the opportunity to either accept or reject the service before incurring any costs and still maintain its registration. Registrants are responsible for updating and maintaining key company, contact, and product information in the system. Offerors may register at

<https://saofn.state.ga.us/psp/sao/SUPPLIER/ERP/?cmd=login>

2.1.2. Georgia Vendor Manual

The Offeror agrees to strictly abide by all the terms and conditions contained in the *Georgia Vendor Manual*, located online at:

http://doas.ga.gov/StateLocal/SPD/Docs_SPD_General/GeorgiaVendorManual.pdf

2.1.3. Restrictions on Communicating with Staff

From the issue date of this RFP until the final award is announced, Offerors are not allowed to communicate for any reason with any State staff except through the Issuing Officer named herein, or during the Offerors' conference (if any), or as defined in this RFP or as provided by existing work agreement(s). Prohibited communication includes all contact or interaction, including but not limited to telephonic communications, emails, faxes, letters, or personal meetings, such as lunch, entertainment, or otherwise. The State Entity reserves the right to reject the proposal of any Offeror violating this provision.

2.1.4. State's Right to Request Additional Information - Offeror Responsibility

Prior to an award, the State Entity must be assured that the selected Offeror has all of the resources to successfully perform under the contract. This includes, but is not limited to, adequate number of personnel with required skills, availability of appropriate equipment in sufficient quantity to meet the on-going needs of the State Entity, financial resources sufficient to complete performance under the contract, and experience in similar endeavors. If, during the evaluation process, the State Entity is unable to assure itself of the Offeror's ability to perform, if awarded, the State Entity has the option of requesting from the Offeror any information deemed necessary to determine the Offeror's responsibility. If such information is required, the Offeror will be so notified and will be permitted approximately seven (7) business days to submit the information requested.

2.1.5. Failing to Comply with Submission Instructions

Proposals received after the identified due date and time or submitted by any other means than those expressly permitted by the RFP will not be considered. Proposals must be complete in all respects, as required in each section of this RFP.

2.1.6. Rejection of Proposals; State's Right to Waive Immaterial Deviation

The State Entity reserves the right to reject any or all proposals, to waive any irregularity or informality in a proposal, and to accept or reject any item or combination of items, when to do

so would be to the advantage of the State of Georgia. It is also within the right of the State Entity to reject proposals **that do not contain all elements and information requested in this RFP**. A proposal will be rejected if the proposal contains any defect or irregularity and such defect or irregularity constitutes a material deviation from the RFP requirements, which determination will be made by the State Entity on a case-by-case basis.

2.1.7. State's Right to Amend and/or Cancel the RFP

The State Entity reserves the right to amend this RFP prior to the end date and time. Amendments will be made in writing and publicly posted as one or more addenda to the Georgia Procurement Registry. EACH OFFEROR IS INDIVIDUALLY RESPONSIBLE FOR REVIEWING ADDENDA AND ANY OTHER POSTED DOCUMENTS AND MAKING ANY NECESSARY OR APPROPRIATE CHANGES AND/OR ADDITIONS TO THE OFFEROR'S RESPONSE. ALL OFFERORS ARE ENCOURAGED TO FREQUENTLY CHECK THE GPR FOR ADDITIONAL INFORMATION. Finally, the State Entity reserves the right to cancel this RFP at any time.

2.1.8. Protest Process

Offerors should familiarize themselves with the procedures set forth in Section 3.8 of the *Georgia Vendor Manual*, located at:

<http://pur.doas.ga.gov/SPDportalDocs/GeorgiaVendorManual.pdf>

2.1.9. Costs for Preparing Proposals

Each proposal should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete presentation. The cost for developing the proposal and participating in the procurement process (including the protest process) is the sole responsibility of the Offeror. The State will not provide reimbursement for such costs.

2.1.10. ADA Guidelines

The State of Georgia adheres to the guidelines set forth in the Americans with Disabilities Act. Offerors should contact the Issuing Officer at least one day in advance if they require special arrangements when attending the Offerors' or Pre-bid Conference (if any). The Georgia Relay Center at 1-800-255-0056 (TDD Only) or 1-800-255-0135 (Voice) will relay messages, in strict confidence, for the speech and hearing impaired.

2.1.11. Public Access to Procurement Records

PLEASE NOTE: Even though information (financial or other information) submitted by an Offeror may be marked as "confidential", "proprietary", etc., the State Entity will make its own determination regarding what information may or may not be withheld from disclosure.

2.1.12. Registered Lobbyists

By submitting a response to this RFP, the Offeror hereby certifies that the Offeror and its lobbyists are in compliance with the Lobbyist Registration Requirements in accordance with the Georgia Vendor Manual.

2.2. Submittal Instructions

Listed below are key action items related to this RFP. The Schedule of Events in Section 1.4 identifies the dates and time for these key action items. This portion of the RFP provides instructions regarding the process for reviewing the RFP, preparing a response to the RFP and submitting a response to the RFP.

2.2.1. RFP Released

The release of this RFP is formally communicated through the posting of this RFP on the Georgia Procurement Registry, which is accessible online as follows:

http://ssl.doas.state.ga.us/PRSapp/PR_index.jsp

2.2.2. RFP Review

The RFP consists of the following:

1. This document, entitled "The State Entity RFP Document", and
2. Any and all documents provided by the State Entity as attachments to the RFP or links contained within the RFP or its attached documents.

Please carefully review all information contained in the RFP, including all documents available as attachments or available through links. Any difficulty accessing the RFP or opening provided links or documents should be reported immediately to the Issuing Officer (See Section 1.5).

2.2.3. Submitting Questions

All questions concerning this RFP must be submitted in writing via email to the Issuing Officer identified in Section 1.5. No questions other than written will be accepted. No response other than written will be binding upon the State. All Offerors must submit questions by the deadline identified in the Schedule of Events for submitting questions. Offerors are cautioned that the State Entity may or may not elect to entertain late questions or questions submitted by any other method than as directed by this section. All questions about this RFP must be submitted in the following format:

Company Name

Question #1 Question, *Citation of relevant section of the RFP*

Question #2 Question, *Citation of relevant section of the RFP*

All vendor questions and the corresponding answers will be posted to the Georgia Procurement Registry as an official addendum to this RFP.

2.2.4. Attending Offerors' Conference/Pre-bid Conference

The Offerors' conference, Pre-bid Conference or any other information session (if indicated in the schedule of events) will be held at the offices referred to in Section 1.4 "Schedule of Events". Unless indicated otherwise, the attendance is not mandatory; although Offerors are strongly encouraged to attend. However, in the event the conference has been identified as mandatory, then a representative of the Offeror must attend the conference in its entirety to be considered eligible for contract award. The Offeror is strongly encouraged to allow ample travel time to ensure arrival in the conference meeting room prior to the beginning of any mandatory conference. The State Entity reserves the right to consider any representative arriving late to be "not in attendance." Therefore, all Offerors are strongly encouraged to arrive early to allow for unexpected travel contingencies.

2.2.5. Preparing a Response

When preparing a response, the Offeror must consider the following instructions:

1. The Offeror must ensure its response is accurate and readily understandable.
2. Each proposal should be prepared simply and economically, avoiding the use of elaborate promotional materials beyond those sufficient to provide a complete presentation. If supplemental materials are a necessary part of the Technical Proposal, the Offeror should reference these materials in the Technical Proposal, identifying the document(s) and citing the appropriate section and page(s) to be reviewed. All information presented in response to this RFP must be included in the submitted response. There can be no information that is linked to a website that requires reviewers

to access the website for consideration of content. Any such conditions will not be considered as part of the RFP.

3. **The Offeror must label its response using the corresponding section numbers of the RFP so that the State Entity can easily organize and navigate the Offeror's response.**

2.2.6 Packaging the Response

The Offeror's proposal, in response to this RFP, must be divided into two (2) appropriately labeled and sealed packages - a Technical Proposal and a Cost Proposal.

The contents of each package will include:

1. Technical Proposal

- Proposal Certification (Appendix A);
- Small or Minority Business Form (Appendix B) ;
- Sales & Use Tax Compliance Form (Appendix C);
- Technical Proposal (including all worksheets and required attachments); and
- Contract Exceptions (if any).

DO NOT INCLUDE ANY COST INFORMATION IN YOUR TECHNICAL SUBMISSION.

2. Cost Proposal

- The Offeror must use the Cost Proposal form attached to this RFP

2.2.7 "Hard Copy" and Electronic Copies Required

Offeror must provide the following number of copies:

1. Technical Proposal:

- Six (6) hard copies, with one (1) marked "Original" with original signatures; and
- One (1) CD-ROM copies.

2. Cost Proposal:

- Three (3) hard copies, with one (1) marked "Original" and with original signatures; and
- One (1) CD-ROM copies.

Technical Proposal and Cost Proposal CDs **must be labeled and packaged separately.** In the event of a discrepancy/conflict between a hard copy and a CD version, the CD version will govern.

2.2.8 Electronic Copies

1. The Offeror must use caution in creating electronic files. If the State Entity is unable to open an electronic file due to a virus or because the file has become corrupted, the Offeror's proposal may be considered incomplete and disqualified from further consideration.
2. The Offeror must use commonly accepted software programs to create electronic files. The State Entity has the capability of viewing documents submitted in the following format: Microsoft Word or WordPad (.doc), Microsoft Excel (.xls), portable document format file (.pdf), plain text files with the file extension noted in parentheses (.txt), and hypertext markup language files with the file extension noted in parentheses (.html). Unless the RFP specifically requests the use of another type of software or file format than those listed above, please contact the Issuing Officer prior to utilizing another type of software and/or file format. In the event the State Entity is unable to open an electronic file because the State Entity does not have ready access to the software utilized by the

Offeror, the Offeror's proposal may be considered incomplete and disqualified from further consideration.

2.2.9 Submitting the Response

Mark the outside of shipping package as follows:

Name of Company
Point of Contact for Company and Phone Number
RFP# 383101

The Offeror's complete proposal must be received on or before the due date and time at the following location:

Georgia Southern University
Attn: Terri Bickerton, Procurement & Contract Services
104 Southern Drive, Room 1051
Statesboro, GA 30458

All proposals will be time stamped by the State Entity upon receipt. Proposals received after the due date and time will not be evaluated.

3. Offeror Information

This section requests basic information concerning the Offeror and may establish certain minimum insurance, bonding, and/or other requirements the Offeror must meet to be considered eligible for award. Please read each section carefully.

3.1 Company Information

The Offeror will provide the company name, company address and the name, telephone number, and email address of the person or persons authorized to represent the company regarding all matters related to the proposal.

3.2 Georgia Based Business/Reciprocal Preference Law O.C.G.A. §50-5-60(b)

For the purposes of evaluation only, Offerors resident in the State of Georgia will be granted the same preference over Offerors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state to Offerors resident therein over Offerors resident in the State of Georgia. NOTE: For the purposes of this law, the definition of a resident Offeror is an Offeror who is domiciled in the State of Georgia. Please identify the State in which your company is domiciled.

3.3 Small and/or Minority Business

It is the policy of the State of Georgia that small and/or minority business enterprises shall have a fair and equal opportunity to participate in the State purchasing process. Therefore, the State of Georgia encourages all small and minority business enterprises to compete for, win, and receive contracts for goods, services, and construction. Also, the State encourages all companies to sub-contract portions of any state contract to small and minority business enterprises. Offerors interested in taking advantage of the Georgia income tax incentives provided for by the Official Code of Georgia Annotated Section 48-7-38, relative to the use of minority subcontractors in the performance of contracts awarded by the State of Georgia, should contact the Vendor Relations Administrator:

Vendor Relations Administrator
Department of Administrative Services
200 Piedmont Avenue, S.E.
Suite 1308, West Tower

Atlanta, Georgia 30334-9010
Telephone: (404) 657-6000
Fax: (404) 657-8444

Please complete and attach the Small and/or Minority Business form (provided as Appendix B to this RFP) to your response.

3.4 Certification Regarding Status as a “Scrutinized Company”

Any Offeror that currently and/or previously, within the last three years, has had business activities or other operations outside of the United States, must certify that it is not a “scrutinized company.” A “scrutinized company” is a company conducting business operations in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company which can demonstrate any of the following exceptions noted in O.C.G.A. Section 50-5-84. False certification hereunder may result in civil penalties, contract termination, ineligibility to bid on state contractors for three or more years, and/or any other available remedy. If the Offeror is a “scrutinized company”, the Offeror shall not be eligible to bid on or submit a proposal for a contract with the State Entity unless DOAS makes a determination in accordance with O.C.G.A. Section 50-5-84 that it is in the best interests of the State to permit the scrutinized company to submit a bid or proposal. Any scrutinized company desiring DOAS to make such a determination should contact both DOAS and the Issuing Officer immediately. Each offeror must respond to this section in one of the following ways as appropriate: (1) include a written certification with its submitted response that the Offeror is not a “scrutinized company” or (2) include a written statement with its submitted response that the Offeror is a “scrutinized company” but that the Offeror has contacted both DOAS and the Issuing Officer with a request to be considered for an award, which request must include a written statement indicating why it is in the best interests of the State to permit the scrutinized company to participate.

3.5 Sales and Use Tax

In accordance with Official Code of Georgia Annotated §50-5-82, the State Entity is prohibited from awarding a contract to a nongovernmental vendor if that vendor or an affiliate of the vendor is a “dealer” failing or refusing to collect sales or use taxes on its sales delivered to Georgia. Please complete the Sales and Use Tax Form (SPD-SP014 “Sales and Use Tax Form”), which is included as Appendix C to this RFP.

In the event the Offeror is identified as an apparent successful vendor, the information provided in the Sales and Use Tax Form will be submitted by the State Entity to the Georgia Department of Revenue (“DOR”) for a determination as to whether the Offeror is a “prohibited source.” The State Entity reserves the right to submit the Offeror’s completed form to DOR for review even if the Offeror has not been selected for award.

Any Offeror identified as a prohibited source will be ineligible for award. **Accordingly, the Offeror is strongly encouraged to check its tax status now and resolve any outstanding tax liabilities prior to submitting this response.** Department of Revenue has identified the following source to allow Offerors to check current tax status: <http://www.etax.dor.ga.gov/>

3.6. Standard Insurance Requirements

MANDATORY: The Offeror’s response must include the Offeror’s affirmation to meet the following requirement(s). Failure to agree to meet the requirement(s) identified below will result in rejection of the Offeror’s proposal.

Insurance Coverage:

If awarded a contract, the Offeror shall procure and maintain insurance which shall protect the Offeror and the State Entity (as an additional insured) from any claims for bodily injury, property damage, or personal injury covered by the indemnification obligations set forth in the contract attached to this RFP throughout the duration of the contract. The Offeror shall procure and maintain the insurance policies described below at the Offeror's own expense and shall furnish to the State Entity an insurance certificate listing the State Entity as certificate holder and as an additional insured. The insurance certificate must document that the Commercial General Liability insurance coverage purchased by the Offeror includes contractual liability coverage applicable to this contract. In addition, the insurance certificate must provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in Georgia); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of notice of cancellation to the State Entity.

Offeror is required to maintain the following insurance coverage's during the term of the 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 Awarded Offeror(s) qualifies to pay its own workers compensation claims.) In addition, the Offeror shall require all subcontractors occupying the premises or performing work under the 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;
 - Policy limits \$500,000.
- 2) Commercial General Liability Policy with the following minimum coverage:
 - General Aggregate including
 - Products and Completed Operations-- \$1,000,000;
 - Each Occurrence-- \$1,000,000;
 - Aggregate Limit-- \$3,000,000.
- 3) Business Auto Policy to include but not be limited to liability coverage on any owned, non-owned and hired vehicle used by the Offeror or Offeror's personnel in the performance of this contract. The Business Automobile Policy shall have a per occurrence limit of \$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 State Entity. Certificates of Insurance showing such coverage to be in force shall be filed with the State Entity prior to commencement of any work under the contract. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to the State Entity, 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 selected Offeror must procure the required insurance and provide the State Entity with two (2) Certificates of Insurance. Certificates must reference this RFP by number or contract number. Offeror's proposal must include the cost of the required insurance. No contract performance shall occur unless and until the required insurance certificates are provided.

3.7. Bonds and/or Letter of Credit

This section has been intentionally deleted.

3.8. Proposal Certification

MANDATORY: The Offeror must complete and attach a signed copy of the Proposal Certification (which is included as Appendix A to this RFP). DO NOT MODIFY OR ALTER THE PROPOSAL CERTIFICATION IN ANY WAY. Failure to attach a signed copy of the Proposal Certification will result in rejection of the Offeror's proposal.

4. RFP Proposal Factors

This section contains the detailed technical requirements and related services for the Electronic Learning System. Offerors are required to download, complete and then submit the following worksheets with their responses: the Worksheets titled "Mandatory Response Worksheet", "Mandatory Scored Requirement Worksheet" and "Additional Scored Response Worksheet" found as attachments to this RFP. Although many solicitations will contain all of the worksheets noted above, it is possible that a solicitation will not contain all of the worksheets. In the event all three worksheets are not available as attachments to this RFP, please confirm with the Issuing Officer that all three worksheets are not required. These worksheets together with any and all other documents submitted in response to Sections 3 and 4 of this RFP will be considered the Offeror's technical proposal.

The State Entity has determined that it is best to define its own needs, desired operating objectives, and desired operating environment. The State Entity will not tailor these needs to fit a particular solution Offerors may have available; rather, the Offerors shall propose to meet the State Entity's needs as defined in this RFP. All claims shall be subject to demonstration. Offerors are cautioned that conditional proposals, based upon assumptions, may be deemed non-responsive.

4.1. Technical Proposal Introduction

All of the items described in this section are service levels and/or terms and conditions that the State Entity expects to be satisfied by the selected Offeror. Each Offeror must indicate its willingness and ability to satisfy these requirements in the appropriate worksheets.

4.2. Mandatory Requirements

As specified with each requirement listed in the **Mandatory Response Worksheet**, the Offeror must indicate whether its proposal meets the individual requirements by marking either a "YES" or "NO" in the response block provided. A Pass/Fail evaluation will be utilized for all mandatory requirements. Ordinarily, to be considered responsive, responsible and eligible for award, all questions identified as mandatory must be marked "YES" to pass. There may be rare instances in which a response of "NO" is the correct and logical response in order to meet the mandatory requirement (e.g. responding "NO" that the Offeror does not possess any conflicts of interest). Otherwise, any mandatory questions marked "NO" will fail the technical requirements and will result in disqualification of the proposal.

**DO NOT INCLUDE ANY COST INFORMATION IN YOUR RESPONSE TO THIS WORKSHEET;
COST SHOULD ONLY BE PROVIDED WHERE REQUESTED IN THE COST PROPOSAL.**

4.3. Mandatory Scored Response

As specified with each requirement listed in the **Mandatory Scored Response Worksheet**, the Offeror must indicate whether it will meet the individual requirement (if any) and provide a supporting narrative in the space provided. To be considered responsive, responsible and eligible for award, any and all requirements identified in the Mandatory Scored Response Worksheet must be met. There may be rare instances in which an item within the Mandatory Scored Response Worksheet does not create an individual requirement which must be met, but, instead, merely requires a response. All requirements labeled "Mandatory Scored" must be met by the Offeror. Failure to meet any

mandatory scored requirements may result in disqualification of the proposals. The narrative description, along with any required supporting materials, will be evaluated and awarded points in accordance with Section 6 “Proposal Evaluation, Negotiations and Award.”

**DO NOT INCLUDE ANY COST INFORMATION IN YOUR RESPONSE TO THIS WORKSHEET;
COST SHOULD ONLY BE PROVIDED WHERE REQUESTED IN THE COST PROPOSAL.**

4.4. Additional Scored Responses

All items labeled “Additional Scored Responses” represent information that is requested by the State Entity. Offerors are encouraged to provide a thorough narrative description in the space provided in the **Additional Scored Response Worksheet**. Answers along with any requested supporting materials will be evaluated and awarded points in accordance with Section 6 “Proposal Evaluation, Negotiations and Award.”

**DO NOT INCLUDE ANY COST INFORMATION IN YOUR RESPONSE TO THIS WORKSHEET;
COST SHOULD ONLY BE PROVIDED WHERE REQUESTED IN THE COST PROPOSAL.**

4.5. Additional Information

Please access and review all of the attachments provided by the State Entity with this RFP to ensure you have responded to all requests for information.

5. Cost Proposal

5.1 Cost Proposal

Each Offeror is required to submit a cost proposal as part of its response. The cost proposal will be evaluated and scored in accordance with Section 6 “Proposal Evaluation, Negotiations and Award”. By submitting a response, the Offeror agrees that it has read, understood, and will abide by the following instructions/rules:

1. The submitted cost proposal must include all costs of performing pursuant to the resulting contract; and
2. Cost proposals containing a minimum order/ship quantity or dollar value, unless otherwise called for in the RFP, will be treated as non-responsive and may not be considered for award; and
3. In the event there is discrepancy between an Offeror’s unit price and extended price, the unit price shall govern; and
4. The prices quoted and listed in the cost proposal shall be firm throughout the term of the resulting contract, unless otherwise noted in the RFP or contract.

5.2 Cost Structure and Additional Instructions

The State Entity’s intent is to structure the cost format in order to facilitate comparison among all Offerors and foster competition to obtain the best market pricing. Consequently, the State Entity requires that each Offeror’s cost be in the format outlined below. Additional alternative cost structures will not be considered. Each Offeror is hereby advised that failure to comply with the instructions listed below, submission of an incomplete offer, or submission of an offer in a different format than the one requested may result in the rejection of an Offeror’s proposal.

Enter all information directly into the cost sheet(s). Enter numbers on each cost sheet in “number” (two-place decimal), not “currency” or other format unless otherwise stated. That is, omit dollar signs, commas, and any other non-essential symbols. (e.g., \$7.90 should be entered as 7.90) Prices must be in US Dollars. Enter “n/a” to indicate not available or “0” if there is no charge. Cells left blank will be interpreted as “no offer”.

The cost proposal has been included as an attachment to this RFP.

6. Proposal Evaluation, Negotiations and Award

All timely proposals will be evaluated in accordance with the following steps. The objective of the evaluation process is to identify the proposal which represents the best value to the State Entity based on a combination of technical and cost factors. Based on the results of the initial evaluation, the State Entity may or may not elect to negotiate technical and/or cost factors as further described in the RFP. In the event negotiations of the technical and/or cost factors occur, the revised proposals will be reevaluated in accordance with the provisions of Section 6.4 "Scoring Criteria." Once the evaluation process has been completed (and any negotiations the State Entity desires to conduct have occurred), the apparent successful Offeror(s) will be required to enter into discussions with the State Entity to resolve any exceptions to the State Entity's contract. The State Entity will announce the results of the RFP as described further in Section 6.8 "Public Award Announcement."

6.1. Administrative/Preliminary Review

First, the proposals will be reviewed by the Issuing Officer to determine the proposal's compliance with the following requirements:

1. Proposal was received by deadline
2. Proposal is complete and contains all required documents
3. Technical Proposal does not include any pricing from the Cost Proposal

6.2. Evaluating Proposal Factors (Section 4)

If the Offeror's proposal passes the Administrative/Preliminary Review, the Offeror's responses to Section 4 "RFP Proposal Factors" will be submitted to the Evaluation Team for evaluation.

6.2.1. Review of Mandatory & Mandatory Scored Questions

The Evaluation Team will review each proposal in detail to determine its compliance with mandatory RFP requirements. Responses to both "Mandatory" and "Mandatory Scored" Questions will be evaluated on a pass/fail basis. If a proposal fails to meet a mandatory and/or mandatory scored RFP requirement, the State Entity will determine if the deviation is material. A material deviation will be cause for rejection of the proposal. An immaterial deviation will be processed as if no deviation had occurred. All proposals which meet the requirements of the "Mandatory" and "Mandatory Scored" Questions are considered "Responsive Proposals" at this point in time and will be scored in accordance with the point allocation in Section 6.4 "Scoring Criteria."

6.2.2. Review of Additional Scored Information Questions

For all proposals determined to be "Responsive Proposals", the Evaluation Team will review and score the responses to the Additional Scored Information (if any) in accordance with the point allocation in Section 6.4 "Scoring Criteria."

The Offeror will receive a total technical score at the conclusion of the evaluation of the RFP Proposal Factors.

6.3. Evaluating Cost Proposal and Total Combined Score

The cost proposals will be reviewed and scored in accordance with Section 6.4 "Scoring Criteria." To expedite the evaluation process, the State Entity reserves the right to analyze the cost proposals independently, but at the same time the Evaluation Team is analyzing the technical proposals, provided neither the cost proposals nor the cost analysis is disclosed to the Evaluation Team until the Evaluation Team completes its initial evaluation and scoring of the RFP Proposal Factors.

The State Entity may utilize lowest cost, lowest total cost, and total cost of ownership (TCO) or greatest savings to determine the most competitive cost proposal. The cost proposal may be scored on an overall basis or at the category/subcategory/line level (as applicable) relative to other proposals. The Offeror deemed to have the most competitive cost proposal overall, as determined by the State Entity, will receive the maximum score for the cost criteria. In the alternative, in the event the cost proposal is scored at the category, subcategory or line level, the State Entity may assign the maximum score per category/subcategory/line for the most competitive proposal at that level. Other proposals will receive a percentage of the maximum score based on the percentage differential between the most competitive cost proposal and the specific proposal in question.

The Offeror's cost score will be combined with the Offeror's technical score to determine the Offeror's overall score (or "total combined score").

6.4. Scoring Criteria

The evaluation is comprised of the following:

Category	Criteria	Points
Cost	1. Cost of proposed products and/or services	200 points
Technical/Proposal Factors	2. "Mandatory" Requirements	Pass/Fail
Technical/Proposal Factors	3. "Mandatory Scored" and/or "Additional Scored" Responses	800 points
Total	N/A	1000 points

6.5. Negotiations of Proposals and/or Cost Factors

DOAS possesses discretionary authority to conduct one or more rounds of negotiations of technical proposal and/or cost factors as permitted by Georgia law and DOAS' established procurement policy. This section of the RFP describes DOAS' process for utilizing its discretionary negotiation authority as defined by O.C.G.A. Section 50-5-67(a)(6). No state entity is permitted to conduct negotiations of proposal and/or cost factors without DOAS' supervision unless DOAS has expressly authorized the state entity to conduct negotiations on its own. Although this section addresses DOAS' right to negotiate in accordance with O.C.G.A. §50-5-67(a)(6), DOAS/State Entity reserves the right to conduct any other negotiations authorized by law.

The objective of negotiations is to obtain the Offeror's best terms. PLEASE NOTE: NEGOTIATIONS ARE DISCRETIONARY; THEREFORE, THE STATE ENTITY URGES THE OFFEROR (1) TO SUBMIT ITS BEST RESPONSE AND (2) NOT TO ASSUME THE OFFEROR WILL BE GRANTED AN OPPORTUNITY TO NEGOTIATE.

6.5.1. Overview of Negotiations

After the Evaluation Team has scored the Offerors' proposals, the State Entity may elect to enter into one or more rounds of negotiations with all responsive and responsible Offerors or only those Offerors identified by the Evaluation Team as being in the competitive range. The competitive range will not be selected arbitrarily and those Offerors included in the competitive range must have highly scored proposals.

After each round of negotiations (if any), the Offeror will submit revisions to its proposal factors and/or cost proposal, which revisions will be scored by the Evaluation Team in accordance with the same criteria used to evaluate the initial responses from the Offerors. Offerors may be removed from further participation in the negotiation process in the event the Evaluation Team determines the Offeror cannot be considered responsive and responsible or based on the competitive range as defined in Section 6.5.3 "Competitive Range."

The State Entity reserves the right to proceed to award without further discussions after receipt of the initial proposals, in which case, negotiations and Proposal Revisions will not be required.

6.5.2. Negotiation Instructions

Listed below are the key action items related to negotiations. If the State Entity finds it necessary to change any of these items, it will be accomplished by (1) a new version of the RFP posted to the GPR and/or sent electronically to all Offerors or (2) some other written communication. The State's Negotiation Committee may consist of the State's Evaluation Committee or may be comprised of different people. However, evaluation of proposals or revised proposals shall be completed only by the State's Evaluation Committee.

- 1. Negotiation Invitation:** Those Offerors identified by the Evaluation Committee to negotiate will be notified and invited to attend negotiations. Offerors will be notified in writing: (i) the general purpose and scope of the negotiations; (ii) the anticipated schedule for the negotiations; and (iii) the procedures to be followed for negotiations.
- 2. Confirmation of Attendance:** Offerors who have been invited to participate in negotiations must confirm attendance.
- 3. Negotiations Round(s):** One or more rounds of negotiations may be conducted with those Offerors identified by the State's Evaluation Team.

6.5.3. Competitive Range

If the State Entity elects to negotiate pursuant to Section 6, the State Entity may either (1) elect to negotiate with all responsive and responsible Offeror's, (2) limit negotiations to those Offerors identified within the competitive range, or (3) limit negotiations to the number of Offerors with whom the State Entity may reasonably negotiate as defined below. In the event the State Entity elects to limit negotiations to those Offerors identified within the competitive range, the State Entity will identify the competitive range by (1) ranking Offerors' proposals from highest to lowest based on each Offeror's Total Combined Score and (2) then looking for breaks in the scores such that natural groupings of similar scores may be identified. In the event the State Entity determines the number of responsive and responsible Offerors is so great that the State Entity cannot reasonably conduct negotiations (which determination shall be solely at the State Entity's discretion and shall be conclusive), the State Entity may elect to limit negotiations to the top three (3) ranked Offerors as determined by the Total Combined Score.

6.5.4. Negotiation Round Completion

As part of each round of negotiation, the State Entity may or may not engage in verbal discussions with the Offerors. However, whether or not the State Entity engages in verbal discussions, any revisions the Offeror elects to make to its response must be submitted in writing via email by the end date and time identified by the Issuing Officer. All revisions received by the due date and time will be evaluated and re-scored by the Evaluation Team in accordance with the same criteria used to evaluate the initial responses from the Offerors. Revisions which are not received prior to the due date and time cannot be considered; however, any Offeror failing to submit timely revisions will not be disqualified from consideration for award based on its final proposal as accepted by the State Entity.

6.6. Selection and Award

The Offeror receiving the highest Total Combined Score and with whom the State Entity is able to reach agreement as to contract terms will be selected for award.

6.7. Site Visits and Oral Presentations

The State Entity reserves the right to conduct site visits or to invite Offerors to present their proposal factors/technical solutions to the Evaluation Team. Cost proposals and related cost information must not be discussed during the oral presentation of the Offeror's technical solution. Nothing in this section shall prohibit the Negotiation Team from discussing both proposal factors and cost information during the negotiation process defined by Section 6.5 "Negotiations of Proposals and/or Cost Factors".

6.8. Public Award Announcement

The preliminary results of the evaluation will be announced through the public posting of a Notice of Intent to Award (in the event the value of the contract(s) is estimated to be \$100,000 or more in the first year) to the Georgia Procurement Registry. The Notice of Intent to Award ("NOIA") is not notice of an actual contract award; instead, the NOIA is notice of the State Entity's expected contract award(s) pending resolution of the protest process. The NOIA (if any) will identify the apparent successful Offeror(s), unsuccessful Offeror(s), and the reasons why any unsuccessful Offerors were not selected for contract award. NO OFFEROR SHOULD ASSUME PERSONAL NOTICE OF THE NOTICE OF INTENT TO AWARD ("NOIA") WILL BE PROVIDED BY THE STATE ENTITY. INSTEAD, ALL OFFERORS SHOULD FREQUENTLY CHECK THE GEORGIA PROCUREMENT REGISTRY FOR NOTICE OF THE NOIA.

The Notice of Award ("NOA") is the State Entity's public notice of actual contract award(s). The NOA will be publicly posted to the Georgia Procurement Registry.

7. Contract Terms and Conditions

The contract that the State Entity expects to award as a result of this RFP will be based upon the RFP, the successful Offeror's final response as accepted by the State Entity and the contract terms and conditions, which are attached to this RFP. The "successful Offeror's final response as accepted by the State Entity" shall mean: the final cost and technical proposals submitted by the Awarded Offeror and any subsequent revisions to the Awarded Offeror's cost and technical proposals and the contract terms and conditions due to negotiations, written clarifications or changes made in accordance with the provisions of the RFP, and any other terms deemed necessary by the State Entity, except that no objection or amendment by an Offeror to the RFP requirements or the contract terms and conditions shall be incorporated by reference into the contract unless the State Entity has explicitly accepted the Offerors objection or amendment in writing.

Please review the State Entity's contract terms and conditions prior to submitting a response to this RFP. Offerors should plan on the contract terms and conditions contained in this RFP being included in any award as a result of this RFP. Therefore, all costs associated with complying with these requirements should be included in any pricing quoted by the Offerors. The contract terms and conditions may be supplemented or revised before contract execution and are provided to enable Offerors to better evaluate the costs associated with the RFP and the potential resulting contract.

Exception to Contract

By submitting a proposal, each Offeror acknowledges its acceptance of the RFP specifications and the contract terms and conditions without change except as otherwise expressly stated in the submitted proposal. If an Offeror takes exception to a contract provision, the Offeror must state the reason for the exception and state the specific contract language it proposes to include in place of the provision. Any exceptions to the contract must be submitted with the Offeror's response. Exceptions must be in an original

document using the track changes functionality and may not be submitted in the form of highlighted changes to the original contract. Proposed exceptions must not conflict with or attempt to preempt mandatory requirements specified in the RFP.

In the event the Offeror is selected for potential award, the Offeror will be required to enter into discussions with the State Entity to resolve any contractual differences before an award is made. These discussions are to be finalized and all exceptions resolved within the period of time identified in the schedule of events. Failure to resolve any contractual issues will lead to rejection of the Offeror. The State Entity reserves the right to proceed to discussions with the Offeror ranked next best Offeror.

The State Entity reserves the right to modify the contract to be consistent with the apparent successful offer, and to negotiate other modifications with the apparent successful Offeror. Exceptions that materially change the terms or the requirements of the RFP may be deemed non-responsive by the State Entity, in its sole discretion, and rejected. Contract exceptions which grant the Offeror an impermissible competitive advantage, as determined by the State Entity, in its sole discretion, will be rejected. If there is any question whether a particular contract exception would be permissible, the Offeror is strongly encouraged to inquire via written question submitted to the Issuing Officer prior to the deadline for submitting written questions as defined by the Schedule of Events.

8. List of RFP Attachments

The following documents make up this RFP. Any difficulty locating or accessing the following documents should be immediately reported to the Issuing Officer.

- A. State Entity RFP (this document)
- B. Special Term Definitions from Section 1.6 "Definition of Terms" of this RFP (**NONE INCLUDED**)
- C. Appendix A Proposal Certification
- D. Appendix B Small and/or Minority Business Form
- E. Appendix C Sales and Use Tax Compliance Form
- F. Appendix D References recent/current references & Contact information on cancelled contracts
- G. Mandatory Response Worksheet from Section 4.2 of this RFP
- H. Mandatory Scored Response Worksheet from Section 4.3 of this RFP
- I. Additional Scored Response Worksheet from Section 4.4 of this RFP
- J. Cost Worksheet from Section 5 "Cost Proposal" of this RFP
- K. State Contract from Section 7 "Contract Terms and Conditions" of this RFP

L.



Appendix A PROPOSAL CERTIFICATION

By responding to this RFP, the Offeror understands and agrees to the following:

1. That the submitted proposal constitutes an offer, which when accepted in writing by the State Entity, and subject to the terms and conditions of such acceptance, will constitute a valid and binding contract between the undersigned and the State Entity; and
2. That the Offeror has read the specifications and requirements shown or referenced in the RFP and that the Offeror's proposal is made in accordance with the provisions of such specifications and requirements except as expressly stated otherwise in the Offeror's proposal; and
3. That the Offeror guarantees and certifies that all items included in the Offeror's proposal meet or exceed any and all such stated RFP specifications and requirements except as expressly stated otherwise in the Offeror's proposal; and
4. That, if awarded a contract, the Offeror will deliver goods and/or services that meet or exceed the RFP specifications and requirements except as expressly stated otherwise in the Offeror's proposal; and
5. That the technical and cost proposals submitted by the Offeror shall be valid and held open for a period of **one hundred and twenty (120) days** from the final RFP closing date and that the proposals may be held open for an additional period of time subject to the Offeror's consent; and
6. That this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same materials, supplies, equipment, or services and is in all respects fair and without collusion or fraud. The Offeror understands and agrees that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards; and
7. That the provisions of the Official Code of Georgia Annotated, Sections 45-10-20 et seq. have not been violated and will not be violated in any respect.

DO NOT MODIFY THE PROPOSAL CERTIFICATION TERMS IN ANY WAY. THIS FORM MUST BE COMPLETED, SIGNED AND SUBMITTED WITH YOUR TECHNICAL PROPOSAL.

Contractor's Full Legal Name: (PLEASE TYPE OR PRINT)	
Authorized Signature:	
Printed Name and Title of Person Signing:	
Date:	
Company Address:	
FAX Number:	
Email Address:	

***This table must be completed in its entirety by the Offeror.**



Appendix B

SMALL OR MINORITY BUSINESS FORM

- Can your company be classified as a **SMALL BUSINESS** by the following definition:

Small Business – defined as an independently owned and operated entity that has either fewer than one hundred (100) employees or less than one million dollars (\$1,000,000) in gross receipts per year. (State Statute 50-5-121)

____ **Yes** (If yes, please check the following reason(s) that apply)

____ Less than 100 employees or,

____ Less than \$1,000,000 in gross annual receipts.

____ **No**

- Can your company be classified as a **MINORITY OWNED BUSINESS** by the following definition?

Minority Owned Business – means a business that is 51% owned or controlled by one or more minority persons. Please indicate below if your firm is 51% owned or controlled by one of the minority groups listed.

African American	%	Asian American	%
Hispanic / Latino	%	Pacific Islander	%
Native American	%		

Ownership: American Citizen ____ Yes ____ No

Are any of your suppliers minority and/or small business enterprises? ____ Yes ____ No

If Yes, please indicate the percentage of minority companies represented. ____%

If awarded a contract as a result of this solicitation, do you anticipate employing any small or minority subcontractors? ____ Yes ____ No



Appendix C

SALES AND USE TAX COMPLIANCE

The purpose of this form is to obtain information regarding the vendor to determine whether the vendor may be considered a prohibited source as defined by O.C.G.A. Section 50-5-82. The information provided in this form will be submitted to the Georgia Department of Revenue.

Please complete the following information:

- Vendor's Name:
- Physical Location Address:
- Federal Identification Number (FEI):
- Have you ever been registered in the State of Georgia?
- If so, please provide the following information, if applicable:
 - State Taxpayer Identification Number (STI):
 - Sales and Use Tax Number:
 - Withholding Tax Number:
- What type of service will you perform?
- Will you sell any tangible personal property or goods?
- Vendor Affiliate's Name:
 - FEI:
 - STI:
 - Sales and Use Tax Number:
 - Withholding Tax Number:

If there is more than one affiliate, please attach a separate sheet listing the information above.

Contact Information

Telephone Number:

E-mail Address:

Appendix D

References

References: Bidders must include in their responses at **least three references** where services similar in scope were performed. Preference shall be given to vendors with experience working with higher education institutions. Businesses with account sizes similar to the University requirements may be included. Please provide names of universities, colleges, and/or businesses of similar size with points of contact, phone numbers, and dates service was provided in your response. The University may, with full cooperation of selected vendors, contact clients and references. Services rendered for the referenced accounts must have been in performed within the past 5 years.

Bidders will furnish contact information for those whom similar services have been cancelled within the last five (5) years. Include name of company, point of contact and telephone number/email.

Bidders will furnish at least three (3) references for whom similar services are or have been performed within the last five (5) years. Include name of company, point of contact and telephone number/email.

COMPANY NAME & ADDRESS	TYPE OF WORK PERFORMED	CONTACT NAME, PHONE NUMBER AND EMAIL

Bidders will furnish contact information for those whom similar services have been cancelled within the last five (5) years . Include name of company, point of contact and telephone number/email.

COMPANY NAME & ADDRESS	TYPE OF WORK PERFORMED	CONTACT NAME, PHONE NUMBER AND EMAIL

PROVIDE A BRIEF DESCRIPTION OF THE STRUCTURE AND HISTORY OF YOUR COMPANY:

May attach additional Company Information or Brochures

State of Georgia
Agency Standard Contract Form

Solicitation Title Electronic Learning System LMS/LCMS	Solicitation Number 383101	Contract Number
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1. This Contract is entered into between the Agency and the Contractor named below:

Agency's Name Georgia Southern University	(hereafter called Agency)
Contractor's Name	
(hereafter called Contractor)	

2. Contract to Begin: **Upon Award** Date of Completion: Renewals: **4**

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

4. Maximum Amount of this Contract:	Total Financial Obligation of the Agency for the First Fiscal Year:	Total Financial Obligation of the Agency for each Renewal Period if Renewed:
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5. Authorized Person to Receive Contract Notices for Agency: **Terri Bickerton** Authorized Person to Receive Contract Notices for Contractor:

6. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Contract:

Attachment 1: Agency Standard Contract Terms and Conditions for Software Purchases
Attachment 2: Solicitation (referenced above)
Attachment 3: Contractor's Final Response
Attachment 4: Amendments to the Statewide Contract Terms and Conditions (if any)

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

7.

Contractor

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

By <i>(Authorized Signature)</i>	Date Signed
Printed Name and Title of Person Signing	

Address

8.

Agency

Agency Name
Georgia Southern University

By <i>(Authorized Signature)</i>	Date Signed
Printed Name and Title of Person Signing	

Address
P.O. Box 8123 Statesboro, GA 30460

**STATE OF GEORGIA
AGENCY STANDARD CONTRACT
Attachment 1**

Contract Terms and Conditions for Software Purchases

A. DEFINITIONS AND GENERAL INFORMATION

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

- (i) **"Agency"** means the State of Georgia entity identified in the Agency Standard Contract Form to contract with the Contractor for the Software, Licenses and Services as identified in the Contract.
- (ii) **"Agency Standard Contract" or "Contract"** means the agreement between the Agency and the Contractor as defined by the Agency Standard Contract Form and its incorporated documents.
- (iii) **"Agency Standard Contract Form"** means the document that contains basic information about the Contract and incorporates by reference the applicable Contract Terms and Conditions, the RFX, Contractor's Response to the RFX, the final pricing documentation for Software, Licenses and Services 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 Contract shall be incorporated by reference into this Contract unless the Agency has accepted the Contractor's objection or amendment in writing. The Agency Standard Contract Form is defined separately and referred to separately throughout the Agency Standard Contract as a means of identifying the location of certain information. For example, the initial term of the Contract is defined by the dates in the Agency Standard Contract Form.
- (iv) **"Contractor"** means the provider(s) of the Software, Licenses and Services under the Contract as identified in the Agency Standard Contract Form.
- (v) **"Purchase Instrument"** means the documentation issued by the Agency to the Contractor for a purchase of Software, Licenses and Services in accordance with the terms and conditions of the Contract. The Purchase Instrument should reference the Contract and may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Agency.
- (vi) **"Response", "Contractor's Response" or "Final Response"** means the Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the Agency.
- (vii) **"RFX"** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the Agency Standard Contract Form, which solicitation document was issued (electronically or by other means) to solicit the Software, Licenses and Services that are subject to the Contract.
- (viii) **"State"** means the State of Georgia, the Agency, and any other authorized state entities issuing Purchase Instruments against the Contract.

2. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.
3. **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 Contract and shall submit a quarterly written report to the Agency.

B. DURATION OF CONTRACT

1. **Contract Term.** The Contract shall begin and end on the dates specified in the Agency Standard Contract Form unless terminated earlier in accordance with the applicable terms and conditions.
2. **Contract Renewal.** The Agency shall have the option, in its sole discretion, to renew the Contract for additional terms on a year-to-year basis by giving the Contractor written notice of the renewal decision at least sixty (60) days prior to the expiration of the initial term or renewal term. Renewal will depend upon the best interests of the State, funding, and Contractor's performance. Renewal will be accomplished through the issuance of a Notice of Award Amendment. Upon the Agency's election, in its sole discretion, to renew any part of this Contract, Contractor shall remain obligated to perform in strict accordance with this Contract unless otherwise agreed by the Agency and the Contractor.
3. **Contract Extension.** In the event that this Contract shall terminate or be likely to terminate prior to the making of an award for a new contract for the identified Software, Licenses and Services, the Agency may, with the written consent of Contractor, extend this Contract for such period as may be necessary to afford the State a continuous supply of the identified Software, Licenses and Services.

C. DESCRIPTION OF GOODS AND SERVICES

1. **Software and Specifications.** The Contractor shall provide all software ("Software") in strict compliance with the descriptions and representations as to the Software (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) which appear in the RFX and the terms of the Contract.
2. **Software Licenses.** Contractor shall provide Software licenses ("Licenses") in compliance with the specifications contained in the RFX and the terms of the Contract. To the extent permitted and/or required by the Software publishers of any Software provided hereunder, Contractor hereby grants an irrevocable, nonexclusive, worldwide, fully paid up, royalty-free license and/or sublicense to use, execute, maintain, reproduce, modify, display, and perform copies of Software and accompanying documentation in accordance with the licensing capacity (if any) specified in the RFX and or applicable Purchase Instrument. The Agency may copy the Software as necessary to efficiently utilize the Software. Without limiting the generality of the foregoing, such rights shall include copying rights granted to "owners of copies" under federal copyright laws of the United States, plus copying:
 - (i) For backup, archive or emergency restart purposes;
 - (ii) For disaster recovery and disaster recovery testing purposes;
 - (iii) To migrate the Software for use on other computers and/or hardware; and
 - (iv) To store the Software at any off premise location which the Agency uses for storage purposes.

If the Contractor is acting as a reseller of the Software, the Contractor must provide the Licenses, as required by the Software publishers, to the Agency and shall coordinate with any negotiations of such Licenses as may be conducted between the Agency and the Software publishers. All licenses provided hereunder shall remain in effect perpetually until termination of the Contract. Within thirty (30) days of any termination or expiration of each individual License, the Agency will destroy all copies of the Software in its possession or control.

- 3. Exclusions.** Except as expressly permitted by this Contract, the Agency agrees 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) Permit third-party access to, or use of, the Software, except as permitted in the Contract;
 - (iii) Create derivative works based on the Software;
 - (iv) Reverse engineer, disassemble, or decompile the Software; or
 - (v) Remove any identification or notices contained on the Software.

The Agency will notify Contractor if the Agency becomes aware of any unauthorized third-party access to, or use of, the Software.

- 4. Services and other Deliverables.** Contractor shall provide services and other deliverables ("Services") in compliance with the specifications contained in the RFX and the terms of the Contract. "Services" shall include administration, distribution, installation, configuration, support and training services as further described in the RFX. Contractor and any employees of Contractor will 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 such Services are provided.
- 5. Ordering and Technical Assistance.** Agency may place orders individually from time to time in any manner permitted by applicable state purchasing policy, the RFX, and the Response as accepted by the Agency. The Contractor shall provide technical assistance as reasonably required for the Agency to make purchases if online purchases are made utilizing the Contractor's website.
- 6. Product Shipment and Delivery.** All products shall be provided as required by the provisions of the RFX. Unless the RFX requires otherwise, all products shall be made available either by online download or shall be shipped F.O.B. destination. Destination shall be the location(s) specified in the RFX or any provided Purchase Instrument. All items shall be at the Contractor's risk until they have been delivered and accepted by the receiving entity. All items shall be subject to inspection on delivery. Hidden damage will remain the responsibility of the Contractor to remedy without cost to the Agency, regardless of when the hidden damage is discovered.
- 7. Non-Exclusive Rights.** The Contract is not exclusive. The Agency reserves the right to select other contractors to provide software, licenses and services similar to the Software and Services described in the Contract during the term of the Contract.
- 8. No Minimums Guaranteed.** The Contract does not guarantee any minimum level of purchases.

D. COMPENSATION

1. **Pricing and Payment.** The Contractor will be paid for the Software, Licenses and Services sold pursuant to the Contract in accordance with the RFX and final pricing documents as incorporated into the Agency Standard Contract Form and the terms of the Contract. Unless clearly stated otherwise in the Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties.
2. **Billings.** If applicable, and unless the RFX provides otherwise, the Contractor shall submit, on a regular basis, individual invoices for the Software, Licenses and Services as supplied to the Agency under the Contract at the billing addresses specified in the Purchase Instruments or Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall pay all approved invoices in arrears and in accordance with applicable provisions of State law.

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

3. **Delay of Payment Due to Contractor's Failure.** If the Agency in good faith determines that the Contractor has failed to perform or deliver Software, Licenses and/or Services as required by the Contract, the Contractor shall not be entitled to any compensation under the Contract until such Software or Licenses are delivered and Services are performed. In this event, the Agency may withhold that portion of the Contractor's compensation which represents payment for Software, Licenses and/or Services that were not delivered or performed. To the extent that the Contractor's failure to perform or deliver in a timely manner causes the Agency to incur costs, the Agency may deduct the amount of such incurred costs from any amounts payable to Contractor. The Agency's authority to deduct such incurred costs shall not in any way affect the Agency's authority to terminate the Contract.
4. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the Agency and/or the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the Agency and/or the State may set off the sum owed to the Agency and/or the State against any sum owed by the Agency and/or the State to the Contractor in the Agency's sole discretion.

E. TERMINATION

1. **Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, this Contract will terminate immediately and absolutely if the Agency determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the Agency cannot fulfill its obligations under the Contract, which determination is at the Agency's sole discretion and shall be conclusive. Further, the Agency may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:
 - (i) In the event the Contractor is required to be certified or licensed as a condition precedent to providing such Software, Licenses and Services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
 - (ii) The Agency determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;

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

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

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

3. Notice of Default. If there is a default event caused by the Contractor, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the Agency's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the Agency may:

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

4. Termination Upon Notice. Following thirty (30) days' written notice, the Agency may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for Software, Licenses and Services provided under the Contract to the Agency up to and including the date of termination.

- 5. Termination Due to Change in Law.** The Agency shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of any of the following:
- (i) The Agency's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency; and/or
 - (ii) The Agency's duties are substantially modified.
- 6. Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by the Agency, the Agency shall pay only those amounts, if any, due and owing to the Contractor for Software, Licenses and Services actually rendered up to the date specified in the notice of termination for which the Agency is obligated to pay pursuant to the Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the Agency under the Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.
- 7. The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:
- (i) Cease work under the 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 Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;
 - (ii) Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
 - (iii) Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract;
 - (iv) Cooperate in good faith with the Agency and its 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 Agency any payments made by the Agency for Software, Licenses and Services that were not delivered or rendered by the Contractor.

F. CONFIDENTIAL INFORMATION

- 1. Access to Confidential Data.** The Contractor's employees, agents and subcontractors may have access to confidential data maintained by the State to the extent necessary to carry out the Contractor's responsibilities under the Contract. The Contractor shall presume that all information received pursuant to the Contract is confidential unless otherwise designated by the State. If it is reasonably likely the Contractor will have access to the State's confidential information, then:
- (i) The Contractor shall provide to the State a written description of the Contractor's policies and procedures to safeguard confidential information;
 - (ii) Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

- (iii) The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract; and
- (iv) The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of the Contract.

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

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

G. INDEMNIFICATION

- 1. **Contractor's Indemnification Obligation.** The 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 Contract;
 - (ii) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;
 - (iii) Any failure of the Software, Licenses and/or Services to comply with applicable specifications, warranties, and certifications under the Contract;
 - (iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Software, Licenses and/or Services or any parts thereof provided under the 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) The Contractor's performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;

- (vii) Any failure by the Contractor to comply with the "Compliance with the Law" provision of the Contract;
- (viii) Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;
- (ix) Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or
- (x) Any failure by the Contractor to adhere to the confidentiality provisions of the Contract.

2. **Duty to Reimburse State Tort Claims Fund.** To the extent such damage or loss as covered by this indemnification is covered by the State of Georgia Tort Claims Fund ("the Fund"), the Contractor (and its insurers) agrees to reimburse the Fund. To the full extent permitted by the Constitution and the laws of the State and the terms of the Fund, the Contractor and its insurers waive any right of subrogation against the State, the Indemnified Parties, and the Fund and insurers participating thereunder, to the full extent of this indemnification.
3. **Litigation and Settlements.** The Contractor shall, at its own expense, be entitled to and shall have the duty to participate in the defense of any suit against the Indemnified Parties. No settlement or compromise of any claim, loss or damage entered into by the Indemnified Parties shall be binding upon Contractor unless approved in writing by Contractor. No settlement or compromise of any claim, loss or damage entered into by Contractor shall be binding upon the Indemnified Parties unless approved in writing by the Indemnified Parties.
4. **Patent/Copyright Infringement Indemnification.** 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 Software, Licenses and/or Services constitutes an infringement of any United States Letters Patent or copyright, provided the State gives the Contractor immediate notice in writing of the institution of such suit, permits Contractor to fully participate in the defense of the same, and gives Contractor all available information, assistance and authority to enable Contractor to do so. Subject to approval of the Attorney General of the State of Georgia, the Agency shall tender defense of any such action to Contractor upon request by Contractor. Contractor shall not be liable for any award of judgment against the State reached by compromise or settlement unless Contractor accepts the compromise or settlement. Contractor shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement shall be binding upon the State unless approved by the State.

In case any of the Software, Licenses and/or Services is in any suit held to constitute infringement and its use is enjoined, Contractor shall, at its option and expense:

- (i) Procure for the State the right to continue using the Software, Licenses and Services;
- (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 such patent, or copyright infringement or claim thereof is based upon or arises out of:

- (i) Compliance with designs, plans or specifications furnished by or on behalf of the Agency as to the Software;
- (ii) Use of the Software 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.

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

H. INSURANCE

Contractor shall provide all insurance as required by the RFX.

I. BONDS

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

J. WARRANTIES

1. **Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Contractor and/or subcontractors in all provisions of the Contract and the Contractor's Response, whether or not the Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the Software, Licenses 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, including without limitation, warranties which arise through course of dealing or usage of trade, the warranty of merchantability, and the warranty of fitness for a particular purpose. The warranties expressed in the Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Software, Licenses and Services provided by the Contractor. Contractor shall assign and pass through to Agency all applicable Software publishers' warranties, covenants and indemnification provisions. The provisions of this section apply during the term of the Contract and any extensions or renewals thereof.
2. **Nonconforming Software.** All Software delivered by Contractor to the Agency shall be free from any defects in design, material, or workmanship. In the event that any of the Software is found by the Contractor, the State, any governmental agency, or court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such Software be reworked or recalled, the Contractor will promptly communicate all relevant facts to the Agency and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the Agency from taking such action as may be required of it under any such law or regulation.

The Agency shall have the option of returning or replacing the defective Software at Contractor's expense. If the Contractor is the Software publisher, the Contractor shall perform all necessary

repairs or modifications at its sole expense provided the State determines the performance of such repairs and modifications is in the State's best interest.

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

3. **Originality and Title to Provided Software and Services.** Contractor represents and warrants that all the concepts, materials, Software and Services produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials Software and Services. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the Software and Services contemplated by the Contract. Contractor or the original Software publisher shall retain all right, title and interest in the Software and any accompanying documentation, including all applicable intellectual property rights.

The Contractor represents and warrants that the concepts, materials, Software and Services and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials, Software and Services will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity.

4. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the Software, Licenses and Services provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.
5. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the 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.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.
7. **Title to Property.** The Contractor represents and warrants that title to any Software assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all Software shall be delivered free of any security interest or other lien or encumbrance.
8. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the Software, License and Services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.
9. **Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform the Services under this Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency. All of Contractor or any subcontractor's personnel shall comply with the confidentiality requirements of the Contract and the security requirements of the applicable Agency while on state property. In the event that any of Contractor or subcontractor's personnel do not comply with such confidentiality and security requirements, the Agency may have the personnel removed from the premises.

All persons assigned to perform the Services under this Contract shall be qualified to perform such Services. Personnel assigned by Contractor shall have all professional licenses required to perform

the Services. If the 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 Contract, the Agency shall notify Contractor in writing and Contractor shall promptly address the performance or conduct of such person, or, at the Agency's request, immediately replace such person with another person acceptable to the 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 Contract.

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

K. CONTRACT ADMINISTRATION

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

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

- (i) Local license or permit requirements;
- (ii) Export, import and customs laws and regulations, which may apply to certain equipment, software and technical data provided hereunder; and

- (iii) All applicable foreign corrupt practices acts.

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

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

4. Drug-free Workplace. The Contractor hereby certifies as follows:

- (i) Contractor will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of this 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 Contract; and
- (iii) Contractor will secure from any subcontractor hired to work on any job assigned under this Contract the following written certification: "As part of the subcontracting agreement with (Contractor's Name), (Subcontractor's Name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this Contract pursuant to paragraph 7 of subsection (b) of Code Section 50-24-3."

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

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

- 5. Amendments.** The Contract may be amended in writing from time to time by mutual consent of the parties. If the contract award exceeds the delegated purchasing authority of the Agency, then the Agency must obtain approval of the amendment from the Department of Administrative Services (DOAS). All amendments to the Contract must be in writing and fully executed by duly authorized representatives of the Agency and the Contractor.
- 6. Third Party Beneficiaries.** There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.
- 7. Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this 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 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 Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

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

- 9. Assignment and Delegation.** The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
- 10. Use of Third Parties.** Except as may be expressly agreed to in writing by the Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Contract or any of the work subsequently assigned under this Contract. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Agency. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.
- 11. Integration.** The Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.
- 12. Headings or Captions.** The paragraph headings or captions used in the 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 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 goods 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 Contract.
- 14. Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.
- 15. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Software, Licenses and Services provided in connection with the Contract.
- 16. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 17. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Agency Standard 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 persons 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 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 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 Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision,

the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Contract shall not affect any other part of this Contract, and the remainder of this 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 Contract. Contractor shall ensure that all personnel providing Software, Licenses and Services to the State are responsive to the State's requirements and requests in all respects.
- 21. Authorization.** The persons signing this Contract represent and warrant to the other parties that:
- (i) It has the right, power and authority to enter into and perform its obligations under the Contract; and
 - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract and the 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 Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 23. Record Retention and Access.** The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the State throughout the term of the 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. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
- 24. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
- 25. Immunity from Liability.** Every person who is a party to the Contract is hereby notified and agrees that the State is immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.
- 26. 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.
- 27. Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1

Subpart 9.4. Contractor will immediately notify the Agency if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

- 28. Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.
- 29. Taxes.** The Agency is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The Agency is exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform Services required in this Contract, which verification is incorporated herein by reference.
- 30. Certification Regarding Sales and Use Tax.** By executing the Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.
- 31. Delay or Impossibility of Performance.** Neither party shall be in default under the Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract.
- 32. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Contract, Contractor's liability to the State for any claim of damages arising out of this Contract shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Contract.

No limitation of Contractor's liability shall apply to Contractor's liability for loss or damage to State equipment or other property while such equipment or other property is in the sole care, custody, and control of Contractor's personnel. Contractor hereby expressly agrees to assume all risk of loss or damage to any such State equipment or other property in the care, custody, and control of Contractor's personnel. Contractor further agrees that equipment transported by Contractor personnel in a vehicle belonging to Contractor (including any vehicle rented or leased by Contractor or Contractor's personnel) shall be deemed to be in the sole care, custody, and control of Contractor's personnel while being transported. Nothing in this section shall limit or affect Contractor's liability arising from claims brought by any third party.
- 33. Obligations Beyond Contract Term.** The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.
- 34. Counterparts.** The Agency and the Contractor agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

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

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