

## State of Georgia Statewide Standard Contract Form

Solicitation Title <b>Networking Equipment and IT Infrastructure Products</b>	Solicitation Number <b>eRFP 99999-SPD0000071</b>	Contract Number <b>99999-SPD-720120501-0006</b>
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1. This Contract is entered into between the Agency and the Contractor named below:

Agency's Name <b>Georgia Department of Administrative Services</b>	(hereafter called Agency)
Contractor's Name <b>Cisco Systems, Inc.</b>	(hereafter called Contractor)

2. Contract to Begin: <b>June 1, 2012</b>	Date of Completion: <b>May 31, 2013</b>	Renewals: <b>4</b>
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3. Performance Bond, if any: <b>Not Applicable</b>	Other Bonds, if any: <b>Not Applicable</b>
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4. Authorized Person to Receive Contract Notices for Agency: <b>Janet Pytelewski</b>	Authorized Person to Receive Contract Notices for Contractor:
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5. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Statewide Contract:

Attachment 1: <b>Statewide Contract for Software, Products and Ancillary Services</b>
Attachment 2: <b>Solicitation (referenced above)</b>
Attachment 3: <b>Contractor's Final Response</b>

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

6. **Contractor**

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

By (Authorized Signature) 	Date Signed <b>JUNE 12, 2012</b>
Printed Name and Title of Person Signing <b>Brian Fukuhara</b>	
Address <b>Vice President Finance</b>	

7. **Agency**

Agency Name  
**Georgia Department of Administrative Services**

By (Authorized Signature) 	Date Signed <b>June 20, 2012</b>
Printed Name and Title of Person Signing <b>Xolie Lowe, Assistant Commissioner - State Purchasing Div.</b>	
Address <b>200 Piedmont Ave., SE, Suite 1308, West Tower, Atlanta, GA 30334-9010</b>	

**APPROVED BY LEGAL**

**STATE OF GEORGIA  
STATEWIDE CONTRACT  
Attachment 1**

**Contract Terms and Conditions for Software, Products and Ancillary Services**

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**A. DEFINITIONS AND GENERAL INFORMATION**

1. **Definitions.** The following words shall be defined as set forth below:
  - (i) **"Agency"** means the Department of Administrative Services of the State of Georgia.
  - (ii) **"Awarded Item Schedule"** means the summarizing document, if any, listing the software, products and services as awarded to the Contractor and any other awarded companies.
  - (iii) **"Contract"** or **"Statewide Contract"** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
  - (iv) **"Contractor"** means the provider(s) of the software, products and services under the Statewide Contract as identified in the Statewide Contract Form.
  - (v) **"Purchase Instrument"** means the documentation issued by the User Agencies to the Contractor or one of its authorized resellers for a purchase of software, products and/or services in accordance with the terms and conditions of the Statewide Contract. The Purchase Instrument should reference the Statewide Contract and may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the Agency or User Agencies as long as such requirements are not in conflict with the terms of this Statewide Contract and/or are mutually agreed to by the parties in writing. **Services** means one or more of the services options as determined by RFX scope and selected by the Customer in its Purchase Order and described at: <http://www.cisco.com/go/servicedescriptions>
  - (vi) **"Response", "Contractor's Response" or "Final Response"** means the Contractor's submitted response to the RFX, including any modifications or clarifications accepted by the Agency.
  - (vii) **"RFX"** means the Request for Proposal, Request for Bid, or other solicitation document (and any amendments or addenda thereto) specifically identified in the Statewide Contract Form that was issued to solicit the software, products and/or services that are subject to the Statewide Contract.
  - (viii) **"State"** means the State of Georgia, the Agency, User Agencies, and any other authorized entities as identified by the RFX issuing Purchase Instruments against the Statewide Contract.
  - (ix) **"Statewide Contract Form"** means the document that contains basic information about the Statewide Contract and incorporates by reference the applicable Contract Terms and Conditions, the RFX, Contractor's Response to the RFX, the final pricing documentation and any mutually agreed clarifications, modifications, additions and deletions resulting from final contract negotiations. No objection or amendment by a Contractor to the RFX requirements or the Statewide Contract shall be incorporated by reference into this Statewide Contract unless the Agency has accepted the

Contractor's objection or amendment in writing. The Statewide Contract Form is defined separately and referred to separately throughout the Statewide Contract Terms and Conditions as a means of identifying the location of certain information. For example, the initial term of the Statewide Contract is defined by the dates in the Statewide Contract Form.

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- (x) **"User Agency" or "User Agencies"** means any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to make purchases from this Statewide Contract. For clarity, User Agency also includes Department of Administrative Services of the State of Georgia when DOAS issues a Purchase Instrument
2. **Certified Source of Supply.** Pursuant to Section 50-5-57 of the Official Code of Georgia Annotated (O.C.G.A.), the Agency hereby certifies the Contractor as a source of supply to the User Agencies of the software, products and services identified in this Statewide Contract. Orders shall be placed individually and from time to time by the User Agencies. The execution of this Statewide Contract only establishes the Contractor as an authorized source of supply by the Agency and creates no financial obligation on the part of the Agency. Contractor's products are not required to be certified as Security Content Automation Protocol Validated (SCAP) Products under NIST SCAP Validation program [<http://scap.nist.gov/validation/>] as noted in Attachment G to the RFX.
3. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's or the State's forms, invoices or payment documents shall be null and void.
4. **Reporting Requirements.** Contractor shall provide all reports as included in Exhibit B to this Contract. In addition, Contractor shall keep a record of the purchases made pursuant to the Statewide Contract and shall submit a quarterly written report to the Agency. This Section supercedes RFX reporting requirements as outlined in Section 3.1 of Attachment A to the RFX. In addition, Section 3.3 (Virtual Catalog) of Attachment A to the RFX shall be deleted in its entirety.

## B. DURATION OF CONTRACT

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

## C. DESCRIPTION OF SOFTWARE, PRODUCTS AND SERVICES

1. **Specifications in Bidding Documents.** Contractor shall use reasonable efforts to provide all software, products, services, and other deliverables in compliance with the terms of the Statewide Contract.
2. **Software Licenses.** Contractor shall provide software licenses in compliance with the terms of this Statewide Contract. Subject to User Agency's compliance with the payment provisions of this Statewide Contract, Contractor shall grant User Agency a license to the software and accompanying documentation in accordance with the terms of the applicable Contractor End User License Agreement (EULA).

Contractor's End User Licenses and/or service usage terms are available at the below sites:

- 1) Cisco: [http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN\\_.html](http://www.cisco.com/en/US/docs/general/warranty/English/EU1KEN_.html)
- 2) WebEx: <http://www.webex.com/terms-of-service.html>
- 3) Ironport:  
[http://www.cisco.com/web/about/doing\\_business/legal/service\\_descriptions/related.html](http://www.cisco.com/web/about/doing_business/legal/service_descriptions/related.html)

These End User License terms shall govern User Agencies' use of the software except as follows: 1) Governing law shall be per the terms of this Statewide Contract, 2) User Agency may transfer the software per Contractor's Software Transfer and Re-licensing Policy located at: [http://www.cisco.com/en/US/prod/cisco\\_software\\_transfer\\_relicensing\\_policy.html](http://www.cisco.com/en/US/prod/cisco_software_transfer_relicensing_policy.html) and 3) Contractor shall pay for any audit's Contractor initiates.

3. **Exclusions.** Except as expressly permitted by this Statewide Contract, the User Agencies agree that they will not:
  - (i) Lease, loan, resell, sublicense or otherwise distribute the software to parties who are not State of Georgia government entities;

- (ii) Create derivative works based on the software;
  - (iii) Reverse engineer, disassemble, or decompile the software; or
  - (iv) Remove any identification or notices contained on the software.
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4. **Ordering and Technical Assistance.** User Agencies may place orders individually from time to time in any manner permitted by applicable state purchasing policy and the terms of this Statewide Contract. Contractor shall provide technical assistance as reasonably required for the User Agencies to make purchases if online purchases are made utilizing the Contractor's website.
5. **Delivery and Acceptance.** Software and products shall be made available either by online download or shall be shipped F.O.B. destination Freight Prepaid. Destination shall be the location(s) specified in the Purchase Instrument. All shipped items shall be at the Contractor's risk until they have been delivered to the User Agency. All items shall be subject to inspection on delivery.
- (i) **Fixed Pricing Services.** Certain services as defined by Contractor's Response will be provided on a fixed price basis and will be delivered to User Agency in accordance with the schedule for delivering milestones as defined by the statement of work mutually agreed to by the parties and as attached to the Purchase Instrument or such other written document mutually agreeable to User Agency and Contractor. Upon Contractor's completion and User Agency's acceptance of an identified milestone, Contractor may submit an invoice for payment in accordance with Section D "Compensation" of this Statewide Contract.
  - (ii) **Time and Materials Services.** Certain deliverables and services as defined by Contractor's Response may be provided on a time and materials basis in accordance with the hourly rates and fees identified in Contractor's Response. Such deliverables and services may be requested by User Agency on an "as needed" and "as budgeted" basis and must include a defined maximum pricing threshold that cannot be exceeded without the User Agency's prior written approval. In the event Contractor provides services to a User Agency on a time and materials basis, Contractor must provide work progress reports to the User Agency on a basis agreed to by the parties.
  - (iii) **Acceptance Process.** Acceptance of Services, where applicable, shall be as outlined in the Statement of Work covering such Services. Acceptance is not applicable to Contractor's Subscription-based services.
  - (iv) **Product.** Unless otherwise agreed in writing between Contractor and a User Agency, acceptance of product will occur no more than thirty (30) days after delivery of product to the User Agency address specified on the order document. User Agency's failure to provide notice to Contractor of acceptance or rejection within that thirty (30) day period shall be automatically deemed to be acceptance as of the thirtieth day after delivery.
6. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. Agency reserves the right to select other contractors to provide software, products and services similar to the software, products and services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar software, products and services from other contractors.

7. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level of purchases.

#### D. COMPENSATION

1. **Pricing and Payment.** The Contractor will be paid for the software, products and services sold pursuant to the Statewide Contract in accordance with the RFX and final pricing documents as incorporated into the Statewide Contract Form and the terms of the Statewide Contract. Unless clearly stated otherwise in the Statewide Contract, all discounts are 1) firm and fixed 2) not subject to variation and 3) are off Cisco's then-current list price. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. Taxes, if any, are not included in the pricing / discounts. User Agencies are solely and individually financially responsible for their respective purchases. Agency shall not be responsible for payment of any amounts owed by other User Agencies. In Section 3.5 d. (Late Payment Fee) of Attachment A to the RFX the interest on the overdue Fees shall be restated to be at a rate of five percent (5%) per annum (not 18% as stated in such RFX section).
2. **Billings.** If applicable, the Contractor shall submit, on a regular basis, individual invoices for the software, products and services supplied to the User Agencies under the Statewide Contract at the billing addresses specified in the Purchase Instruments.

**Product Payment Terms:** Payment terms shall be either fifteen (15) days from acceptance date or thirty (30) days date of invoice for those order(s) or portions thereof not requiring acceptance. All payments shall be made in US Dollars. If at any time User Agency is delinquent in the payment of any invoice, or is otherwise in breach of this Statewide Contract, Contractor may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order. User Agencies shall pay all approved invoices per the terms of this Section and in accordance with applicable provisions of State law.

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

**Service Payment Terms:** Payment terms shall be either fifteen (15) days from the date of acceptance or thirty (30) days from date of invoice for those order(s) or portions thereof not requiring acceptance. Unless otherwise agreed by Contractor, all payments shall be made in US Dollars. The invoice shall be accompanied by a schedule which details the services, deliverables and/or milestones (if any) including the resources in support of those services, deliverables and/or milestones for which the Contractor is requesting payment. The invoice shall comply with all applicable rules concerning payment of such claims.

3. **Retainage.** Notwithstanding Paragraph (D)(1) of this Statewide Contract, User Agency shall have the right to retain Fifteen Percent (15%) ("Retainage") of the total payment amount for any Cisco Advanced Services Transactional order (SOW-based order) or 2) Reseller professional services order either of which is \$250,000.00 or more. User Agency shall release the Retainage to Contractor or Reseller only upon final and complete delivery of all services and upon full review and acceptance of the same by User Agency without any outstanding obligation pursuant to this Statewide Contract or any attendant agreements between the parties.
4. **RESERVED**
5. **RESERVED**



6. **Leasing/Financing.** Under the scope of this RFX, Contractor is offering Leasing/Financing arrangements via separate legal entities. Contractor has not agreed to Agency's leasing/financing documents as included in RFX. Any leasing/financing documents will be negotiated between the User Agency and Contractor's Leasing/Financing partner.
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## E. TERMINATION

### 1. Termination of the Statewide Contract.

- (i) **Immediate Termination.** Agency may terminate the Statewide Contract for any one or more of the following reasons effective (a) immediately upon providing advance written notice if the breach is not capable of being cured, and (b) thirty (30) days after providing written notice if Contractor fails to cure such breach within such thirty (30) day period:
- a. In the event the Contractor is required to be certified or licensed as a condition precedent to providing the software, products and/or services, the revocation or loss of such license or certification may result in immediate termination of the Statewide Contract effective as of the date on which the license or certification is no longer in effect;
  - b. Agency determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, life, health or safety to be jeopardized;
  - c. The Contractor fails to comply with confidentiality laws or provisions; and/or
  - d. The Contractor furnished any statement, representation or certification in connection with the Statewide Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.
- (ii) **Termination for Cause.** The occurrence of any one or more of the following events shall constitute cause for the Agency to declare the Contractor in default of its obligations under the Statewide Contract:
- a. The Contractor is in violation of a material provision of the Statewide Contract, including, but without limitation, the express warranties made by the Contractor;
  - b. The Agency determines that satisfactory performance of the Statewide Contract is substantially endangered or that a default is likely to occur;
  - c. The Contractor fails to make substantial and timely progress toward performance of the Statewide Contract;
  - d. The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the Agency reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

e. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Statewide Contract;

f. ~~The Contractor has infringed any patent, trademark, copyright, trade-dress or any other intellectual property rights of the Agency, the State, or a third party.~~

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

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

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

b. The Agency's duties are substantially modified.

2. **Agency's Notice of Default.** If there is a default event caused by the Contractor, the Agency shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the reasonable period of time specified in the Agency's written notice to the Contractor, such period of time not less than thirty (30) days. If the breach or noncompliance is not remedied within the period of time specified in the written notice and the parties do not otherwise agree to an extension of the time period, the Agency may:

(i) Immediately terminate the Statewide Contract without additional written notice; and/or

(ii) Procure substitute software, products and/or services from another source; and/or,

(iii) Enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.

Neither party shall be liable for any costs incurred by the other party in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.

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

(i) **Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, any purchase made pursuant to this Statewide Contract will terminate immediately and absolutely if the User Agency determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the User Agency cannot fulfill its obligations under the Statewide Contract, which determination is at the User Agency's sole discretion and shall be conclusive.

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



In the event of termination of the Statewide Contract for any reason by the Agency, the User Agencies shall pay only those amounts, if any, due and owing to the Contractor for software, products and services actually rendered up to the termination date specified in the notice of termination for which the User Agencies are obligated to pay pursuant to the Statewide Contract or Purchase Instrument. Payment will be made only upon submission of invoices and, if requested in writing by the User Agency, proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Statewide Contract in the event of termination. Neither party shall be liable for any costs incurred by the other party in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.

4. **The Contractor's Termination Duties.** Upon the termination date provided in the written notice of termination, the Contractor shall:
  - (i) Cease work under the Statewide Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Statewide Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;
  - (ii) Immediately cease using and, if so requested in writing, return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
  - (iii) RESERVED
  - (iv) Cooperate in good faith with the Agency, the User Agencies, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
  - (v) Immediately return to the User Agencies any payments made by the User Agencies for software, products and services that were not delivered or rendered by the Contractor, unless such payment was made for pre-paid subscription services.
5. Upon termination of the Contract, User Agency shall pay Contractor for all services performed and/or products received at the agreed upon prices, fees and expense reimbursement rates. If User Agency disputes the performance of services or receipt of products for which payment is due Contractor, then User Agency and Contractor shall in good faith resolve such dispute within thirty (30) days after Contract termination.

## F. CONFIDENTIAL INFORMATION

### 1. Access to Confidential Data.

State / User Agency and Contractor agree that in connection with this Statewide Contract and their relationship, they may obtain Confidential Information. "Confidential Information" means proprietary and confidential information received by Cisco or Customer in connection with this Agreement and their relationship. Such Confidential Information may include, but is not limited to, trade secrets, know how, inventions, techniques, processes, programs, schematics, software source documents, data, customer lists, financial information, and sales and marketing plans or information which the receiving party knows or has reason to know is confidential, proprietary or trade secret information of the disclosing party, as well as, in the case of Cisco, any information posted on Cisco.com.

The receiving party shall at all times keep in trust and confidence all such Confidential Information, and shall not use such Confidential Information other than as expressly authorized by the disclosing party under this Statewide Contract, nor shall the receiving party disclose any such Confidential Information to third parties without the disclosing party's written consent. Notwithstanding the above, Contractor shall be authorized to disclose State / User Agency's Confidential Information to contractors or employees of a Contractor entity who have a legitimate business need to have access to such information. The receiving party shall immediately return to the disclosing party all Confidential Information (including copies thereof) in the receiving party's possession, custody, or control upon termination or expiration at any time and for any reason of this Statewide Contract. The obligations of confidentiality shall not apply to information which (a) has entered the public domain, except where such entry is the result of the receiving party's breach of this Statewide Contract; (b) prior to disclosure hereunder was already rightfully in the receiving party's possession; (c) subsequent to disclosure hereunder is obtained by the receiving party on a non-confidential basis from a third party who has the right to disclose such information to the receiving party. The receiving party will be authorized to disclose Confidential Information pursuant to a valid order issued by a court or government agency.

Unless such information is disclosed by the Agency and/or User Agencies pursuant to statutory requirement or a valid order issued by a court or government agency, neither party shall disclose, advertise, or publish the terms and conditions of this Statewide Contract without the prior written consent of the other party. Any press release or publication regarding this Statewide Contract is subject to prior review and written approval of the parties.

The terms of this Section are subject to the State of Georgia Open Records Law and State Purchasing Guidelines.

2. **Survives Termination.** The receiving party's confidentiality obligation under the Statewide Contract shall survive termination of the Statewide Contract for five (5) years after such termination.

## G. INDEMNIFICATION

### 1. PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

- 1.1. **Claims.** Subject to the approval of the Attorney General, Contractor will defend any claim against State that a Product infringes third party patents or copyrights ("**Claim**") and will indemnify State against the final judgment entered by a court of competent jurisdiction or any settlements arising out of a Claim, provided that State:

- (a) Promptly notifies Contractor in writing of the Claim; and

- (b) Cooperates with Contractor in the defense of the Claim, and grants Contractor full and exclusive control of the defense and settlement of the Claim and any subsequent appeal.

- 1.2. **Additional Remedies.** If a Claim is made or appears likely, State agrees to permit Contractor to procure for State the right to continue using the Product, or to replace or modify the Product with one that is at least functionally equivalent. If Contractor determines that none of those alternatives is reasonably available, then State will

return the Product and Contractor will refund State's remaining net book value of the Product calculated according to generally accepted accounting principles.

1.3. **Exclusions.** Contractor has no obligation for any Claim based on:

- (a) compliance with any designs, specifications, or instructions provided by State or a third party on State's behalf;
- (b) modification of a Product by State or a third party;
- (c) the amount or duration of use which State makes of the Product, revenue earned by State from services it provides that use the Product, or services offered by State to external or internal States; or
- (d) combination, operation, or use of a Product with non-Contractor products, software or business processes.

**Sole and Exclusive Remedy.** This Section G. states Contractor's entire obligation and State's exclusive remedy regarding any claims for intellectual property infringement.

2. **Contractor's Indemnification Obligation.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, related to or arising from:
  - (i) Any negligent, intentional or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor.
3. **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.
4. **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.
5. **Survives Termination.** The indemnification obligation of the Contractor shall survive termination of the Statewide Contract.

## H. INSURANCE

Contractor shall provide all insurance as required in Exhibit A. This Section supersedes Section 3.6 (Standard Insurance Requirements) of Attachment A to the RFX.

## I. RESERVED

## J. WARRANTIES

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

The provisions of this section apply during the term of the Statewide Contract and any extensions or renewals thereof.

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- a. **Products.** The warranties for the Products may be found at the following URL: <http://www.cisco.com/go/warranty>.
- b. Notwithstanding any other term of this Statewide Contract, Contractor's sole and exclusive warranty and obligations are set forth in Contractor's Limited Warranty Statement delivered with the Product.
- c. **Services.** All Services provided hereunder shall be performed in a workmanlike manner. User Agency shall notify Contractor promptly of any claimed breach of this Services warranty. User Agency's sole and exclusive remedy for any breach of warranty shall be, at Contractor's option, re-performance of the Services or termination of the applicable Equipment List or SOW, and return of the portion of the fees paid to Contractor by User Agency for such non-conforming Services.
- d. **Restrictions.** The limited warranties referenced in this Section do not apply if the Product (a) has been altered, except by Contractor, (b) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Contractor, (c) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated; (d) is acquired by Agency for beta, evaluation, testing, demonstration purposes or other circumstances for which Contractor does not receive a payment of a purchase price or license fee. The limited warranties referenced in this Section also do not apply to any software or hardware that may be offered for sale on the Price List in the name of a third party.

**DISCLAIMER OF WARRANTY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, CISCO HEREBY DISCLAIMS AND CUSTOMER WAIVES ALL REPRESENTATIONS, CONDITIONS AND WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, SATISFACTORY QUALITY, QUIET ENJOYMENT, ACCURACY, OR SYSTEM INTEGRATION, OR (B) ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE INDUSTRY. TO THE EXTENT AN IMPLIED WARRANTY OR CONDITION CANNOT BE DISCLAIMED, SUCH WARRANTY OR CONDITION IS LIMITED IN DURATION TO THE APPLICABLE EXPRESS WARRANTY PERIOD.

2. **Warranty – Nonconforming Software, Products or Services** Acceptance by the User Agencies shall not relieve the Contractor of its warranty or any other obligation under the Statewide Contract. Except as provided in Cisco's warranty statements, Cisco does not accept returns unless (i) Cisco shipped a product other than as specified in the Purchase Order, (ii) such Product is unopened, and (iii) the Product is returned in accordance with Cisco's then current RMA policy and procedures.
3. **RESERVED**
4. **RESERVED**
5. **RESERVED**

6. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Statewide Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
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7. Notwithstanding any other provision of this Statewide Contract, nothing in this Statewide Contract authorizes Agency to waive User Agencies rights to cover or seek substitute performance for defective performance which remains uncured by Contractor's standard warranty obligations and Agency specifically denies having waived such User Agencies rights; provided, however, nothing in this Statewide Contract prohibits Contractor from obtaining such waiver from individual User Agencies.
8. **Title to Property.** The Contractor represents that title to any property assigned, conveyed or licensed to the State is good and that, to the best of Contractor's knowledge, transfer of title to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. This Section is not a warranty of title. Title to any supplies, materials, or equipment shall transfer to the User Agencies upon delivery.
9. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the software, products and services provided or used by it shall at a minimum conform to the applicable specifications provided with the software and/or products.
10. **Contractor's Personnel and Staffing.** All persons assigned to perform services under this Statewide Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency. All of Contractor or any subcontractor's personnel shall comply with the confidentiality requirements of the Statewide Contract and the security requirements, provided to Contractor and/or its Subcontractor in advance and in writing, of the applicable Agency or User Agencies while on state property. In the event that any of Contractor or subcontractor's personnel do not comply with such confidentiality and security requirements, the Agency or User Agencies may have the personnel removed from the premises.

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

11. **State Security.** Contractor's regular employees, vendors, contractors, partners and temporary workers issued a Contractor badge undergo (prior to badge issuance) a criminal background check that includes criminal conviction history (misdemeanor and felony convictions covering a minimum of 7 years), At User Agency's request and expense, User Agency may require that an additional criminal background investigation be made of any and all Contractor personnel utilized to provide services to such User Agency. If such investigation reveals a disregard for the law or other background that indicates an unacceptable security risk as determined by the User Agency, then the User Agency may request that such Contractor personnel no longer provide services to the User Agency. Agency and User Agency understands that Contractor personnel have the option to refuse being subjected to the criminal background investigation. The sole recourse for such refusal is removal from providing services for the Agency and/or User Agency. The Contractor's employees, agents and subcontractors may be granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations to the extent necessary to carry out the Contractor's responsibilities under the Statewide Contract. Such access may be terminated at the sole discretion of the State. The Contractor shall provide immediate notice to Agency of any employees, agents and/or subcontractors suspected of abusing or misusing such access privilege. The Contractor shall

provide notice to Agency of the changed status (once Contractor becomes aware) of any employee, agent or subcontractor granted access to state computers, hardware, software, programs and/or information technology infrastructure or operations, including, but not limited to, termination or change of the position or contract relationship. This Section supersedes any Contractor and/or its subcontractor background requirements contained in the RFX to include Attachment C to the RFX.

12. **Use of State Vehicles.** No State vehicles will be used by Contractor for the performance of services under this Statewide Contract. Contractor shall be responsible for providing transportation necessary to perform all services.
13. The paragraph headings or captions used in the Statewide Contract are for identification purposes only and do not limit or construe the contents of the paragraphs (such as each of these provisions rising to a level of a warranty unless otherwise stated).

**K. RESERVED.**

**L. CONTRACT ADMINISTRATION**

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

Certain equipment, software and technical data which may be provided hereunder may be subject to export and re-export controls under the U.S. Export Administration Regulations and/or similar regulations of the United States or any other country. The parties 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.

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The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Statewide Contract. Contractor and Contractor's personnel shall also comply with all State, Agency, and User Agency policies and standards 1) in effect during the performance of the Statewide Contract and 2) provided to the Contractor in advance and in writing, including but not limited to the Agency and User Agencies' policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Statewide Contract.

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

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

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

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

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

**5. Amendments.** The Statewide Contract may be amended in writing from time to time by mutual consent of the parties and upon approval by the Agency. All amendments to the Statewide Contract must be in writing and fully executed by duly authorized representatives of the Agency and the Contractor.

**6. Third Party Beneficiaries.** There are no third-party beneficiaries to the Statewide Contract. The Statewide Contract is intended only to benefit the State and the Contractor.



7. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Statewide Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Statewide Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia.

8. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** In addition to any dispute resolution procedures otherwise required under this Statewide Contract or any informal negotiations which may occur between the State and the Contractor, no civil action with respect to any dispute, claim or controversy arising out of or relating to this Statewide Contract may be commenced without first giving fourteen (14) calendar days written notice to the State of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either the State or the Contractor may elect to submit the matter for mediation. Either the State or the Contractor may exercise the right to submit the matter for mediation by providing the other party with a written demand for mediation setting forth the subject of the dispute. The parties will cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. Venue for the mediation will be in Atlanta, Georgia; provided, however, that any or all mediation proceedings may be conducted by teleconference with the consent of the mediator. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs; provided, however that the cost to the State shall not exceed five thousand dollars (\$5,000.00).

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

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

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

10. **Use of Third Parties.**

Contractor has the right to utilize alternate fulfillment partners, including value added resellers (VARs) and/or distributors and dealers (hereafter "Reseller[s]" or "Subcontractors") as fulfillment agents under this Statewide Contract, e.g., for direct order taking, processing, fulfillment or provisioning.

Subject to approval of the Agency, Resellers may be added at any time during the term of this Statewide Contract at the sole discretion of Contractor, with a minimum of five (5) Resellers and no set maximum number of Resellers who may be used, subject to the approval of the State. Contractor, in its sole discretion, is not required to add and may delete upon thirty (30)

days written notice any Reseller who does not meet Contractor's established qualifying criteria, or where the addition of the entity would violate any state or federal law or regulation.

The name, address and approved contact number for each approved Reseller shall be ~~separately set forth at the Contractor's website, which will be updated from time to time by~~ Contractor during the term of this Statewide Contract.

User Agencies may place orders directly only through these Resellers on approved products and services. The order process shall be as agreed between the User Agency and the Resellers. Only those Resellers approved and listed during the term of this Statewide Contract at Contractor's website are authorized to directly receive Purchase Orders, invoice User Agencies, and receive payment from User Agencies on Contractor's behalf. All authorized Resellers are eligible to quote pricing to User Agencies for procurements under this Statewide Contract which otherwise meet the Reseller's qualifying criteria.

Except as otherwise set forth in the qualifying criteria, Contractor will not, directly or indirectly, restrict any Reseller's participation or ability to quote pricing for a User Agency. Resellers will not offer less favorable pricing discounts than the contract discounts established by Contractor under the Statewide Contract. However, any additional incremental discounts available to User Agencies, if offered, may be provided in the discretion and as the sole legal obligation of the Reseller to the Agency.

Contractor shall not be responsible for verification of E-Rate compliance by the Reseller; however it will use reasonable efforts to compile the SPIN number for Reseller selling to all schools within GA's school districts, GA's Charter schools, GA's State Schools and GA's Libraries. Contractor shall not be responsible for monitoring Reseller's Better Business Bureau rating. However, Contractor will work with the Agency to 1) properly onboard Reseller(s) such that the Reseller(s) are aware of the scope of the Master Contract, 2) manage de-certification or off-boarding of Resellers from servicing User Agencies under this Master Contract, and 3) assist in the resolution of any escalated User Agency issue(s). In addition, Contractor will facilitate review meetings with Resellers to ensure that the Agency's and Contractor's business needs and requirements are satisfactorily met as set forth in this Master Contract. Contractor may provide a reference on a proposed Servicing Partner if Agency requests.

Except as allowed under this Statewide Contract or as may be expressly agreed to in writing by the Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Statewide Contract or any of the work subsequently assigned under this Statewide Contract. The Agency's designated contract administrator shall have the right to approve the addition of any new subcontractors. No subcontract which Contractor enters into with respect to performance of obligations or work assigned under the Statewide Contract shall in any way relieve Contractor of any responsibility, obligation or liability under this Statewide Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Statewide Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the Agency. The Agency shall have the right to request the removal of a subcontractor from the Statewide Contract for good cause.

11. **Integration.** The Statewide Contract represents the entire agreement between the parties. The parties shall not rely on any representation that may have been made which is not included in the Statewide Contract.

- 12. Headings or Captions.** The paragraph headings or captions used in the Statewide Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 13. Not a Joint Venture.** Nothing in the Statewide Contract shall be construed as creating or constituting the relationship of a partnership, joint-venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for software, products and services and acting toward the mutual benefits expected to be derived herefrom. Neither Contractor nor any of Contractor's agents, servants, employees, subcontractors or contractors shall become or be deemed to become agents, servants, or employees of the State. Contractor shall therefore be responsible for compliance with all laws, rules and regulations involving its employees and any subcontractors, including but not limited to employment of labor, hours of labor, health and safety, working conditions, workers' compensation insurance, and payment of wages. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Statewide Contract.
- 14. Joint and Several Liability.** If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Statewide Contract, and for any default of activities and obligations.
- 15. Supersedes Former Contracts or Agreements.** Unless otherwise specified in the Statewide Contract, this Statewide Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the software, products and services provided in connection with the Statewide Contract.
- 16. Waiver.** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Statewide Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.
- 17. Notice.** Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to the person who signed the Statewide Contract on behalf of the party at the address identified in the Statewide Contract Form. Each such notice shall be deemed to have been provided the earlier of:
- (i) At the time it is actually received; or,
  - (ii) Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,
  - (iii) Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.
- From time to time, the parties may change the name and address of the person designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.
- 18. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Statewide Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by

law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

- 19. Severability.** If any provision of the Statewide Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Statewide Contract. Further, if any provision of the Statewide Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the Agency and the Contractor to amend, modify, eliminate, or otherwise change any part of this Statewide Contract shall not affect any other part of this Statewide Contract, and the remainder of this Statewide Contract shall continue to be of full force and effect.
- 20. Time is of the Essence.** Except in a Force Majeure event(s), time is of the essence with respect to performance of the terms under this Statewide Contract.
- 21. Authorization.** The persons signing this Statewide Contract represent and warrant to the other parties that:
- (i) It has the right, power and authority to enter into the Statewide Contract; and
  - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Statewide Contract and the Statewide Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 22. Successors in Interest.** All the terms, provisions, and conditions of the Statewide Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 23. Record Retention and Access.** The Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State throughout the term of the Statewide Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The Contractor should maintain separate accounts and records for the Agency and the User Agencies. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating solely to sales orders, invoices, payments or quarterly sales reports made in accordance with the contract, wherever such records may be located during normal business hours. Agency and the User Agencies shall provide adequate advance written notice of any audits and shall pay for any shortfalls in payment(s) revealed by the audit(s).. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings, the State reserves the right to charge the Contractor for appropriate reimbursement. In addition, if an audit discloses underpayment by the State, Agency or User Agency, Contractor reserves the right to charge the applicable State, Agency or User Agency for appropriate payment. Evidence of criminal conduct will be turned over to the proper authorities. The audit provisions in this Section and this Statewide Contract supercede the audit provisions in Section 3.5 (b) of Attachment A to the RFX.

24. **Solicitation.** The Contractor agrees that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Statewide Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.
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25. **Public Records.** The laws of the State of Georgia, including the Georgia Open Records Act, as provided in O.C.G.A. Section 50-18-70 et seq., require procurement records and other records to be made public unless otherwise provided by law.
26. **RESERVED**
27. **Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor has 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. Contractor shall also require such certification from its subcontractors.
28. **Use of Name or Intellectual Property.** The parties agree they will not use trademarks or logos of the other party in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the other party. Such consent, if provided, shall be provided within fourteen (14) business days of the provision of the request for review and approval.
29. **Taxes.** User Agencies are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. User Agencies are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Statewide Contract, which verification is incorporated herein by reference.
30. **Certification Regarding Sales and Use Tax.** By executing the Statewide Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Statewide Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.
31. **Delay or Impossibility of Performance.** Neither party shall be in default under the Statewide Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. Unless otherwise provided in this Statewide Contract, if delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Statewide Contract.
32. **Limitation of Contractor's Liability to the State.**

Contractor's liability to the User Agency is limited to the greater of \$1,000,000 or the amount payable by the User Agency for the relevant order (per occurrence). Neither the Agency, User Agency or Contractor will be liable to the other for lost revenues or profits, downtime costs, loss or damage to data or indirect or consequential damages. This provision does not limit any

party's liability for 1) unauthorized use of intellectual property, 2) third party claims for (i) death or bodily injury directly from negligence of the other party, or (ii) damage to tangible personal property (not including lost or damaged data), 3) acts of fraud or other willfully wrongful acts or omissions. Notwithstanding the foregoing, any representation as to a limitation of Contractor's liability as to third parties shall not require Agency or User Agencies to indemnify Contractor from claims of any third parties.

NOTWITHSTANDING THE FOREGOING, CONTRACTOR'S TOTAL AGGREGATE LIABILITY UNDER THIS STATEWIDE CONTRACT IS LIMITED TO THE MONEY PAID TO CONTRACTOR UNDER THIS STATEWIDE CONTRACT DURING AN AVERAGE TWELVE (12) MONTH PERIOD.

NEITHER AGENCY, USER AGENCY OR CONTRACTOR WILL BE LIABLE TO THE OTHERS FOR ANY:

(A) SPECIAL (TO THE EXTENT SPECIAL DAMAGES WOULD NOT BE CONSIDERED DIRECT DAMAGE UNDER GEORGIA LAW), INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES;

(B) LOSS OF ANY OF THE FOLLOWING: PROFITS, REVENUE, BUSINESS, ANTICIPATED SAVINGS, USE OF ANY PRODUCT OR SERVICE, OPPORTUNITY, GOODWILL OR REPUTATION; OR

(C) LOST OR DAMAGED DATA.

REFERENCES IN THIS SECTION TO A "PARTY" INCLUDES A PARTY'S AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS.

The State of Georgia has waived sovereign immunity for contract actions.

33. **Obligations Beyond Contract Term.** The Statewide Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Statewide Contract. All obligations of the Contractor incurred or existing under the Statewide Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Statewide Contract.
34. **Counterparts.** The Agency and the Contractor agree that the Statewide Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
35. **Further Assurances and Corrective Instruments.** The Agency and the Contractor agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Statewide Contract.
36. **Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Statewide Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall use sufficient efforts to provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to perform services for the State. Subject to payment of appropriate fees, agreement to applicable license terms and in compliance with licensing rights, The Contractor shall use sufficient efforts to transfer licenses or assign agreements for any software or third-party services used to provide the services to the State or to another contractor.

**37. Force Majeure.** Neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, earthquakes, labor disputes, shortages of supplies, actions of governmental entities, riots, war, acts or threatened acts of terrorism, fire, epidemics, delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.



EXHIBIT A  
INSURANCE REQUIREMENTS

1. ~~Contractor shall, at its own expense, at all times during the term of this Statewide Contract, and after the termination of this Statewide Contract (as set forth below), provide and maintain in effect those insurance policies and minimum limits of coverage as designated below, and any other insurance required by law in any state where Contractor provides Services under this Statewide Contract, in insurance companies with an A.M. Best's Insurance Rating of A:VIII or better, and will comply with all those requirements as stated herein. In no way do these minimum requirements limit the liability assumed elsewhere in this Statewide Contract.~~
2. Workers' Compensation and Employer's Liability Insurance. Contractor shall maintain Workers' Compensation insurance shall be provided as required by any applicable law or regulation and, in accordance with the provisions of the laws of the nation, state, territory or province having jurisdiction over Contractor's employees, and Employer's Liability insurance with limits of \$1,000,000.
3. Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability insurance covering all operations by or on behalf of Contractor arising out of or connected with this Statewide Contract providing insurance for bodily injury, property damage, personal and advertising injury, products/completed operations liability and contractual liability, with limits of \$2,000,000 each occurrence and \$4,000,000 in the annual aggregate. Customer will be included as an additional insured under the Commercial General Liability insurance, but only to the extent of liabilities falling within Contractor's indemnity obligations pursuant to the terms of this Statewide Contract, and such insurance shall apply as primary insurance, without a right of contribution from any other insurance maintained by Customer.
4. Automobile Liability Insurance. Contractor shall maintain Business Automobile Liability insurance, coverage for all owned, non-owned and hired vehicles used in Contractor's performance of the Services under this Statewide Contract, covering bodily injury and property damage, with limit of \$2,000,000.
5. Errors and Omissions Liability Insurance. Contractor shall maintain technology errors and omissions insurance covering negligent acts, errors and omission in the performance of Services, with limits of not less than \$5,000,000 per claim and \$5,000,000 in the annual aggregate. Such insurance shall include coverage for liability arising from (a) theft, dissemination and/or use of Confidential Information stored or transmitted in electronic form and (b) the introduction of a computer virus into a customer's or third person's computer, data, software or programs. Contractor will continue to maintain such coverage for one year after termination of this Statewide Contract. Notwithstanding anything to the contrary herein, Contractor reserves the right to self-insure this coverage at its sole discretion.
6. Umbrella and/or Excess Liability Insurance. Contractor shall maintain Umbrella and/or Excess Liability insurance with limits of not less than \$5,000,000 each occurrence and \$5,000,000 in the annual aggregate in excess of the limits provided by Contractor's Employer's Liability, Commercial General Liability, and Automobile Liability insurance policies. The coverage terms of the Umbrella/Excess Liability insurance shall be on a follow-form basis.
7. Contractor shall provide Customer with current certificates of insurance reflecting the coverage set forth above at the time this Statewide Contract is executed, or within a reasonable time thereafter, and within a reasonable time after such coverage is renewed or replaced. In the event of notice of cancellation, Contractor shall promptly replace coverage so that no lapse in insurance occurs.

EXHIBIT B  
SAMPLE REPORT

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## **Attachment 2**

The following RFX documents are incorporated by reference into the Statewide Contract:

- RFP#99999-SPD0000071 Attachment A eRFP v.4
- RFP#99999-SPD0000071 Attachment B Definitions of Terms v2
- RFP#99999-SPD0000071 Attachment C GA Performance Expectations
- RFP#99999-SPD0000071 Attachment D Supplier General Information Worksheet
- RFP#99999-SPD0000071 Attachment E Immigration and Security Form
- RFP#99999-SPD0000071 Attachment F Mandatory Worksheet v3
- RFP#99999-SPD0000071 Attachment G Mandatory Scored Response Document
- RFP#99999-SPD0000071 Attachment H Servicing Partner Portfolio
- RFP#99999-SPD0000071 Attachment I Additional Scored Response Document
- RFP#99999-SPD0000071 Attachment J Cost Proposal Worksheet
- 99999SPD0000071 Addendum #01
- 99999SPD0000071 Addendum #02
- State Response Questions & Answers 10182011
- State Response Questions & Answers 11022011
- State Response Questions & Answers 11092011

## **Attachment 3**

The following Contractor's response documents are incorporated by reference into the Statewide Contract:

- Attachment F Cisco Systems Mandatory Worksheet
- Attachment G Cisco Systems Mandatory Scored Response
- Attachment H Cisco Systems Servicing Partner Portfolio
- Attachment I Cisco Systems Additional Scored Response
- Attachment J Cisco Systems Cost Proposal Worksheet
- Cisco Systems Category 1 – 6 Price List
- Cisco Systems E-Rate Eligible Final (List)
- Cisco Systems IronPort Price List (Final)
- Cisco Systems' Response to Clarification Request #01
- Cisco Systems' EU Software License
- Cisco Systems' IronPort EU Software License