

**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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CONTACT #: ADSPO16-169901, as amended

Contractor: **NEOPOST USA INC.**

Participating Entity: **STATE OF GEORGIA**

The following products or services are included in this contract portfolio:

*Production Ink Jet Address System*

*Postage Meter Rental*

*Mailing Systems-Ultra Low, Low, Medium, High, Production Volume*

*Integrated Postal Scales*

*Letter Openers-Low, High Volume*

*Letter Folders-Low, High Volume*

*Folder-Inserters-Low, Medium, High, Production Volume*

*Envelope Addressing System-Low, Medium, High, Production Volume*

*Tabbers-Low Volume*

*Extractors*

*Mail Furniture*

*Software License & Subscription*

**Master Agreement Terms and Conditions:**

1. Scope: This addendum covers the NASPO ValuePoint *Mailroom Equipment, Supplies & Maintenance* Master Agreement led by the State of **Arizona** for use by state agencies and other entities located in the State of Georgia authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

This is not a mandatory contract for any Purchasing Entities. The Purchasing Entities may obtain related Deliverables and Services from other sources during the term of this Participating Addendum. The Participating Entity makes no express or implied warranties whatsoever that any quantity or dollar amount of Deliverables or Services will be procured.

2. Participation: This NASPO ValuePoint Participating Addendum may be used by all State of Georgia governmental entities subject to the State Purchasing Act, including but not limited to certain state offices, agencies, departments, boards, bureaus, commissioners, institutions and colleges and universities. The statewide contract(s) will also be available on a convenience basis to other governmental entities such as state authorities, local government, municipalities, cities, townships, counties and other political subdivisions of the State of Georgia. All entities authorized to utilize the resulting statewide contract(s) shall be referred to collectively as Authorized Users.

Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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3. Contract Term: The term of this Participating Addendum will be effective January 1, 2019 through December 31, 2019 and coterminous with the Master Agreement term unless otherwise cancelled or terminated as set forth in this Participating Addendum by the Participating State. Lead State amendments to extend the term date are automatically incorporated into this Participating Addendum unless terminated early in accordance with the terms and conditions of the Master Agreement or this Participating Addendum.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name: David Nagel, Government Acct. Manager, Neopost USA  
478 Wheeler Farms Rd.  
Address: Milford, CT 06461  
Telephone: (573) 489-8860  
Fax: (203) 301 - 2600  
Email: d.nagel@neopost.com

Lead State

Name: Rocky Advani  
Address: Arizona DOA-SPO, 100 N. 15th Ave, Suite 201, Phoenix, AZ 85007  
Telephone: 602-542-0100  
Email: Rocky.advani@azdoa.gov

Participating Entity

Name: Alicia Pope  
Address: 200 Piedmont Ave., SE, Suite 1308, West Tower, Atlanta Georgia 30334  
Telephone: 404-657-4293  
Fax: 770-357-8833  
Email: Alicia.pope@doas.ga.gov



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

---

**PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER  
AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

☐ No changes to the terms and conditions of the Master Agreement are required.

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions.

**DEFINITIONS AND GENERAL INFORMATION**

**"Purchase Instrument"** means the documentation issued by the Agency or User Agencies to the Contractor for the purchase of goods and 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 equipment and services, 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.

**"Statewide Contract (SWC)" or "Contract"** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.

These documents shall be read to be consistent and complementary. The SWC is comprised of the NASPO Valuepoint Master Agreement, the lead state's solicitation, the state of Georgia's PA (*inclusive of the lease and license agreements*).

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

**ORDER OF PRECEDENCE**

- (i) This Participating Entity's Participating Addendum ("PA"). This Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contractor under the Terms of the NASPO Valuepoint Master Agreement. This PA includes the following documents:
  - a. The state of Georgia's Statewide Contract for Equipment Rental or Lease - Exhibit A (if applicable);
  - b. The state of Georgia End User Lease Agreement - Exhibit B;



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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- c. The Georgia Department of Administrative Services – End User License Agreement of Commercial Off-the-Shelf- Software – Exhibit C.
- (ii) NASPO Valuepoint Master Agreement Terms & Conditions, including the applicable Exhibits to the Master Agreement;
- (iii) The Solicitation;
- (iv) Contractor's response to the Solicitation, as revised and accepted by the Lead State.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment.

Forum and Choice of Law. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Statewide Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Statewide Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.

1. Usage of Postage Meters. All purchasing entities requiring the use of a Postage Meter will comply with all United States Postal Service regulations and meter terms and conditions applicable to the rental and use of postage meters supplied under this participating addendum as provided by the Contractor.
2. Subcontractors. Contractor must ensure that any subcontractor, fulfillment partner, dealer, or reseller who makes sales under this Participating Addendum complies with the terms of the Master Agreement and this Participating Addendum.
3. Billings. If applicable, and unless the RFP provides otherwise, the Contractor shall submit, on a regular basis, invoices for all of the equipment rentals, leases, sales and services supplied to the User Agencies under the Participating Addendum at the billing addresses specified in the Purchase Instruments. Invoices shall comply with all applicable rules concerning payment of such claims. User Agencies shall pay all approved invoices in accordance with the terms stated in Section 16.

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 equipment 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.



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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4. Purchase Order Instructions. All orders under this PA are to be made out to and processed by Neopost and should contain the following:

- (i) Mandatory Language "PO is subject to Mail Equipment Services SWC";
- (ii) Your Name, Address, Contact, & Phone-Number and;
- (iii) Reference to the state contract number. **"99999-SPD-00006328-0002"**

5. Individual Customer. Each State agency and political subdivision, as a User Agency, that purchases products/services under this Participating Addendum will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Participating Addendum Master Agreement; and they will have the same rights and responsibilities for their purchase as the Participating Entity has in the Master Agreement. Each agency and political subdivision will be responsible for their own bills, charges, fees, and liabilities. The Contractor will apply the charges to each Purchasing Entity individually.

6. Implementation of Requirements of Senate Bill 327. Senate Bill 327 (passed during 2016 Georgia Legislative Session): Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract, including any renewals or extensions thereof, not to engage in, a boycott of Israel, as defined in O.C.G.A. § 50-5-85.

7. State of Georgia ePayables/Purchasing Card Program. The State of Georgia provides for the use of several payment methods including ePayables, Purchasing Card (PCard), and Automated Clearing House (ACH) transfers. DOAS will determine the most advantageous method(s) of supplier payment for the awarded Statewide Contract. Potential suppliers need to be prepared to accommodate any and all forms of payments.

The State of Georgia PCard may be used by authorized government employees of certain governmental entities electing to participate in the program to purchase necessary supplies. Supplier agrees to accept payment via PCard and shall impose no fee on either DOAS or any Authorized User for the use of the State of Georgia PCard pursuant to this statewide contract. The Supplier also agrees to accept payment via ePayables and shall impose no fee on either DOAS or any Authorized User for the use of ePayables pursuant to this Statewide Contract. Payment via ePayables is the preferred method of compensation processing. DOAS has entered into a Contract with its PCard provider, Bank of America, to provide the e-Payables solution which will allow DOAS and Authorized Users to facilitate electronic payment by DOAS and Authorized Users to the Supplier.

All purchases made by Authorized Users' representatives utilizing State of Georgia ePayables shall be exempt from sales tax. It is the responsibility of the Authorized User representative to provide the Authorized User's tax identification number as needed at the point of sale.

If selected for award, the Supplier shall keep the State of Georgia ePayables numbers confidential and shall not disclose the State of Georgia ePayables numbers except as expressly authorized by DOAS. The Supplier represents that State of Georgia ePayables numbers will be processed, transmitted and stored in compliance with the Payment Card



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

---

Industry Data Security Standard. The Supplier shall provide immediate written notice to the current DOAS Contract Administrator in the event of (1) any unauthorized disclosure of State of Georgia ePayables Numbers or (2) Supplier's failure to maintain compliance with the Payment Card Industry Data Security Standard in the Supplier's contract performance. The Supplier agrees to cooperate with DOAS, Authorized Users, and DOAS contractual partner(s) for ePayables in resolving any issues or disputes.

- 8 Administrative Fee and Sales Report Submission. Pursuant to O.C.G.A. Section 50-5-51(10), DOAS has the authority to collect monies, rebates, or commissions payable to the State that are generated by supply contracts established pursuant to O.C.G.A. Section 50-5-57. These administrative fees (Fees) are used by DOAS to fund various initiatives, including the administration of existing and new statewide contracts, training, and technology. DOAS requires each Contractor to pay to DOAS an administrative fee on all sales pursuant to the resulting statewide contract. The administrative fee amount for this statewide contract is [**1 percent (%)**]. All Contractors must agree that the Fee will not be identified separately from the product and/or service pricing offered to Authorized Users wherever that pricing may appear (website, catalog, invoices, etc.). This Fee will be collected by the awarded Contractor and remitted to DOAS in accordance with the following paragraphs.
- 9 Quarterly Sales Report. The Quarterly Sales Report must be received by DOAS twenty (20) days after the end of the Fiscal Quarter through submission within the Contractor Portal of Team Georgia Marketplace, and the Fees must be received as a response to an invoice generated by DOAS between the time of receipt of the invoice and forty-five (45) days after the end of the fiscal quarter as defined by the table below:

<i>DOAS' Fiscal Quarters</i>	<i>Months</i>	<i>Contractor's Quarterly Sales Report Due Date</i>	<i>Contractor's Payment Due Date (In Response to DOAS generated Invoice)</i>
<i>Quarter 1</i>	<i>July 1<sup>st</sup> – September 30<sup>th</sup></i>	<i><u>October 20<sup>th</sup></u></i>	<i><u>November 15<sup>th</sup></u></i>
<i>Quarter 2</i>	<i>October 1<sup>st</sup> – December 31<sup>st</sup></i>	<i><u>January 20<sup>th</sup></u></i>	<i><u>February 15<sup>th</sup></u></i>
<i>Quarter 3</i>	<i>January 1<sup>st</sup> – March 31<sup>st</sup></i>	<i><u>April 20<sup>th</sup></u></i>	<i><u>May 15<sup>th</sup></u></i>
<i>Quarter 4</i>	<i>April 1<sup>st</sup> – June 30<sup>th</sup></i>	<i><u>July 20<sup>th</sup></u></i>	<i><u>August 15<sup>th</sup></u></i>
			<b>30 DAYS FOLLOWING TERMINATION OF SWC</b>



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report and submit the file through the Contractor Portal of Team Georgia Marketplace, including the Contractor's most up-to-date Invoice Contact Name (Billing Contact), Contractor Billing Address, and Contractor Billing E-Mail. In the event that no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating that no sales have occurred, and submit the file through Contractor Portal of Team Georgia Marketplace. No later than the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, the Contractor shall remit a payment of fees to DOAS in response to a DOAS generated invoice, through Electronic Funds Transfer (EFT).

By submission of these reports and corresponding Contractor payments, Contractor is certifying their correctness. DOAS, at its sole discretion, may also accept payment of Fees from the Contractor via electronic funds transfer (EFT).

(i). Auditing and Contract Close Out. All sales reports and Fee payments shall be subject to audit by the State. Contractor shall maintain books, records and documents which sufficiently and properly document and calculate all charges billed to the State and all Fees throughout the term of the statewide contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the statewide contract, wherever such records may be located during normal business hours. 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.

In no event shall Contractor retain any amount of money in excess of the compensation to which Contractor is entitled and all Fees owed DOAS shall be paid within thirty (30) calendar days of termination of the statewide contract for any reason.

(ii). Modifying or Canceling the Fee. DOAS reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend the statewide contract pricing to reflect any modification or cancellation of the Fee by DOAS. In addition, DOAS reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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(iii). Late Payment Fee. In the event DOAS does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree the Contractor must pay DOAS interest on the overdue Fees at a rate of eighteen percent (18%) per annum. Interest will be calculated as follows:

(Administrative Fee Amount Due) x (18%) = X

X / 365 (366 for leap years) = Y

Y x (Number of Days Payment is Late) = Interest Owed

For the purposes of this provision, payment of the Fees shall be considered received by DOAS on (1) the date of DOAS' receipt of the EFT confirmation or (2) the date DOAS receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting DOAS in writing of the Contractor's discovery of the overpayment. DOAS will confirm whether an overpayment has occurred and refund or credit the overpayment amount to the Contractor no later than thirty (30) days' following DOAS' receipt of written notice of the overpayment. DOAS will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.

10. Business Review Meetings. The Contractor must participate in Business Review ("BR") meetings at DOAS' request. During the BR meetings, the Contractor will present a written and oral status to DOAS regarding all work orders/purchase orders (including date and value). The BR meeting will also focus on the status of service level agreements, marketing efforts, and key performance indicators agreed to by Contractor and DOAS. The BR meeting may involve, but not be limited to, the following: review of the Contractor's performance and submitted reports, identification of areas of improvement to be addressed, review of the previous sales statistics, strategies to grow sales volume, marketing plan, development/monitoring of a Contractor service "scorecard."
11. Team Georgia Marketplace™ Virtual Catalog. In June 2008, DOAS entered into a multi-year agreement with Jagger, Inc. whereby Jagger will provide certain electronic catalog hosting and management services to enable state customers to access a central online website to view and/or shop the goods and services available from existing statewide contracts as further described in that agreement. The central online website is referred to as Team Georgia Marketplace™ and the catalog site is referred to as the Virtual Catalog.

Supplier's Interface with the Virtual Catalog



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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When the sourced segment applies, the Supplier must agree to cooperate with DOAS and Jagger (and any authorized agent or successor entity to Jagger) in the event DOAS selects this statewide contract to be exhibited on the Virtual Catalog.

12. Equipment Return. Unless title to the Equipment is transferred to the User Agency as provided in the Statewide Contract, Equipment will be returned to Contractor in the same mode of shipment unless otherwise mutually agreed upon. Equipment will be returned in the same condition as received, normal wear and tear excepted. Upon the termination or expiration of this User Agency Lease Agreement, Contractor shall promptly return to User Agency all papers, materials and other property of User Agency then in its possession, including but not limited to all work in progress as is appropriate in its then-existing form (in object code and source code to the extent such work is composed of software, and in machine-readable and printed formats to the extent such work is composed of documentation). Contractor will work with State Entity to comply with all State laws, rules and standards, including the Georgia Technology Standard SS-08-035.01 "Media Sanitization – Vendor Return" (or any successor policy) to facilitate the electronic wiping or physical removal of the hard drive from the Equipment at a cost that does not exceed the Contractor's published price for such services under the Statewide Contract.
13. Fees/Payment Terms. User Agency agrees to pay Contractor in arrears for all undisputed amounts within thirty (30) days of receipt of an undisputed invoice, provided that the Equipment and Services have been accepted by the User Agency as hereinafter provided. Contractor shall not invoice User Agency in advance of Contractor's deliverance/performance of the items and/or services that are the subject of the invoice. Contractor shall deliver the Equipment and/or perform any services in accordance with the schedule set forth in the Statewide Contract.

Charges for late payment of invoices, other than as prescribed by the State Finance and Procurement Article, with respect to regulated state entities, as applicable, are prohibited.
14. Conflicting Terms. At any time, after the commencement of this agreement, if terms under this agreement, differ from the terms under any existing agreement, and a change in service delivery has occurred, Contractor must agree to delay the action, and allow for an agreed upon transition period, and/or settle any informal conflict with the User Agency and the State Purchasing Division (SPD).
15. Care, Use and Maintenance of Leased or Rented Equipment. User Agencies shall protect leased or rented equipment from deterioration, other than normal wear and tear, and will not use the leased or rented equipment for any purpose other than that for which it was designed. Contractor shall maintain the leased/rented equipment in good working



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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order and will make all necessary adjustments and repairs. The Contractor shall have full and free access to the leased/rented equipment for the purpose of maintenance and repairs during the User Agencies' normal business hours and subject to the User Agencies' operational guidelines, including security regulations. The charge for such maintenance is included in their cost response and any final pricing documents as incorporated into the NASPO Valuepoint Master Agreement.

16. Lease Survivability. If User Agency terminates this Lease Agreement for convenience prior to the expiration of the current fiscal year term, or if Contractor terminates this User Agency Lease Agreement as set forth in the User Agency Lease Agreement, then User Agency will be responsible for the payment of all amounts remaining in the unexpired portion of the current term, plus any unpaid invoices unless those invoices are in dispute.

The termination or expiration of this agreement shall not relieve any entity from its obligations to any product lease or rental. Any underlying lease entered into during the Term of this Participation Addendum will remain throughout the lease term.

17. Leased/Rented Equipment Return. The User Agency shall have the option to continue with the existing lease, purchase the equipment, or present a favorable alternative upon maturity of the lease. Should the User Agency decline to exercise any of these options, User Agency shall terminate the lease, and return to the Contractor.

Unless provided otherwise in the Participating Addendum, upon termination, Contractor must enter the premises of the User Agency and remove the leased/rented equipment. Contractor should arrange and confirm removal times with the User Agency during the User Agency's normal business hours and subject to the User Agency's operational guidelines, including security regulations. Contractor agrees that the cost of removal is included in the Contractor's response or other final pricing documentation as incorporated into the Statewide Contract Form.

18. Insurance. The supplier shall maintain insurance which shall protect the supplier and the State of Georgia (as an additional insured) from any claims for bodily injury, property damage, or personal injury covered by the indemnification obligations set forth in the statewide contract attached to this solicitation throughout the duration of the statewide contract. The supplier shall maintain the insurance policies described below at the supplier's own expense and shall furnish DOAS an insurance certificate listing the State of Georgia as certificate holder and as an additional insured. The insurance certificate must document that the Commercial General Liability insurance coverage purchased by the supplier includes contractual liability coverage applicable to the statewide contract. In addition, the insurance certificate must provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in Georgia); a



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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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 DOAS.

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

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

Bodily injury by accident - per employee	\$100,000;
Bodily injury by disease - per employee	\$100,000;
Bodily injury by disease – policy limit	\$500,000.
- 2) Commercial General Liability Policy with the following minimum coverage:

Each Occurrence Limit	\$1,000,000;
Personal & Advertising Injury Limit	\$1,000,000;
General Aggregate Limit	\$ 2,000,000;
Products/Completed Ops. Aggregate Limit	\$ 2,000,000.
- 3) Automobile Liability

Combined Single Limit	\$1,000,000.
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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 prior written notice has been given to DOAS. Certificates of Insurance showing such coverage to be in force shall be filed with DOAS prior to commencement of any work under the statewide contract. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to DOAS, which must have a minimum A.M. Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

Within ten (10) business days of award, the awarded supplier must procure the required insurance and provide DOAS with two (2) Certificates of Insurance. Certificates must

**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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reference the contract number. The supplier's submitted pricing must include the cost of the required insurance. No contract performance shall occur unless and until the required insurance certificates are provided.

19. Software. This Participating Addendum contains mutually agreed upon software license terms and conditions. All other software license and subscription terms shall be mutually agreed upon by the Supplier and DOAS.
20. Marketing. The Contractor must agree to outline a marketing plan which addresses strategies to introduce new Authorized Users to the statewide contract, and retain the existing Authorized Users. Contractor should include their response as an Exhibit when responding to this agreement.

**ENTIRE AGREEMENT.**

This Participating Addendum, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of User Agency or of any agency of the State of Georgia, whether verbal or written, shall be effective to amend this User Agency Lease Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to rely on any such representation, request, instruction, directive or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive or order.


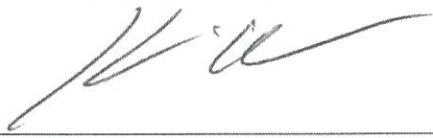


NASPO ValuePoint  
**PARTICIPATING ADDENDUM**



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Georgia	Contractor: Neopost USA Inc.
Signature: 	Signature: 
Name: <i>LISA EASON</i>	Name: Kevin O'Connor
Title: <i>Deputy Commissioner</i>	Title: VP Marketing
Date: <i>11-2-18</i>	Date: 7/26/2018

*[Additional signatures may be added if required by the Participating Entity]*

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	<a href="mailto:tfosket@naspovaluepoint.org">tfosket@naspovaluepoint.org</a>

***[Please email fully executed PDF copy of this document to***

***[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)***

***to support documentation of participation and posting in appropriate data bases.]***



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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**STATE OF GEORGIA  
STATEWIDE CONTRACT  
Exhibit A**

**Contract Terms and Conditions for Equipment Rental or Lease**

**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 equipment to be purchased, leased or rented and any ancillary services as awarded and may also denote the Contractor providing such equipment and services.
- (iii) **"Contractor"** means the provider(s) of the equipment and the identified ancillary services under the Statewide Contract.
- (iv) **"Purchase Instrument"** means the documentation issued by the Agency or User Agencies to the Contractor as payment 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 equipment and services, 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.
- (v) **"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.
- (vi) **"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 equipment and services that are subject to the Statewide Contract.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- (vii) **"State"** means the State of Georgia, the Agency, User Agencies, and any other authorized state entities issuing Purchase Instruments against the Contract.
  - (viii) **"Statewide Contract"** or **"Contract"** means the agreement between the Agency and the Contractor as defined by the Statewide Contract Form and its incorporated documents.
  - (ix) **"Statewide 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 the equipment 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 Statewide Contract Form is defined separately and referred to separately throughout the Statewide 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 Statewide Contract Form.
  - (x) **"User Agency"** or **"User Agencies"** means any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State of Georgia entitled to or required to make purchases from this Statewide Contract.
  - (xi) **"User Agency Lease"** shall mean the standard lease template attached to this Statewide Contract, which shall be used by the Contractor to lease or rent any equipment to User Agencies pursuant to this Statewide Contract.
2. **Certified Source of Equipment and Ancillary Services.** Pursuant to Section 50-5-57 of the Official Code of Georgia Annotated (O.C.G.A.), the Agency hereby certifies the Contractor as a source of supply to the User Agencies of the equipment and the services identified in this Statewide Contract. Orders shall be placed individually and from time to time by the User Agencies. The execution of this Statewide Contract only establishes the Contractor as an authorized source of supply by the Agency and creates no financial obligation on the part of the Agency.
3. **Priority of Contract Provisions.** Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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4. **Reporting Requirements.** Contractor shall provide all reports required by the RFX. In addition, unless otherwise provided in the RFX, Contractor shall keep a record of the payments made pursuant to the Statewide Contract and shall submit a quarterly written report to the Agency.

**B. DURATION OF CONTRACT**

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

**C. DESCRIPTION OF EQUIPMENT AND SERVICES**

1. **Specifications in Bidding Documents.** The Contractor shall provide all equipment, services, and other deliverables required in the RFX that comply with the specifications contained in the RFX and the terms of the Statewide Contract, plus those equipment, services and deliverables as may additionally be described in the Response. Any equipment provided hereunder shall be new equipment unless provided otherwise in the RFX.



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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2. **Product Shipment and Delivery.** All equipment and any other products 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 User Agencies, regardless of when the hidden damage is discovered.
3. **Title to Leased or Rented Equipment.** Unless provided otherwise in the RFX, leased or rented equipment is and shall at all times remain the sole property of the Contractor unless the User Agency exercises an option to purchase as permitted by the User Agency Lease.
4. **Care, Use and Maintenance of Leased or Rented Equipment.** User Agencies shall protect leased or rented equipment from deterioration, other than normal wear and tear, and will not use the leased or rented equipment for any purpose other than that for which it was designed. Contractor shall maintain the leased/rented equipment in good working order and will make all necessary adjustments and repairs. The Contractor shall have full and free access to the leased/rented equipment for the purpose of maintenance and repairs during the User Agencies' normal business hours and subject to the User Agencies' operational guidelines, including security regulations. The charge for such maintenance is included in the Response and any final pricing documents as incorporated into the Statewide Contract Form.
5. **Leased/Rented Equipment Return.** Unless provided otherwise in the RFX, upon termination of the User Agency Lease, Contractor must enter the premises of the User Agency and remove the leased/rented equipment. Contractor should arrange and confirm removal times with User Agencies during the User Agencies' normal business hours and subject to the User Agencies' operational guidelines, including security regulations. Contractor agrees that the cost of removal is included in the Contractor's response or other final pricing documentation as incorporated into the Statewide Contract Form.
6. **Non-Exclusive Rights.** The Statewide Contract is not exclusive. The Agency reserves the right to select other contractors to provide equipment and services similar to the equipment and services described in the Statewide Contract during the term of the Statewide Contract. User Agencies may obtain similar equipment and services from other contractors upon prior approval of the Agency, which approval shall be made at the sole discretion of the Agency when it is deemed to be in the best interests of the State, and shall be conclusive.
7. **No Minimums Guaranteed.** The Statewide Contract does not guarantee any minimum level of purchases or any minimum time period for rental or lease of the equipment



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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**D. COMPENSATION**

1. **Pricing and Payment.** The Contractor will be paid for the purchase, rental or lease of its equipment and services provided pursuant to the Statewide Contract in accordance with the RFX and final pricing documents as incorporated into the Statewide Contract Form and the terms of the Statewide Contract. Unless clearly stated otherwise in the Statewide Contract, all prices are firm and fixed and are not subject to variation. Prices include, but are not limited to freight, insurance, fuel surcharges and customs duties. User Agencies are solely and individually financially responsible for their respective purchases.
2. **Billings.** If applicable, and unless the RFX provides otherwise, the Contractor shall submit, on a regular basis, invoices for all of the equipment rentals, leases, sales and services supplied to the User Agencies under the Statewide Contract at the billing addresses specified in the Purchase Instruments or Statewide Contract. Invoices shall comply with all applicable rules concerning payment of such claims. User Agencies shall pay all approved invoices in arrears and in accordance with applicable provisions of State law.

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

3. **Delay of Payment Due to Contractor's Failure.** If the User Agencies in good faith determine that the Contractor has failed to perform or deliver any service or equipment or failed to maintain or repair the equipment as required by the Statewide Contract, the Contractor shall not be entitled to any compensation under the Statewide Contract until such service is performed or such equipment is delivered, maintained or repaired. In this event, the User Agencies may withhold that portion of the Contractor's compensation which represents payment for services not performed or equipment not delivered or properly maintained and repaired. To the extent that the Contractor's failure to provide services or deliver equipment in a timely manner causes the User Agencies to incur costs, the User Agencies may deduct the amount of such incurred costs from any amounts payable to Contractor. The User Agencies' authority to deduct such incurred costs shall not in any way affect the Agency's sole authority to terminate the Statewide Contract.
4. **Set-Off Against Sums Owed by the Contractor.** In the event that the Contractor owes the User Agency any sum under the terms of the Statewide Contract, pursuant to any judgment, or pursuant to any law or the User Agency must obtain substitute performance,



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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the User Agency may set off the sum owed to the User Agency against any sum owed by the User Agency to the Contractor in the Agency's sole discretion.

**E. TERMINATION**

- 1. Immediate Termination.** Pursuant to O.C.G.A. Section 50-5-64, any lease, rental or 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. Further, the Agency may terminate the Statewide 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 the equipment, goods and 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;
  - (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 Statewide 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 Statewide Contract:

- (i) The Contractor fails to deliver or has delivered nonconforming equipment, goods or services or fails to perform, to the Agency's satisfaction, any material requirement of the Statewide Contract or is in violation of a material provision of

**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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the Statewide Contract, including, but without limitation, the express warranties made by the Contractor;

- (ii) The Agency determines that satisfactory performance of the Statewide 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 Statewide 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 Statewide 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 Statewide Contract without additional written notice; and/or



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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- (ii) Procure substitute goods or services from another source and charge the difference between the Statewide Contract and the substitute contract to the defaulting Contractor; and/or,
  - (iii) Enforce the terms and conditions of the Statewide Contract and seek any legal or equitable remedies.
- 4. **Termination 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 Agencies, upon submission of invoices and proper proof of claim, for equipment and services provided under the Statewide Contract to the User Agencies up to and including the date of termination.
- 5. **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:
  - (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 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 equipment and services actually provided up to the date specified in the notice of termination for which the User Agencies are obligated to pay pursuant to the Statewide Contract or Purchase Instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Statewide Contract in the event of termination. The State shall not be liable for any costs incurred by the Contractor in its performance of the Statewide Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Statewide Contract.
- 7. **The Contractor's Termination Duties.** Upon receipt of notice of termination or upon request of the Agency, the Contractor shall:

**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- (i) Cease work under the Statewide Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Statewide Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the Agency may require;
- (ii) Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor;
- (iii) Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Statewide Contract;
- (iv) Cooperate in good faith with the Agency, the User Agencies, and their employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- (v) Immediately return to the User Agencies any payments made by the User Agencies for equipment 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 Statewide Contract. The Contractor shall presume that all information received pursuant to the Statewide 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;



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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

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

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

**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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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 Statewide 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 equipment and services to comply with applicable specifications, warranties, and certifications under the Statewide Contract;
  - (iv) The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the equipment or any parts thereof provided under the Statewide Contract;
  - (v) Claims, demands, or lawsuits that, with respect to the equipment or any parts thereof, allege product liability, strict product liability, or any variation thereof;
  - (vi) The Contractor's performance or attempted performance of the Statewide 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 Statewide 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



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- (x) Any failure by the Contractor to adhere to the confidentiality provisions of the Statewide 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 provided equipment and 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 provided equipment and 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 Agency the right to continue using the equipment and services;

**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- (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 equipment;
- (ii) Use of the equipment in combination with apparatus or devices not supplied by Contractor;
- (iii) Use of the equipment 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 Statewide 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 Statewide Contract Form.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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**J. WARRANTIES**

- 1. Construction of Warranties Expressed in the Contract with Warranties Implied by Law.** All warranties made by the Contractor and/or subcontractors in all provisions of the Statewide Contract and the Contractor's Response, whether or not the Statewide Contract specifically denominates the Contractor's and/or subcontractors' promise as a warranty or whether the warranty is created only by the Contractor's affirmation or promise, or is created by a description of the equipment, goods 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 Statewide Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the equipment and services provided by the Contractor. The provisions of this section apply during the term of the Statewide Contract and any extensions or renewals thereof.
- 2. Warranty – Nonconforming Goods.** All goods delivered by Contractor to the State shall be free from any defects in design, material, or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the User Agencies shall have the option of returning, repairing, or replacing the defective equipment at Contractor's expense. Payment for the use of the equipment shall not constitute acceptance. Acceptance by the User Agency shall not relieve the Contractor of its warranty or any other obligation under the Statewide Contract.
- 3. Compliance with Federal Safety Acts.** Contractor warrants and guarantees to the State that the goods provided under the Statewide Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget A-110 Appendix A; and the Anti-Kickback Act of 1986.
- 4. Originality and Title to Concepts, Materials, and Goods Produced.** Contractor represents and warrants that all the concepts, materials, goods and services produced, or provided to the State pursuant to the terms of the Statewide Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Contractor represents and warrants that the concepts, materials, goods and services and the State's use of same and the exercise by the State of the rights granted by the Statewide Contract shall not infringe upon any other work, other than



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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material provided by the Statewide 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 and works 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. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods and services contemplated by the Statewide Contract.

5. **Conformity with Contractual Requirements.** The Contractor represents and warrants that the equipment and services provided in accordance with the Statewide Contract will appear and operate in conformance with the terms and conditions of the Statewide Contract.
6. **Authority to Enter into Contract.** The Contractor represents and warrants that it has full authority to enter into the Statewide Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.
7. **Obligations Owed to Third Parties.** The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Statewide Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.
8. **Title to Property.** The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Title to any supplies, materials or equipment shall remain in the Contractor until fully paid for by the User Agencies.
9. **Industry Standards.** The Contractor represents and expressly warrants that all aspects of the equipment and services provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Statewide Contract, which shall take precedence.
10. **Contractor's Personnel and Staffing.** Contractor warrants that all persons assigned to perform services under this Statewide Contract are either lawful employees of Contractor or lawful employees of a Subcontractor authorized by the Agency as specified in the RFX. All persons assigned to perform services under this Statewide Contract shall be qualified to perform such services. Personnel assigned by Contractor shall have all professional licenses required to perform the services.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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

**K. PRODUCT RECALL**

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

**L. CONTRACT ADMINISTRATION**

- 1. Order of Preference.** In the case of any inconsistency or conflict among the specific provisions of the Statewide Contract Terms and Conditions (including any amendments accepted by both the Agency and the Contractor attached hereto), 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 specific provisions of 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 User Agency Lease.
  - (iv) Fourth, by giving preference to the specific provisions of the Contractor's Response, except that objections or amendments by a Contractor that have not been explicitly accepted by the Agency in writing shall not be included in this Statewide Contract and shall be given no weight or consideration.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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2. **Intent of References to Bid Documents.** The references to the parties' obligations, which are contained in this document, are intended to supplement or clarify the obligations as stated in the RFX and the Contractor's Response. The failure of the parties to make reference to the terms of the RFX or the Contractor's Response in this document shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFX and the Contractor's Response. The contractual obligations of the Agency cannot be implied from the Contractor's Response.
3. **Compliance with the Law.** The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders now or hereafter in effect when performing under the Statewide Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or contractors. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under the Statewide Contract. Contractor and Contractor's personnel shall also comply with all State, Agency and User Agency policies and standards in effect during the performance of the Statewide Contract, including but not limited to the Agency and User Agencies' policies and standards relating to personnel conduct, security, safety, confidentiality, and ethics. Further, the provisions of O.C.G.A. Section 45-10-20 et seq. have not and must not be violated under the terms of this Statewide Contract. Contractor certifies that Contractor is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §50-5-85.
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



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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subcontractor's employees during the performance of this Statewide 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 all the parties.
6. **Third Party Beneficiaries.** There are no third-party beneficiaries to the Statewide Contract. The Statewide Contract is intended only to benefit the State, and the Contractor.
7. **Choice of Law and Forum.** The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Statewide Contract without regard to the choice of law provisions of State law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Statewide Contract, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the State.
8. **Parties' Duty to Provide Notice of Intent to Litigate and Right to Demand Mediation.** In addition to any dispute resolution procedures otherwise required under this Statewide Contract or any informal negotiations which may occur between the parties, 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 other party of the claim and the intent to initiate a civil action. At any time prior to the commencement of a civil action, either party may elect to submit the matter for mediation. Either party 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;



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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provided, however that the cost to Agency shall not exceed five thousand dollars (\$5,000.00).

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

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

9. **Assignment and Delegation.** The Statewide Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.
10. **Use of Third Parties.** Except as may be expressly agreed to in writing by the Agency, Contractor shall not subcontract, assign, delegate or otherwise permit anyone other than Contractor or Contractor's personnel to perform any of Contractor's obligations under this Statewide Contract or any of the work subsequently assigned under this Statewide Contract. 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.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- 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 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 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 goods 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



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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Statewide Contract on behalf of the party at the address identified in the Statewide Contract Form. Each such notice shall be deemed to have been provided:

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

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

- 18. Cumulative Rights.** The various rights, powers, options, elections and remedies of any party provided in the Statewide Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.
- 19. Severability.** If any provision of the Statewide Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Statewide Contract. Further, if any provision of the Statewide Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Statewide Contract shall not affect any other part of this Statewide Contract, and the remainder of this Statewide Contract shall continue to be of full force and effect.
- 20. Time is of the Essence.** Time is of the essence with respect to the performance of the terms of the Statewide Contract. Contractor shall ensure that all personnel providing goods and services to the State are responsive to the State's requirements and requests in all respects.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- 21. Authorization.** The persons signing this Statewide Contract represent and warrant to the other parties that:
- (i) It has the right, power and authority to enter into and perform its obligations under the Statewide Contract; and
  - (ii) It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Statewide Contract and the Statewide Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.
- 22. Successors in Interest.** All the terms, provisions, and conditions of the Statewide Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- 23. Record Retention and Access.** The Contractor shall maintain books, records and documents 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 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. 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 Agency, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Statewide Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.
- 24. Solicitation.** The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Statewide Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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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. **Clean Air and Water Certification.** Contractor certifies that none of the facilities it uses to produce goods provided under the Statewide Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the Agency of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities.
27. **Debarred, Suspended, and Ineligible Status.** Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Georgia or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the Agency if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.
28. **Use of Name or Intellectual Property.** Contractor agrees it will not use the name or any intellectual property, including but not limited to, State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the State.
29. **Taxes.** User Agencies are exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. User Agencies are exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor has provided the Agency with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform services required in this Statewide Contract, which verification is incorporated herein by reference.
30. **Certification Regarding Sales and Use Tax.** By executing the Statewide Contract the Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the O.C.G.A.; or (b) not a "retailer" as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the State may declare the Statewide Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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**31. Delay or Impossibility of Performance.** Neither party shall be in default under the Statewide Contract if performance is delayed or made impossible by an act of God. In each such case, the delay or impossibility must be beyond the control and without the fault or negligence of the Contractor. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Statewide Contract.

**32. Limitation of Contractor's Liability to the State.** Except as otherwise provided in this Statewide Contract, Contractor's liability to the State for any claim of damages arising out of this Statewide Contract shall be limited to direct damages and shall not exceed the total amount paid to Contractor for the performance under this Statewide Contract.

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

**33. Obligations Beyond Contract Term.** The Statewide Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Statewide Contract. 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 parties 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 parties 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.





**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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- 36. Transition Cooperation and Cooperation with other Contractors.** Contractor agrees that upon termination of this Statewide Contract for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to the State or another contractor. The Contractor shall provide full disclosure to the State and the third-party contractor about the equipment, software, or services required to perform services for the State. The Contractor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to the State or to another contractor.

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



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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**GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES  
STATEWIDE CONTRACT FOR MAIL EQUIPMENT SUPPLIERS AND MAINTENANCE  
SERVICES  
Exhibit B**

<b>USER AGENCY LEASE AGREEMENT</b>	
<b>Contractor's Full Legal Name:</b>	
<b>Contractor's Statewide Contract #:</b>	
<b>User Agency Name:</b>	
<b>User Agency Billing Address:</b>	

WHEREAS, the Georgia Department of Administrative Services ("DOAS") on behalf of the State of Georgia (the "State") established the above referenced Statewide Contract by and between DOAS and Contractor;

WHEREAS, the User Agency desires to lease equipment from Contractor in accordance with the terms of the Statewide Contract and this User Agency Lease Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

- 1. EQUIPMENT AND SERVICES.** Pursuant to the terms and conditions of the Statewide Contract, Contractor agrees to lease to User Agency the Equipment identified in the Equipment Schedule attached hereto as Attachment 1 and incorporated herein by reference (collectively and individually, the "Equipment"). The Equipment Schedule may be amended to include any additional Equipment added hereto by written agreement of both parties. In addition, Contractor agrees to provide to the User Agency the installation and maintenance and other services described in the Statewide Contract.



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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2. **TERM AND RENEWAL.** The initial term of this User Agency Lease Agreement shall begin on the Effective Date and end on June 30<sup>th</sup> of the then-current State fiscal year (July 1 – June 30). Thereafter, the User Agency Lease Agreement may be renewed at the sole discretion of the User Agency on a year-to-year basis (one renewal term at a time) for the period of time identified in Attachment 1. User Agency may, at its sole option, renew as to all of the Equipment and services to be provided hereunder or as to only selected Equipment and services. The terms and conditions of this User Agency Lease Agreement shall apply during any and all renewals.
3. **SHIPPING AND DELIVERY.** Contractor shall pay for packing, crating, and shipping of the Equipment to and from the User Agency and shall install the Equipment at the User Agency's premises at no cost to the User Agency. Shipment/Delivery shall be FOB: Destination.
4. **PAYMENT AND ACCEPTANCE.** User Agency agrees to pay Contractor in arrears for all undisputed amounts within thirty (30) days of receipt of an undisputed invoice, provided that the Equipment and Services have been accepted by the User Agency as hereinafter provided. Contractor shall not invoice User Agency in advance of Contractor's deliverance/performance of the items and/or services that are the subject of the invoice. Contractor shall deliver the Equipment and/or perform any services in accordance with the schedule set forth in the Statewide Contract or the time specified in Attachment 1 (whichever is later). Unless otherwise agreed to by Contractor and the User Agency, Contractor shall provide written notification of completion of the delivery, installation and any other required services to the User Agency ("Delivery/Installation Notice"). User Agency shall have thirty (30) days from the date of receipt of the Delivery/Installation Notice to provide Contractor with written notification of acceptance or rejection due to unsatisfactory performance ("Acceptance Period"), and in the event of acceptance by the User Agency, the obligation to pay shall be effective on the first (1<sup>st</sup>) day of the Acceptance Period. The failure of the User Agency to issue an acceptance or rejection notice on or before the end of the Acceptance Period shall be deemed an acceptance of the Equipment or services. In the event User Agency issues a rejection notice, Supplier shall, as quickly as is practicable, correct at its expense all deficiencies caused by Contractor. User Agency shall not unreasonably withhold or delay such acceptance or rejection.
5. **TERMINATION.** Termination of this User Agency Lease Agreement shall be governed by the following provisions:
  - a. Each party has the right to terminate this User Agency Lease Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). Contractor shall provide prompt written notice to DOAS of any and all default notices sent to a User Agency.
  - b. Provided that Contractor is in default of this User Agency Lease Agreement, User Agency may terminate this User Agency Lease Agreement, in whole or in part, by written notice to Contractor if Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

- c. User Agency may terminate this User Agency Lease Agreement, in whole or in part, immediately, without notice, if: (i) User Agency deems that such termination is necessary to prevent or protect against fraud or otherwise protect User Agency's personnel, facilities or services; or (ii) Contractor is debarred or suspended from performing services on any public contract(s).
  - d. If User Agency terminates this User Agency Lease Agreement for convenience prior to the expiration of the current fiscal year term, or if Contractor terminates this User Agency Lease Agreement as set forth in subsection (a) above, then User Agency will be responsible for the payment of all amounts remaining in the unexpired portion of the current term, plus any unpaid invoices unless those invoices are in dispute.
6. **EQUIPMENT RETURN.** Unless title to the Equipment is transferred to the User Agency as provided in the Statewide Contract, Equipment will be returned to Contractor in the same mode of shipment unless otherwise mutually agreed upon. Equipment will be returned in the same condition as received, normal wear and tear excepted. Upon the termination or expiration of this User Agency Lease Agreement, Contractor shall promptly return to User Agency all papers, materials and other property of User Agency then in its possession, including but not limited to all work in progress as is appropriate in its then-existing form (in object code and source code to the extent such work is composed of software, and in machine-readable and printed formats to the extent such work is composed of documentation). Contractor will work with State Entity to comply with all State laws, rules and standards, including the Georgia Technology Standard SS-08-035.01 "Media Sanitization – Vendor Return" (or any successor policy) to facility the electronic wiping or physical removal of the hard drive from the Equipment at a cost that does not exceed the Contractor's published price for such services under the Statewide Contract.
7. **FUNDING.** The parties acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. If the source of payment for the charges payable hereunder no longer exists or is determined to be insufficient, this User Agency Lease Agreement shall terminate without further obligation of the User Agency as of that moment. The determination of the User Agency as to the occurrence of the events stated herein shall be conclusive; User Agency represents, however, that it will use reasonable care that the termination of this User Agency Lease Agreement will not be frivolous, but rather will result from a reduction of funding.
8. **PURCHASE OPTION.** User Agency, at its sole discretion, shall have the option to purchase leased equipment at pricing mutually agreeable to User Agency and Contractor.
9. **TAXES.** All fees payable to Contractor hereunder shall be net of any and all taxes that the Contractor



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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may be required by law to collect in connection with the provision of the Services hereunder. Contractor shall be solely responsible for the payment of any and all taxes lawfully imposed upon it, including but not limited to taxes on property owned, leased or used by Contractor; franchise or privilege taxes on Contractor's business; gross receipts taxes to which Contractor is subject; and income taxes. By this paragraph, neither DOAS nor the User Agency makes any representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity. Upon request, User Agency will provide a certificate of tax exemptions which apply to this User Agency Lease Agreement.

**10. ASSIGNMENT.** Contractor shall not assign or subcontract the whole or any part of this User Agency Lease Agreement.

**11. WAIVER AND SEVERABILITY.** The waiver by User Agency of any breach of any provision contained in this User Agency Lease Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this User Agency Lease Agreement. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof. All provisions of this User Agency Lease Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this User Agency Lease Agreement have no substantive meaning or content and are not a part of this User Agency Lease Agreement.

**12. APPLICABLE LAW AND VENUE.** This User Agency Lease Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, U.S.A., without regard to its conflict of laws principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia.

**13. NOTICES.** All notices, requests, or other communications excluding invoices hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received.

<b>USER AGENCY</b>	<b>CONTRACTOR</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>
<b>Address:</b>	<b>Address:</b>
<b>Email Address:</b>	<b>Email Address:</b>

**14. TITLE AND RISK OF LOSS.** Any leased Equipment is and shall at all times remain the sole property



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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of the Contractor, and the User Agency shall have or acquire no right, title or interest therein. All risk of loss or damage to the Equipment, including risk of transit, shall remain with the Contractor until it is accepted by User Agency in accordance with Section 4 "Payment and Acceptance". Insurance during shipment and until the Equipment is accepted by User Agency is the responsibility of the Contractor.

- 15. ENTIRE AGREEMENT.** This User Agency Lease Agreement, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of User Agency or of any agency of the State of Georgia, whether verbal or written, shall be effective to amend this User Agency Lease Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to rely on any such representation, request, instruction, directive or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive or order.





**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES  
STANDARD AMENDMENT  
TO  
END USER LICENSE AGREEMENTS  
FOR  
COMMERCIAL OFF-THE-SHELF SOFTWARE  
Exhibit C

This Agreement is made the [redacted] day of [redacted], 20[redacted] (the "Effective Date") between [Neopost] a corporation organized and existing under the laws of \_\_\_\_\_, and having its principal office at \_\_\_\_\_ (hereinafter referred to as "Licensor") and \_\_\_\_\_, an instrumentality of the State of Georgia (hereinafter referred to as "Licensee." Licensor and Licensee may also be referred to in this Agreement collectively as the "Parties."

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents.

**Recitals**

This document is being used in conjunction with a solicitation issued for a government procurement being conducted for Licensee; nevertheless, the Parties intend for this document (including any attachments) to memorialize a contractual relationship related to but independent of any contractual relationship entered into by an award issued pursuant to that solicitation.

**Agreement**

For the reasons recited above, and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**Definitions**

**Agreement** means this Georgia Standard Amendment to End User License Agreements for Commercial Off-The-Shelf Software, not including any EULA or other attachments.

**Authorized EULA** means any EULAs attached as Exhibit "B", but does not include any document referenced or incorporated therein unless attached to this Agreement. Licensor warrants that every Authorized EULA is an unmodified copy of Licensor's standard form agreement.

**Distributor** means the generic category of entities authorized by Licensor, if any, that participate in the distribution chain between Licensor and Licensee, including, but not limited to, value added resellers (VARs), original equipment manufacturers (OEMs), distributors, dealers, independent sales organizations (ISOs), resellers, and retail outlets.





## **MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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**Distributor Contract** means a contract between a Licensee and a Distributor by which Licensee can acquire licenses of the Software. Nothing in this agreement constitutes a representation or obligation that Licensor has made or will make its Software available through a Distributor.

**Documentation** means all materials supplied, directly or indirectly, to Licensees by Licensor, by any means or media that explain or facilitate the use of the Software, which may include, without limitation, any materials that describe the functional, operational, and/or performance capabilities of the Software; training materials; user, operator, system administration, technical, support, and other manuals or instructions; flow charts, and logic diagrams. Licensor warrants that the Documentation does and will continue to accurately describe the functional and operational characteristics of the Software. Licensor warrants that the Documentation will be contemporaneously updated to reflect any changes made to the Software.

**End User License Agreement ("EULA")** means any license agreement or other commercial agreement, regardless of how designated, pertaining to the right to use any Software, including, but not limited to, any such agreement proposed prior to or after execution of this Agreement, and including without limitation any such agreement that either is affixed to (e.g., shrink wrap), imbedded in (e.g., clickwrap), or in any way accompanies the Software upon delivery. The term "EULA" does not include this Agreement. The term "EULA" does not include any contract awarded by or on behalf of a Licensee as a result of a formal solicitation (e.g., invitation for bids or request for proposals) issued by or on behalf of a licensee. The term "EULA" does not include a contract to the extent it governs software maintenance as defined in ISO/IEC 14764:2006.

**DOAS** means the Georgia Department of Administrative Services established by O.C.G.A. § 50-5-1, as amended, or its successor in interest. Pursuant to O.C.G.A. § 50-5-50 et seq. (informally known as the "State Purchasing Act", DOAS is authorized to canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of all supplies, materials, equipment, and services other than professional and personal employment services required by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the State covered by the State Purchasing Act. Consistent with its statutory authority, DOAS is acting solely in a representative capacity and on behalf of Licensees. DOAS is not a party to this Agreement. Notwithstanding any other provision, DOAS bears no liability for any party's losses arising out of or relating in any way to this Agreement).

**Ordering and Confirming Documents** means those documents exchanged between a Licensee and the Licensor to memorialize the number and configuration of licenses ordered and provided, whether exchanged directly with Licensor or indirectly through a Distributor. By way of example, ordering documents may include a purchase order or other instrument submitted by Licensee, and confirming documents may include a software key or license-specific identifying information, an invoice, or another document submitted by Licensor.

**Prior Agreement** means a written agreement that was negotiated, signed using pen and paper, and executed by an authorized representative of a Licensee prior to the Effective Date of this Agreement.

**Procurement Contract** means any contract awarded pursuant to the Solicitation identified above by reference to its Solicitation Number and Solicitation Description.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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**Software** means any computer program such as encoded information, data or programmed instructions referenced on Exhibit "A", including any future service packs, maintenance updates, patches, fixes, or like modifications to the computer program by whatever name provided by Licensor, if any. In addition, Exhibit "A" excludes any computer program not identified in the Procurement Contract. For clarity, Exhibit "A" excludes all services, including without limitation, so-called "software-as-a-service" and "cloud services," application services, etc., even if included therein.

**Attachments**

Exhibit A – Software List

**1. RELATIONSHIP BETWEEN THIS AGREEMENT AND THE AUTHORIZED EULAs.**

1.1 Agreement to Authorized EULAs. Subject to the provisions of this Agreement, Licensee agrees to the terms and conditions of the Authorized EULAs. Any EULA that is not an Authorized EULA is void and of no effect. Licensor represents that every EULA applicable to the computer programs referenced on Exhibit "A" has been attached to Exhibit "B" as an Authorized EULA.

1.2 Primacy of Agreement. The terms of this Agreement shall be given full effect prior to the application of any term in the Authorized EULAs. To the extent of any inconsistency or conflict, the terms of this Agreement take precedence over any similar terms in any Authorized EULAs. To the extent an Authorized EULA provides Licensee with options or rights in addition to or beyond those available under this Agreement, nothing in this Agreement is intended to limit Licensee's exercise of such options or rights.

1.3 Entire Agreement. Within the scope of this Agreement, as defined in Paragraph 2, this Agreement, Exhibit "A" (the Software List), and the Authorized EULAs constitute the entire agreement between the Parties and supersede all other prior or contemporaneous agreements, representations, or discussions, whether oral or written. This Agreement and the Authorized EULAs shall apply notwithstanding any conflicting or additional provisions in Ordering or Confirming Documents.

**2. LIMITED SCOPE OF AGREEMENT.**

2.1 This Agreement and the Authorized EULAs apply only to the use and licensing of Software by Licensee. All terms in an Authorized EULA regarding services (other than warranty services) are void.

2.2 Neither this Agreement nor an Authorized EULA authorize any Licensee to pay any funds directly to Licensor. All terms in a EULA regarding pricing, payment, interest, and delivery are void. This Agreement and the Authorized EULAs are independent of, and do not form a part of a Procurement Contract. Ordering and Confirming Documents may not be issued pursuant to an Authorized EULA, but must be issued pursuant to a Procurement Contract. Ordering and Confirming Documents form a part of this Agreement and the Authorized EULAs but only to the extent they memorialize the number of, configuration of, and prices paid for licenses ordered and provided. Ordering and Confirming Documents may not supplement, alter, or modify any provision of this Agreement or an Authorized EULA.



**MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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2.3 Subject to the limits of item 2.1, this Agreement and the Authorized EULAs apply to all licenses of Software licensed from Licensor by a Licensee during the term of this Agreement, whether acquired directly from Licensor or indirectly through a Distributor.

**3. TERM OF AGREEMENT.** This Agreement shall remain in effect for the duration of any and all licenses of any particular copy of software purchased pursuant to the Procurement Contract.

**4. LICENSE GRANT.**

4.1 Any rights granted by Licensor to Licensee in an Authorized EULA are in addition to any rights granted by this Paragraph 4. Licensor agrees that Licensee shall have the rights that are set forth in items 4.2, 4.3, 4.4, and 4.5 below.

4.2 For each license acquired, the Software may be:

4.2.1 Used or copied for use in or with the device or devices for which it was acquired, including without limitation use at any of Licensee's installations to which such device or devices may be transferred;

4.2.2 Used or copied for use in or with a backup device if any device for which it was acquired is inoperative;

4.2.3 Reproduced for safekeeping (archives) or backup purposes;

4.2.4 Modified, adapted, or combined with other computer programs, however, a Licensee may not reverse engineer, decompile or disassemble the Software except to the extent necessary to create interfaces to, or allow inter-operability with, other computer programs or computer data bases;

4.2.5 Disclosed to and used by support service contractors or their subcontractors for the benefit of the Licensee, subject to the restrictions set forth in this Agreement; and,

4.2.6 Used or copied for use in or transferred to a replacement device.

4.3 Notwithstanding any other provision, Licensee's fair use rights (17 U.S.C. § 107) are not limited in any way.

**5. INTELLECTUAL PROPERTY INFRINGEMENT.**

5.1 As used in this Paragraph 5, these terms are defined as follows: "Acquired Item(s)" means the rights, Software, or services, if any, furnished under this Agreement or any Authorized EULA. "Affiliate" means any business connected with or related to Licensor. "Indemnatee" means Licensee, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees. "IP Right(s)" means a copyright, patent, trademark, trade secret, or any other proprietary right.

5.2 In the event of any claim by any third party against an Indemnatee asserting or involving an IP Right which concerns any Acquired Item(s), Licensor shall, without limitation, indemnify Indemnatee



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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for and against any loss, cost, expense, attorneys' fees and expenses (including inside counsel), or liability, resulting from or related to such claim, whether or not such claim is successful.

5.3 Indemnitee must notify Licensor in writing within a reasonable period of time after Indemnitee first receives written notice of any such claim or action. Indemnitee's failure to provide or delay in providing such notice will relieve Licensor of its obligations under this Paragraph 5 only if and to the extent that such delay or failure materially prejudices Licensor's ability to defend such claim. Licensor's defense of such claim against the State is contingent upon approval by the Attorney General of Georgia and appointment of Licensor's counsel as Special Assistant Attorney General. Indemnitee must reasonably cooperate with Licensor's defense of such claims or suits. Except for an injunction limited to requiring the cessation of use of an Acquired Item that is the subject of a claim, Licensor may not, without Licensee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened claim or action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnitee from all liability related to such commenced or threatened claim or action, and (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnitee or otherwise adversely affect an Indemnitee. Licensee's consent is necessary for any settlement that requires Licensee to part with any right or make any payment or subjects Licensee to any injunction, except for an injunction requiring cessation of use of an Acquired Item that is the subject of the claim.

5.4 In the event an injunction, order, or agreement shall be obtained against Licensee's use of any Acquired Item, Licensor shall, without in any way limiting its other obligations under this Agreement and at its sole expense: (a) use good faith, diligent efforts to procure for Licensee the right to continue to use, and to have used, the Acquired Item, and if such remedy is commercially impracticable, to then (b) replace or modify the Acquired Item so that it becomes non-infringing but only if the modification or replacement does not materially adversely affect the functionality of the Acquired Item or its use by Licensee. In the event that both of these remedies are commercially impracticable, Licensor may require that Licensee stop using the Acquired Item, refund to Licensee an amount equal to all money paid by Licensee therefore, and take all steps necessary to have any Indemnitees released from any further liability.

5.5 Licensor's obligations under this Paragraph 5 do not apply to a claim to the extent (a) that the claim is caused by a modification of Software made by Licensee; (b) that the claim is caused by Licensee's use of a superseded release of Software if the infringement would have been avoided by Licensee's timely implementation of an update or upgrade previously provided to Licensee, but only if such update or upgrade (1) was provided by Licensor at no cost or as part of either maintenance or a previous purchase by Licensee, and (2) does not materially adversely affect the functionality of the Acquired Item or its use by Licensee; (c) that the claim is caused by Licensee combining the Software with another computer program or hardware unless such combinations are recommended by the Documentation or otherwise suggested by Licensor or its Affiliates; (d) that the claim is caused by Licensee reverse engineering, decompiling, or disassembling Software; (e) that the claim arises from Licensee's use of any Software that is open source or freeware, but only if the open source or freeware is not incorporated or combined by Licensor in Software provided by Licensor; (f) that the claim is caused (1) by modifications made to the Software by Licensor or its Affiliates in accordance with a detailed, exact statement of specifications furnished by Licensee unless Licensor or its Affiliates knew or should have known that compliance with the Licensee's specifications would infringe an IP right, or (2) by compliance by Licensor or its Affiliates with specifications furnished by Licensee if Licensee



## **MAILROOM EQUIPMENT, SUPPLIES & MAINTENANCE**

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knowingly relied on a third party's product to develop the specifications provided to Licensor or its Affiliates and failed to identify such product to Licensor.

5.6 Notwithstanding any other provision, Licensor's obligations pursuant to this Paragraph 5 are without any limitation whatsoever. Licensor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

5.7 Paragraph 5 states Licensee's exclusive remedy for third party damages claims asserting a violation or infringement of the third party's intellectual property rights.

### **6. LIMITATION OF RECOVERY.**

6.1 Limitation of Damages – Licensor. Except as provided in Paragraph 5 (Intellectual Property Infringement), Paragraph 7.1 (Right to Audit; Misuse of Data), and Paragraph 14.22 (Privacy), Licensor's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license the Software. The foregoing limitation applies to the exclusion of any other limitation or exclusion of the remedies available against Licensor, the liability of Licensor, or the damages recoverable from Licensor.

6.2 Limitation of Damages - Licensee. Except as provided in Paragraph 7.2 (Audit Remedy; Exclusivity), Licensee's liability for damages, if any, for any cause whatsoever, and regardless of the form of action, shall in no event exceed an amount equal to twice the cumulative fees paid or payable by Licensee to license Software. Licensee's total liability for any obligation arising under any clause imposing any duty of confidentiality or non-disclosure shall not exceed an amount equal to fifty thousand dollars. The foregoing limitations do not apply to a loss incurred by Licensor to the extent the loss results because Licensee has created a derivative work from, reverse assembled, reverse compiled, or otherwise reduced to human readable form the Software without Licensor's prior written consent. Nothing herein shall be construed to waive any clause regarding the availability or appropriation of funds, sovereign immunity, or any other immunity, restriction, or limitation on recovery provided by law.

### **7. AUDIT.**

7.1 Right to Audit; Misuse of Data. Licensor has the right to audit Licensee at Licensor's expense. Licensor shall conduct an audit and use the information obtained in an audit only to enforce Licensor's rights under, and to determine whether Licensee is in compliance with, the terms of this Agreement and any Authorized EULAs. Any audit will be subject to a confidentiality obligation and will take place upon not fewer than 30 days' notice, during Licensee's normal business hours, and in a manner that does not interfere unreasonably with Licensee's operations or compromise Licensee's information security protocols. Licensor's sole audit right regarding Licensee is provided by this Paragraph 7. Notwithstanding any other provision, Licensor's liability for intentional breach of its obligation regarding the use of information obtained in an audit is without any limitation whatsoever.

7.2 Audit Remedy; Exclusivity. If an audit reveals or Licensor otherwise discovers unlicensed use of Software by Licensee, to the extent that Licensee determines that it maintains sufficient appropriated funds to cover the expense, Licensee shall either (a) promptly order and pay for sufficient



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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licenses to permit all Software usage discovered and pay Licensor the difference between (i) the license fees that Licensee should have paid for such Software, based upon actual usage, and (ii) the actual license fees that Licensee paid for the software, based upon the actual usage level for which such Software was licensed, or (b) immediately terminate any unlicensed use of Software and pay any applicable license fees for any noncompliance discovered. If a Distributor Contract exists, Licensee may order licenses from, and pay license fees to, a Distributor at a price established by a Distributor Contract. If Licensee's unlicensed use of the Software would be within the scope of license rights granted by this Agreement and the Authorized EULAs but for Licensee's failure to acquire an adequate number of licenses or an available license, Licensor's exclusive remedy for the unlicensed use shall be the remedy provided by this item 7.2. If Licensee fails to execute either option within a reasonable time, the foregoing remedy will not be considered exclusive.

7.3 Licensor's right to conduct an audit is limited by any applicable statutory or regulatory limitations on access to public records.

**8. LICENSEE'S RECORDS.** For each license of Software acquired pursuant to this Agreement, Licensee agrees to retain records of that license for one year beyond the duration of that license, provided that Licensee has no obligation to retain records of a license beyond one year after Licensee ceases to retain a copy of the Software to which a license applies. Licensor may access Licensee's records as provided in the Georgia Open Records Act and any other applicable law. Except as stated in this Agreement, Licensor agrees that Licensee has no obligation to retain any records.

**9. CONFIDENTIALITY & NONDISCLOSURE.** This Agreement and the Authorized EULAs are subject to public disclosure. All provisions of an Authorized EULA regarding confidentiality or nondisclosure are subject to the Georgia Open Records Act and other applicable laws. Any duty of confidentiality or nondisclosure established by an Authorized EULA applies only to Software and Documentation that has been conspicuously marked with the words confidential, proprietary, or trade secret and only to the extent permitted under Georgia law.

**10. TERMINATION.** Licensor may not terminate either this Agreement or the Authorized EULAs in the absence of a breach by Licensee that would, under the common law, be material. Any termination by Licensor must be preceded by adequate notice and opportunity to cure. If Licensor exercises any termination rights under any Authorized EULA, Licensee may, in addition to any rights provided in the Authorized EULAs, continue using software pursuant to this Agreement and the Authorized EULAs for a period of six months in order to allow Licensee to convert from the use of Software, unless Licensee has violated the restrictions in paragraph 4.2.4. During the conversion period, and to the extent applicable Licensee shall pay any applicable, previously unpaid license fees at the price last available from Licensor to Licensee prior to termination or, at Licensee's option, at the price established by an applicable Distributor Contract, if any.

**10.1. Termination for Convenience.** DOAS may terminate this Agreement (in whole or in part), at any time for its convenience (i.e., for any reason or no reason) by giving the Licensor at least sixty (60) days' prior written notice designating the termination date.

**11. WARRANTIES.** The warranties provided in this Paragraph 11 are in addition to any other warranties provided in the Authorized EULAs. Licensor warrants (a) that every item of Software, without unauthorized modification, will perform substantially in accordance with the Documentation



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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applicable to the Software for a period of 365 days from the date the item of Software is installed by Licensee, (b) that Licensor has all necessary right and authority to license the Software and to grant the licenses provided hereunder, and (c) that there is currently no actual or threatened legal action against Licensor by any third party based on an alleged violation of an intellectual or proprietary property right that has not been disclosed to DOAS and that could adversely affect Licensor's ability to license the use of the Software. Licensor agrees that it will not electronically repossess, trigger any lock, or use any device capable of halting operations or erasing or altering data or programs with regard to any Software that it has licensed to Licensee.

**12. BANKRUPTCY.**

12.1 Notice of Insolvency. Licensor shall provide DOAS and Licensee with written notice immediately upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against Licensor under the relevant law on insolvency or bankruptcy, or after the making by Licensor of any assignment or attempted assignment for the benefit of creditors or upon or after the institution of any proceedings for the liquidation or winding up of Licensor's business or for the termination of its corporate charter.

12.2 Rejection of Executory License. The Parties agree that the Software is "intellectual property" as defined in Section § 101(35A) of the U.S. Bankruptcy Code. Upon the filing by Licensor of a petition in bankruptcy or insolvency or upon any other proceeding or action by or against the Licensor under the relevant law on insolvency or bankruptcy, this Agreement and the Authorized EULAs shall be governed by Section 365(n) of the U.S. Bankruptcy Code. If any person seeks to reject this Agreement or the Authorized EULAs pursuant to bankruptcy law, Licensee shall have the option of using the Software for either the original term of the Authorized EULAs or a period of five years after rejection is requested.

**13. RIGHTS TO SOFTWARE OR DATABASE DEVELOPED BY LICENSEE.** Nothing in this Agreement or any Authorized EULA shall be construed to give Licensor any rights with regard to computer programs developed by Licensee, regardless of whether or not such programs are connected to or embedded in Software or are functionally similar, in whole or part, to Software. Nothing in this paragraph grants a Licensee any rights to Licensor's intellectual property or to any derivative works.

**14. GENERAL**

14.1 Choice of Law & Choice of Forum. Both the rights and obligations of the Parties and this Agreement and any EULA, as well as any dispute, claim, or controversy arising out of or relating to this Agreement or any EULA, shall, in all respects, be established, interpreted, construed, enforced and governed by and under the laws of the State of Georgia, without regard to any provision governing conflicts of law. The laws of the State of Georgia shall govern and determine all matters arising out of or in connection with this Agreement 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 Agreement, such proceeding shall solely be brought in the Superior Court of 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.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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14.2 Subject to Applicable Law. This Agreement is entered into pursuant to O.C.G.A. § 50-5-50 et seq. As a public entity, all of Licensee's obligations are subject to any applicable laws.

14.3 Taxes: Pursuant to O.C.G.A. § 50-25-8, DOAS is exempt from the assessment of State taxes on any property acquired or under its jurisdiction. The Customers that constitute State agencies, as defined by O.C.G.A. § 48-1-2, are exempt from the assessment of sales and use taxes as allowed by Law. In addition, DOAS and the Customers are exempt from federal taxes pursuant to 26 United States Code, Sections 4253(i) and (j). DOAS makes no representation whatsoever as to the liability or exemption from liability of the Service Provider to any tax imposed by any governmental entity. Prior to application of any such exemption, DOAS shall provide a valid and duly executed exemption certificate (Form ST-5 or its equivalent), certifying that DOAS is exempt from tax. DOAS further represents and agrees that any payment for Service under this Agreement shall be made directly to the Service Provider by warrant on appropriated government funds.

14.4 Alternative Dispute Resolution. No method of mandatory alternative dispute resolution shall apply to any dispute, claim, or controversy arising out of or relating to this Agreement or the Authorized EULAs.

14.5 CISG / UCITA. Neither the UN Convention on the International Sale of Goods nor the Uniform Computer Information Transactions Act (nor any non-uniform version) shall apply to this Agreement or the Authorized EULAs.

14.6 DOAS Participation In Contract Disputes. Consistent with its statutory authority, DOAS is acting solely in a representative capacity and on behalf of Licensees. Accordingly, DOAS is not a party to this Agreement and need not be joined as a party to any dispute that may arise out of this Agreement. With regard to this Agreement, the officers, agents and employees of DOAS are acting solely in their official capacity and need not be joined as a party to any dispute that may arise out of this Agreement.

14.7 Notices. In addition to any other obligations the parties may have regarding notice, all notices or other communications regarding termination, material breach, modification, or audit of this Agreement, an Authorized EULA, or a license covered by either shall be copied to DOAS and GTA at the following addresses.

GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICES:

DOAS Contracts and Compliance Director  
Georgia Department of Administrative Services  
200 Piedmont Avenue, SE  
Suite 1308 West Tower  
Atlanta, GA 30334

Cc: General Counsel

GEORGIA TECHNOLOGY AUTHORITY:



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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Georgia Technology Authority  
GETS Contracts & Compliance  
47 Trinity Ave.  
Atlanta, GA 30334

**14.8 Third Party Beneficiary.** This Agreement and the Authorized EULAs are made solely and specifically among and for the benefit of the Parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement or the Authorized EULAs as a third-party beneficiary or otherwise.

**14.9 Assignment.** Except as set forth below, neither party may assign or transfer this Agreement, the Authorized EULAs, or any rights regarding either, without the prior written consent of DOAS. Reference Georgia Procurement Manual Section 7.6.4. Such consent shall not be unreasonably withheld. Any attempted assignment, delegation or transfer in derogation of this Paragraph shall be null and void.

**14.9.1** This Agreement and the Authorized EULAs, and any rights regarding either, may be assigned to an affiliate of the Licensor, or to successors-in-interest of substantially all the assets of the Licensor, if the assignee expressly assumes the Licensor's obligations under the assigned agreement. Licensor must give Licensee reasonable prior notice of any assignment. As used in this item, affiliate means a legal entity that controls, is controlled by, or is under common control with Licensor.

**14.9.2** If Licensee is reorganized such that certain operations or functions are transferred from Licensee to a different public procurement unit, then in connection with such reorganization, a Licensee may, upon written notice to Licensor, transfer licenses to another public procurement unit provided that the transferee is performing some substantially similar business and/or operational functions as the original Licensee. Both entities shall execute such paperwork as Licensor may reasonably require.

**14.10 Interpretation.** Any question of interpretation or construction shall not be resolved by any rule providing for interpretation or construction against the party who causes the uncertainty to exist or against the drafters of this Agreement.

**14.11 Headings.** The headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of this Agreement.

**14.12 Publicity.** Licensor agrees not to refer to Licensees in such a manner as to state or imply that either Licensor or its Software is endorsed or preferred by Licensee, the State of Georgia, or any unit of either. The foregoing shall not prohibit the Licensor from identifying a Licensee as a customer in a customer list.

**14.13 Relationship Among Public Entities.** Each Licensee's obligations and liabilities are independent of every other Licensee's obligations and liabilities. Termination of one Licensee does not constitute grounds for termination of a different Licensee.



**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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14.14 Language of Agreement & Notices. The language of this Agreement is English. If translated into another language, this English version of the Agreement shall be controlling. All notices required or permitted to be given hereunder shall be written in the English language.

14.15 Survival of Obligations. The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Agreement shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Intellectual Property Infringement, Limitation of Recovery, Audit, Bankruptcy, and General.

14.16 Waiver & Modification. No waiver of any default by either party shall act as a waiver of a subsequent or different default. The provisions of this Agreement and the Authorized EULAs may not be modified or waived except by another agreement in writing executed by an authorized representative of Licensee and an authorized representative of Licensor.

14.17 Anti-Indemnification & Anti-Representation. Any provision in the Authorized EULAs is void to the extent it imposes an obligation upon DOAS or a Licensee that would properly be characterized as an indemnity. Licensee makes no representations or warranties to Licensor, and any language to the contrary is void.

14.18 Statute of Limitations. Any provision in the Authorized EULAs is void to the extent that it modifies the statute of limitations or alters the time period within which an action must be brought.

14.19 Non-appropriations. Pursuant to O.C.G.A. § 50-5-64, any purchase made pursuant to this Statewide Contract will terminate immediately and absolutely if the Licensee determines that adequate funds are not appropriated or granted or funds are de-appropriated such that the Licensee cannot fulfill its obligations under the Agreement, which determination is at Licensee's sole discretion and shall be conclusive.

14.20 Attorneys' Fees. Except as otherwise provided in this Agreement, each party waives any claim it may have to recover attorneys' fees from any other party.

14.21 Users. A Licensee has no liability for any acts or omissions of any person that Licensee allows to use the Software, unless such acts or omissions are within the scope of that person's employment or have been properly authorized by Licensee.

14.22 Privacy. As used in this paragraph, the term 'data' means any information regarding any person or entity other than a Licensee that is gathered or acquired as a result of the Software licensed by Licensee being used. Except to the extent fully disclosed in writing (e.g., a privacy policy or the Documentation) prior to execution of this Agreement, Licensor represents that Software will not provide any entity other than Licensor with any data. Notwithstanding anything to the contrary, Licensor agrees (i) not to use or retain data for any purpose other than performing this contract, except to the extent that using or retaining state data is incidental to contract administration, such as financial, administrative, cost or pricing, and (ii) not to sell, trade, or release data. Upon request, Licensor shall provide written confirmation of compliance with this clause. Licensor agrees that Licensee has no adequate remedy at law for a violation of Licensor's obligations under this paragraph. Notwithstanding





**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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any other provision, Licensor's liability for breach of its obligation under this paragraph is without any limitation whatsoever. [09-9030-1]





**MAILROOM EQUIPMENT, SUPPLIES &  
MAINTENANCE**

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EXHIBIT A  
SOFTWARE LIST

WTS-P SOFTWARE LICENSE AGREEMENT