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| <b>STATE OF NORTH CAROLINA</b><br><br><b>DEPARTMENT OF REVENUE</b><br><br>Information Technology Division  | <b>INVITATION FOR BIDS NO. 45-194845488</b>                                    |
|  | <b>Offers will be publicly opened:</b> May 4, 2021                             |
|  | <b>Issue Date:</b> April 22, 2021  |
| <b>Refer <u>ALL</u> inquiries regarding this IFB to:</b><br><br>Nicole Hunter<br>Associate Director, Procurement & Contracts<br>DORProcurement@ncdor.gov<br>919.814.1037 | <b>Commodity Number:</b> Issue Date: 811122 – Software Maintenance and Support |
|  | <b>Description:</b> WebInspect & Fortify Software Renewal                      |
|  | <b>Using Agency:</b> Revenue   |
| <b>See page 2 for mailing instructions.</b>  | <b>Requisition No.:</b> PR12000384   |

**OFFER AND ACCEPTANCE**

The State seeks offers for software maintenance described in this solicitation. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this Invitation for Bids (IFB), (3) specifications, (4) Department of Information Technology Terms and Conditions of this IFB, and (5) the agreed portions of the awarded Vendor's offer. **No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

**EXECUTION**

In compliance with this Invitation for Bids, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

**Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.**

|                                       |                   |                   |
|---------------------------------------|-------------------|-------------------|
| OFFEROR:                              |                   |                   |
| STREET ADDRESS:                       | P.O. BOX:         | ZIP:              |
| CITY, STATE & ZIP:                    | TELEPHONE NUMBER: | TOLL FREE TEL. NO |
| PRINT NAME & TITLE OF PERSON SIGNING: | FAX NUMBER:       |                   |
| AUTHORIZED SIGNATURE:                 | DATE:             | E-MAIL:           |

Offer valid for thirty (30) days from date of offer opening unless otherwise stated here: \_\_\_\_ days

**ACCEPTANCE OF OFFER**

If any or all parts of this IFB are accepted, an authorized representative of Department of Revenue shall affix their signature hereto. A copy of this acceptance will be forwarded to the successful vendor(s).

|   |
|---|
| <b><u>FOR STATE USE ONLY</u></b><br><br>Offer accepted and contract awarded this ____ day of _____, 2021, as indicated on attached certification,<br><br>by _____ (Authorized representative of Department of Revenue). |
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## **1.0 INTENT, USE, DURATION AND SCOPE**

The North Carolina Department of Revenue (NCDOR) is responsible for administering tax laws enacted by the North Carolina General Assembly. NCDOR operates thirteen (13) Service Centers across the State and employs staff in seventeen (17) states to provide customer service to citizens and entities on a variety of tax issues. NCDOR administers twenty-five (25) tax types and handles over three million taxpayer interactions each year.

NCDOR utilizes WebInspect and Fortify software for scanning computer source code for security and programming practices to insure compliance with NCDOR's security standards.

The purpose of this Invitation for Bids (IFB) is to obtain pricing for and procure software maintenance for WebInspect and Fortify software previously licensed to NCDOR. Services will be provided in accordance with the terms and conditions of this IFB.

## **2.0 GENERAL INFORMATION**

### **2.1. VENDOR QUESTIONS**

Written questions concerning this IFB will be received until April 26, 2021 at 2:00 pm Eastern Standard Time. They shall be submitted through Message Board in the North Carolina eProcurement (NCEP) Sourcing Module using the Question Template provided in the Section 3 of NCEP Sourcing Event. Please insert "IFB 45-194845488 – WebInspect & Fortify" as the subject for the message.

The State will prepare responses to all written questions submitted, and post an addendum to the IFB in Section 3 of the NCEP Sourcing Event. Oral answers are not binding on the State.

Vendor contact regarding this IFB with anyone other than Nicole Hunter may be grounds for rejection of said Vendor's offer.

### **2.2. ADDENDUM TO IFB**

The State may issue addenda if Vendor questions are permitted as described below, or if additional terms, specifications or other changes are necessary for this procurement. All addenda will be posted to the NCEP Sourcing Event in the NCEP Sourcing Module and shall and shall become an Addendum to this IFB.

### **2.3. OFFER SUBMITTAL**

Due Date: May 4, 2021  
Time: 2:00 PM Eastern Time

**Instructions:** All bid responses shall be submitted electronically via North Carolina eProcurement (NCEP) Sourcing Module, a link which available through the Interactive Purchasing System (IPS). In IPS, vendor will be directed via the NCEP button to a summary of this solicitation and Sourcing Event within the NCEP Sourcing Module with instructions on how to register and submit bid responses.

Bid responses must be submitted in accordance with the instructions in the NCEP Sourcing Event. Any required attachments must be filled out in its entirety. For additional information or technical assistance regarding the NCEP Sourcing Module, please visit the NC eProcurement Vendor Training page at <https://eprocurement.nc.gov/training/vendor-training>. You may also contract the NC eProcurement Help Desk at 888-211-7440, Option 2.

It is the responsibility of the Vendor to deliver the offer in this office by the specified time and date of opening.

**Vendor must return all the pages of this solicitation with its offer.** The files must not be password-protected and must be capable of being copied to other media. Offers submitted via facsimile (FAX) machine, telephone, or email in response to this will not be accepted.

**Offer must be submitted on the forms** provided herein. If additional sheets are required (for example, Vendors who are offering alternate proposals); the Vendor should submit a separate bid document. Any alternate proposals must be clearly marked as such with the phrase “alternate offer for ‘name of Vendor’” and numbered sequentially with the first offer. This legend must be in bold type of not less than 14 point type on the face of the offer, and on the text of the alternative proposal.

Prices and any other entry made hereon by the Vendor shall be considered firm and not subject to change.

#### **2.4. BASIS FOR REJECTION**

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this IFB with anyone other than Nicole Hunter may grounds for rejection of said Vendor's offer.

#### **2.5. LATE OFFERS**

Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

#### **2.6. NON-RESPONSIVE OFFERS**

Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

- “This offer does not constitute a binding offer”,
- “This offer will be valid only if this offer is selected as a finalist or in the competitive range”,
- “Vendor does not commit or bind itself to any terms and conditions by this submission”,
- “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
- “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent.

#### **2.7. NOTICE TO VENDORS**

**The State objects to and will not be required to evaluate or consider any additional terms and conditions not previously agreed to by the State and submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. By execution and delivery of this Invitation for Bids and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.**

## **2.8. E-PROCUREMENT SOLICITATION**

**This is an E-Procurement solicitation but only Services will be procured.** See Paragraph #33 of the attached Department of Information Technology Terms and Conditions. The Support Services Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide E-Procurement initiative. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature vendor acknowledges acceptance of all terms and conditions including those related to E-Procurement.

- a) General information on the E-Procurement service can be found at <http://eprocurement.nc.gov>.
- b) Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <https://vendor.ncgov.com/vendor/login>
- c) As of the IFB submittal date, the Vendor must be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this IFB.

## **2.9. DISTRIBUTORS AND RESELLERS**

"Resellers" as used herein, refers to businesses that routinely sell or distribute Vendor's Products, and may include "Distributors", "Value Added Resellers" (VARs), "Original Equipment Manufacturers" (OEMs), Channel Partners, or such other designations. These businesses must be approved by the State prior to placement of any orders. Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State's competitive bidding process.

If Vendor is not the original manufacturer of the product(s) solicited under this IFB, is Vendor authorized to sell this product (e.g. authorized reseller)? ☐ YES ☐ NO

The Agency acknowledges that the Reseller has merely purchased the Third Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party Items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency.

## **2.10. POSSESSION AND REVIEW**

During the evaluation period and prior to award, possession of the bids and accompanying information is limited to personnel of the issuing agency, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

After award of contract the complete bid file will be available to any interested persons with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule. Any proprietary or confidential information, which conforms to exclusions from public records as provided by N.C.G.S. §132-1.2 **must be clearly marked as such in the offer when submitted.**

## **2.11. IFB AWARD**

It is the general intent to award this contract to one Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302.

A link to the Interactive Purchasing System (IPS) allows the public to retrieve contract award information electronically from the Internet web site: <https://www.ips.state.nc.us/ips/> Results may be found by searching by IFB number or agency name. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.

## **2.12. POINTS OF CONTACT**

Contact by the Offeror with the persons shown below for contractual and technical matters related to this IFB is only permitted if expressly agreed to by the procurement officer named on page 4, or upon award of contract:

| <b>Vendor Contractual Point of Contact</b>  | <b>Vendor Technical Point of Contact</b>  |
|---|---|
| Name of Vendor:<br>Street:<br><br>Attn:<br>Contract Manager Email<br>Contract Manager Telephone | Name of Vendor:<br>Street:<br><br>Attn:<br>Technical Lead Email<br>Technical Lead Telephone |

## **3.0 SPECIFICATIONS**

### **3.1. VENDOR STANDARD AGREEMENT(S)**

The terms and conditions of Vendor's standard license, maintenance or other agreement(s) applicable to Software and other Products acquired under this Agreement may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the Terms and Conditions herein shall apply in all cases and supersede any provisions contained in Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns; nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

An updated license agreement for MicroFocus WebInspect and Fortify software is currently in the process of being finalized by and between MicroFocus and the State and will be applicable to this IFB. A fully executed copy of the updated license agreement shall be incorporated by reference and attached to the final version of this IFB.

### **3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**

Due to NCDOR's security requirements, Vendors may not utilize resources or workers located outside of the United States. Vendor acknowledges and agrees that it will not utilize resources outside of the United States to perform services under this Contract.

☐ YES ☐ NO

If Vendor cannot make the acknowledgment above, in accordance with N.C.G.S. §143B-1361(b), Vendor must detail in the IFB response, the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

- a) The location of work performed under the proposed state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.
- b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.
- c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under the proposed state contract outside of the United States.
- d) Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

### **3.3. E-VERIFY**

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

### **3.4. RESTRICTIONS ON CONTRACTS WITH THE STATE:** Reserved

### **3.5. BRAND SPECIFIC PRODUCT**

Manufacturer(s) name and product descriptions used in this solicitation are product specific. The items offered in response to this solicitation must be the manufacturer and type specified. Failure to comply with this requirement will result in rejection of offer.

### **3.6. CONTRACT TERM**

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The term shall be one (1) year and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for two (2) additional one (1) year periods at its sole discretion.

**4.0 FURNISH AND DELIVER**

| ITEM # | QTY | UNIT | DESCRIPTION  | UNIT COST | EXTENDED COST |
|--------|-----|------|--|-----------|---------------|
| 1      | 1   | year | Annual Maintenance Fee (includes software upgrades, patches and support) for MicroFocus Flexcare Fortify Credit software licenses previously licensed to the NCDOR. Qty. 8, Part No. H0FZ2AS<br><br><i>For Period beginning 04/05/2021 and ending 04/04/2022</i>               |           |               |
| 2      | 1   | Year | Annual Maintenance Fee (includes software upgrades, patches and support) for HP WebInspect software license previously licensed to NCDOR. Qty. 1, Part No. TA579AAE<br><br><i>For Period beginning 04/05/2021 and ending 04/04/2022.</i>                                       |           |               |
| 3      | 1   | Year | Annual Maintenance Fee (includes software upgrades, patches and support) for MicroFocus Fortify Static Code Analyzer Flexible Deployment software previously licensed to NCDOR, Qty. 1, Part No. TF305AAE<br><br><i>For Period beginning 04/05/2021 and ending 04/04/2022.</i> |           |               |

**Total Offer Cost** \_\_\_\_\_



**4.1. OPTIONAL COSTS****May or may not be purchased by the State:****Optional Year 2 Costs**

| ITEM # | QTY | UNIT | DESCRIPTION   | UNIT COST | EXTENDED COST |
|--------|-----|------|---|-----------|---------------|
| 1      | 1   | year | Annual Maintenance Fee (includes software upgrades, patches and support) for MicroFocus Flexcare Fortify Credit software licenses previously licensed to the NCDOR. Qty. 8, Part No. H0FZ2AS<br><br><i>For Period beginning 04/05/2022 and ending 04/04/2023</i>              |           |               |
| 2      | 1   | Year | Annual Maintenance Fee (includes software upgrades, patches and support) for HP WebInspect software license previously licensed to NCDOR. Qty. 1, Part No. TA579AAE<br><br><i>For Period beginning 04/05/2022 and ending 04/04/2023</i>                                       |           |               |
| 3      | 1   | Year | Annual Maintenance Fee (includes software upgrades, patches and support) for MicroFocus Fortify Static Code Analyzer Flexible Deployment software previously licensed to NCDOR, Qty. 1, Part No. TF305AAE<br><br><i>For Period beginning 04/05/2022 and ending 04/04/2023</i> |           |               |

**Total Optional Year 2 Costs \_\_\_\_\_**

**Optional Year 3 Costs**

| ITEM # | QTY | UNIT | DESCRIPTION   | UNIT COST | EXTENDED COST |
|--------|-----|------|---|-----------|---------------|
| 1      | 1   | year | Annual Maintenance Fee (includes software upgrades, patches and support) for MicroFocus Flexcare Fortify Credit software licenses previously licensed to the NCDOR. Qty. 8, Part No. H0FZ2AS<br><br><i>For Period beginning 04/05/2023 and ending 04/04/2024</i>              |           |               |
| 2      | 1   | Year | Annual Maintenance Fee (includes software upgrades, patches and support) for HP WebInspect software license previously licensed to NCDOR. Qty. 1, Part No. TA579AAE<br><br><i>For Period beginning 04/05/2023 and ending 04/04/2024</i>                                       |           |               |
| 3      | 1   | Year | Annual Maintenance Fee (includes software upgrades, patches and support) for MicroFocus Fortify Static Code Analyzer Flexible Deployment software previously licensed to NCDOR, Qty. 1, Part No. TF305AAE<br><br><i>For Period beginning 04/05/2023 and ending 04/04/2024</i> |           |               |

**Total Optional Year 3 Costs** \_\_\_\_\_

**5.0 HISTORICALLY UNDERUTILIZED BUSINESSES**

“Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.”

<http://ncadmin.nc.gov/businesses/hub>

Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this IFB.

Is Vendor a Historically Underutilized Business? ☐ YES ☐ NO

If “YES”, specify classification. \_\_\_\_\_

## 6.0 **DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS**

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
  - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
  - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
  - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
  - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
  - **THE STATE:** Is the state of North Carolina and its agencies.
  - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this RFQ can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9, and in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
- 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES:** Reserved.
- 9) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/ips>
- 10) **DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

## **7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

### **1. DEFINITIONS: Supplementing the Definitions appearing in the body of this solicitation, above:**

- a. "Agency" means the Agency purchasing the goods or Services.
- b. "Custom or Modified Software" means Software that may be modified by the State, or by Vendor at the State's request or direction to perform in accordance with specifications.
- c. "Deliverable"/"Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State, and as included in Paragraph 3 c), of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- d. "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.
- e. "Services" means the tasks and duties associated with the provision of support and maintenance for the Software hereunder.
- f. "Software" means in the context of this IFB the previously licensed software application(s) for which support and maintenance Services are sought, including any modifications, patches, additions or other programming done to such software applications by the Vendor as part of the Support Services.
- g. "State" shall mean the State of North Carolina, the Office of Information Technology Services as an Agency, or in its capacity as the Award Authority.
- h. "Support" includes Software maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support Services, consulting, training and other support Services provided by or through Vendor under this solicitation.

### **2. INTELLECTUAL PROPERTY INDEMNITY**

- a. The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or material supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- b. If any modifications to the Software applied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Software modifications, and refund any sums the State has paid Vendor for Services and the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.
- c. Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Software, or from the continued use of the good(s) or Services after receiving notice they infringe on an intellectual property right of a third party.

### **3. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY**

- a. For purposes of the exclusive remedies and limitations of liability set forth herein, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

- b. The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c. The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.
- d. For delays in the delivery or successful Product or Software installation, whichever is applicable, Vendor shall have no liability unless the delivery or successful installation date is delayed by more than thirty (30) days by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:
  - i. To recover direct costs including replacement Products, if any, attributable to Vendor's delay, and
  - ii. To cancel the order without incurring cancellation charges.
  - iii. Vendor shall have no liability unless the default in delivery of Services is occasioned by causes not attributable either to the State or to Force Majeure conditions

#### **4. SUPPORT AND MAINTENANCE**

- a. Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions in the Vendor License Agreements paragraph above, an order for support will constitute the State's acceptance of the terms of the standard agreement for Support in effect on the date of the order, subject to the order of precedence set forth in this Solicitation.
- b. To be eligible for support, Software must be in good operating condition and at then current specified revision levels, having all current enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Software does not conform to the specified revision levels.
- c. Except as otherwise agreed in writing, and subject to the other terms and conditions of this solicitation, the Services shall include, at a minimum, during the term(s) of this Agreement, the following Maintenance/Support Services for at least the current version and one previous version of any Software identified in this solicitation:
  - 1. Basic Services. The Vendor will provide at least normal and usual software support and maintenance Services generally provided to customers in a similar program, position or setting consistent with and subject to the payment of the support and maintenance fees agreed upon in this Contract.
  - 2. Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Software. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance Services under this Paragraph.
  - 3. Notification of Errors. Vendor shall notify the State of any material errors or defects in the Software known, or made known to Vendor from any source during the term of this Agreement that could cause the production of inaccurate or otherwise materially

incorrect, results. Vendor shall initiate actions as may be commercially reasonable or proper to effect corrections of any such errors or defects.

4. **Implementation of Updates.** Vendor shall provide to the State, at no additional charge, implementation or application of all new releases and bug fixes (collectively referred to as "Changes") for any Software developed or published by the Licensor and made generally available to its other customers.
5. **Telephone Assistance.** Vendor shall provide the State with telephone and Internet access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Software maintenance service within four hours, for calls made at any time.
6. **Custom Software.** In the event Vendor provides for Custom programming herein at the request of the State, such programming will not become a part of the Licensor's licensed code unless the Licensor's License with the State so provides. Such custom programming will become the property of the State, with a perpetual and unlimited license of the custom programming back to the Vendor for its use.
7. **Security.** The provision of onsite support or maintenance is subject to the standard security procedures of the facility or agency within which the onsite Services are to be provided.
8. **Online Services.** If the Services involve one or more online elements (Online Services), the Vendor agrees:
  1. To maintain the confidentiality of any State Data which is or may be stored in the Vendor's online storage devices.
  2. To prevent any malware or other harmful code from being transmitted to the State.
  3. To provide the Online Services in a consistently available and commercially reasonable manner.
9. **Staff.** Vendor shall maintain a trained support staff which shall professionally render the Services provided for in this contract.
10. **Training.** If this solicitation so provides, the agency(ies) covered by this solicitation may enroll its users in any relevant training classes which may be offered by the Vendor at the fees which are mutually agreed upon by the State and Vendor.

5. **VENDOR'S REPRESENTATION:** Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- a. **Intellectual Property.** Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b. **Inherent Services.** If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and

Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables

- c. Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction
- d. Warranty as to Equipment; Hardware. Vendor warrants that the equipment and hardware that it provides pursuant to this Contract, if any, shall be free from defects in materials, in good working order and be maintained in good working order.

#### **6. SOFTWARE RETIREMENT**

- a. Unless otherwise provided in the Software License or in Vendor's standard agreement as agreed by the State, Vendor retains the right to retire support for a version of the Software and stop providing, for such version, Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Software provided to the State and if the State has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, a newer version of the Software that supports substantially the same functionality as the licensed version of the Software. Newer versions of the Software containing substantially increased functionality will be made available to the State for an additional fee.
- b. Vendor may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.
- c. Relocation of Software is the State's responsibility and may result in additional support charges and modified service response times as agreed. Software moved to another State facility or Agency may continue to be serviced subject to availability of a Vendor authorized support provider.
- d. Vendor is not required to provide support for non-qualified Software, or Software not identified in this Agreement. "Non-Qualified Products" are Software not supplied or approved by Vendor, and Software for which the State does not allow Vendor to incorporate modifications. The State is responsible, upon request of the Vendor, for removing non-qualified Software to allow Vendor to perform Software Support Services.
- e. Support does not cover any damage or failure caused by:
  - i. Media and supplies or use of items not designed or designated for use with Products; or
  - ii. Site conditions that do not conform to Vendor's previously established site specifications; or
  - iii. Neglect, improper use, fire or water damage, electrical disturbance, transportation by the State, work or modification by persons other than Vendor personnel, or other authorized parties.

**7. CONFIDENTIALITY OF DATA:** The State is responsible, as to data under the State's control, for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

**8. TRANSPORTATION:** Transportation charges for any software or other Deliverable shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

**9. TRAVEL EXPENSES:** **All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses upon specific written request by the State arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor

agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

10. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1206, or other provision of law.
11. **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
12. **PAYMENT TERMS:** The total Software Support Services or Maintenance Fee (provided the State subscribes or purchases such Services) for the first year shall be invoiced upon execution of this contract. The Software Support Service or Maintenance Fee for subsequent contract renewal years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Payment terms for Services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule.
13. **ACCEPTANCE CRITERIA FOR SOFTWARE MODIFICATIONS:** Acceptance testing is required for all Vendor supplied upgrades, enhancements, patches or modifications to the Software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of such Services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of such modifications to Software or the accompanying Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within following delivery of any such modifications or Software Services if such modifications or Services are unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of modifications to Software.
14. **CONFIDENTIALITY:** In accordance with 9 NCAC 6B.0103 and 6B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. **Under no circumstances shall price information be designated as confidential.** Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's



assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. In any event, the State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9.

- a. The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
- b. All project materials, including software, data, and documentation created during the performance or provision of Services hereunder is the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary vendor materials shall be identified to the State by vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

**15. ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

**16. ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement accepting the terms and conditions and duties as previously agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

**17. INSURANCE COVERAGE:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a. Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
- b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be

\$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and

- d. Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

18. **NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
19. **TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
20. **AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
21. **TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
22. **GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
23. **DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
  - a. If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
  - b. Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
24. **WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 20) (Amendment) herein.
25. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including

without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

- 26. COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 27. EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 28. TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. Should this contract be terminated for cause or for convenience, the fees paid for the current term of support or maintenance for the remaining portion of the term shall be rebated pro rata.
- a. The parties may mutually terminate this Contract by written agreement at any time.
  - b. The State may terminate this Contract, in whole or in part, pursuant to Paragraph 23) (Default), or pursuant to the Terms and Conditions in the Solicitation Documents, or pursuant to any of the following
    - i. Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 3) (Indemnity). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
    - ii. Termination For Convenience Without Cause: The State may terminate service contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and Services delivered in conformance with the Contract up to the date of termination.
- 29. DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 30. SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 31. ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this

provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

**32. FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**33. ELECTRONIC PROCUREMENT:** Reserved