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| <b>STATE OF NORTH CAROLINA</b><br><br><b>OFFICE OF INFORMATION TECHNOLOGY SERVICES</b> | <b>REQUEST FOR PROPOSAL NO. ITS-004456</b>                                              |  |
|                                                                                        | Bids will be publicly opened: July 27, 2009 at 2:00pm Eastern Standard Time             |  |
|                                                                                        | Contract Type: Open Market                                                              |  |
| <b>Refer <u>ALL</u> Inquiries to:</b><br>Leroy Kodak at (919) 754-6665                 | Date Issued: June 22, 2009<br>Commodity Number: 208<br>Commodity: Software and Services |  |
| E-Mail: leroy.kodak@its.nc.gov                                                         | Using Agency Name: Office of Information Technology Services                            |  |
| <b>(See page 2 for delivery instructions)</b>                                          |                                                                                         |  |

**OFFER AND ACCEPTANCE:** This solicitation advertises the State's needs for the services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the services and/or goods described in this solicitation. All proposals and responses received shall be treated as offers to contract. The State's acceptance of any proposal 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 among terms as follows: Special terms and conditions specific to this RFP, Specifications of the solicitation documents, except as amended, the State's General Terms and Conditions for Goods and Related Services, as may be amended by the Supplemental Terms annexed hereto, if any, Best and Final Offers, if any and the awarded Vendor's proposal.

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

Failure to execute/sign bid prior to submittal shall render bid invalid.

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

Offer valid for ninety (90) days from date of bid opening unless otherwise stated here: \_\_\_\_\_ days

**ACCEPTANCE OF BID:** If any or all parts of this bid are accepted, an authorized representative of ITS shall affix their signature hereto and this document and the provisions of the special terms and conditions specific to this Request for Proposal, the specifications, and the State's General Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

**FOR ITS USE ONLY**

Offer accepted and contract awarded this \_\_\_\_ day of \_\_\_\_\_, 2009, as indicated on attached certification, by \_\_\_\_\_ (Authorized representative of ITS).

**ISSUING AGENCY:** Statewide IT Procurement Office  
333 East Six Forks Road, 3rd Floor  
Raleigh, North Carolina 27609

**USING AGENCY:** Office of Information Technology Services  
3700 Wake Forest Road  
Raleigh, North Carolina 27609

**DELIVERY INSTRUCTIONS:** Vendor must deliver **two (2) signed originals** and **four (4) copies** of the Proposal to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front. Vendor must also submit **one (1) electronic copy** of its proposal on read-only CD/DVD(s). The files on the discs should not be password-protected and should be capable of being copied to other media.

**DELIVERED BY US POSTAL SERVICE OR ANY OTHER MEANS**

**BID NUMBER: ITS-004456**

Statewide IT Procurement  
Attn: Leroy Kodak  
333 East Six Forks Road, 3rd Floor  
Raleigh, NC 27609

Sealed bids, subject to the conditions made a part hereof, will be received at **333 East Six Forks Road, 3<sup>rd</sup> Floor, Raleigh, NC until 2:00 pm** Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Proposals for this RFP must be submitted in a sealed package with the Execution of Proposal signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed execution of proposal shall result in disqualification. All proposals must comply with Section VI, Proposal Content and Organization.

Proposals will not be accepted by electronic means. This RFP is available electronically at <http://www.ips.state.nc.us/ips/pubmain.asp>. All inquiries regarding the RFP requirements are to be addressed to the contact person listed on Page One.

Written questions concerning the RFP specifications will be received until **July 1, 2009 at 2:00 pm Eastern Standard Time**. They must be sent via e-mail to: or faxed to (919) 715-8549. Please insert **"ITS-004456 Questions"** in the subject matter of your e-mail. A summary of all questions and answers will be posted to the Interactive Purchasing System (IPS) as an addendum to this RFP.

**Addendum to RFP:** If a pre-bid conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us/ips/deptbids.asp>, and shall become an Addendum to this RFP. Vendors' questions posed orally at any pre-bid conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.

Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this proposal periodically check the State website for any and all Addenda that may be issued prior to the bid opening date.

**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 requirements 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.

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**NOTICE TO VENDORS:** The State objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the document as part of the Bidder's response. By execution and delivery of this Request for Proposal and response(s), the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

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**Late Proposals.** Regardless of cause, late proposals 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 proposals will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

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# **Section I: Introduction, Business Objectives, and Background**

## **A. Introduction**

The purpose of this Request for Proposals (RFP) and any resulting contract award is to acquire an E-mail archiving solution meeting the specifications and considerations in Section III below together with the business objectives and backgrounds of this section. The following summary points are pertinent to this procurement:

- The primary purpose for procuring an e-mail archiving solution is to obtain robust e-discovery, storage, and search and retrieval capabilities for achieving state and federal legal compliance regarding retention, selection, retrieval, and evidentiary procedural requirements that involve e-mail communications to and from state employees, which are responsive to litigation-related matters, investigations, and public records requests. Other uses, such as disaster recovery, business research, historical archives, etc., are important, but secondary in priority.
- Advanced, robust, and easy to use search and retrieval capabilities and features are important considerations for the selection of the e-mail archiving solution.
- ITS customers must use the Exchange E-Mail Service in order to avail themselves of the archiving capabilities that will be provided through this RFP, and participation in the archiving service is mandatory for customers of the Exchange E-Mail Service. The Exchange E-Mail Service is described in ITS's Service Catalogue at <http://www.its.state.nc.us/ServiceCatalog/eMailandCalendarServices.asp>.
- The N.C. General Assembly, in Section 6.14 of S.L. 2008-107, directed the State CIO to develop a detailed plan to implement a single e-mail system for the executive branch by January 1, 2010. The fifth recommendation of the State CIO's IT plan for the 2009-2011 biennium dated March 2009 – continue the effort to transition Executive Branch agencies to a single e-mail system - addresses this mandate. The State CIO's IT plan can be found at [http://www.scio.nc.gov/News\\_Files/2009-2011\\_IT\\_Plan.pdf](http://www.scio.nc.gov/News_Files/2009-2011_IT_Plan.pdf).
- The State is receptive to various options for implementing an e-mail archiving solution; therefore, prospective vendors may offer any or all of the following approaches for providing this solution:
  - o Provide a vendor-hosted e-mail archiving solution.
  - o Provide an ITS-hosted e-mail archiving solution.
  - o Combination of the above.

Vendors offering multiple approaches must submit a separate RFP offer for each approach.

- All e-mails (and their attachments) that pass through Spam and virus filters will be archived. Spam and virus filtering software will be dictated by the State. The anticipated retention period will be for ten (10) years. E-mails will be archived in an enterprise (statewide) database, with capabilities for individual agencies and their divisions to perform their own accessing, searching, retrieval, and reporting activities using the central database.

## **B. Business Objectives**

The primary objectives for obtaining and implementing an e-mail archiving service are as follows:

- 1) The primary, initial, and immediate objective is to procure an e-mail archiving solution that meets legal discovery and retention compliance requirements related to the capture, search, and retention of e-mail records. The archiving solution will be integrated with the facilities of the current statewide Exchange E-Mail Service to assist the State CIO in providing a comprehensive, reliable, resilient, recoverable, and cost-effective e-mail archiving solution on an enterprise scale. The automatic archiving of e-mails to

and from all state employees in the Executive Branch of government through the use of a central archiving database and a common shared e-mail service is a key initiative of top State policy makers. All e-mails (and their attachments) that pass basic Spam and virus checks must be archived, and a retention period of up to ten (10) years will be adhered to. Sophisticated, robust, and easy to use search and retrieval capabilities must be provided.

- 2) A secondary objective is to assist agencies and other customers of ITS to fulfill other e-mail related responsibilities (such as performing research, fulfilling public record requests, providing for business continuity, etc.) efficiently and effectively.

The implementation of a common e-mail archiving solution will support ITS' statewide Exchange E-Mail Service offering and will assist the transition of agencies using their own e-mail services to the consolidated Exchange E-Mail Service. The intents are to: a) establish a scalable statewide approach for e-mail processing, including archiving, rather than continue or develop point solutions on an individual group-by group or agency-by-agency basis, and b) accrue monetary and staffing efficiencies due to the sharing of common software, business knowledge and technical skills, related to e-mail processing and archiving capabilities, functions, and features.

The State's present capabilities in the areas covered by this RFP do not adequately meet current and projected business needs. Therefore, the expeditious completion of this procurement and resulting implementation of a common archiving service are important business considerations. Vendors are encouraged to offer solutions that best meet the business challenges and needs of the State for better planning, budgeting, and management of a statewide e-mail archiving service; support the use of industry recognized best practices and standards for e-mail archiving; and enable the State to become more capable for performing the business and technical roles and functions covered by this RFP.

## C. Background Information

The sections below provide background information regarding e-mail processing and archiving in State government and the ITS Exchange E-Mail Service.

### Background E-Mail Statistics

The table below presents key statistics for e-mail processing in the Executive Branch of state government (excluding public schools, universities, and community colleges).

| Description                                                                                                                                                          | Approximate Value |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| Approximate number of legitimate e-mails sent and received daily - average number of incoming messages is 680,000 and average number of outgoing messages is 320,000 | 1 million         |
| Number of e-mails filtered out daily due to viruses or spam                                                                                                          | 5 million         |
| Current storage volume of e-mail                                                                                                                                     | 17TB              |
| Average incoming message size                                                                                                                                        | 81K               |
| Average outgoing message size                                                                                                                                        | 133K              |
| Average size of all e-mails sent and received daily                                                                                                                  | 82GB              |
| Approximate number of system-wide e-mail accounts                                                                                                                    | 41,000            |

## **Background of E-Mail Archiving**

The statewide e-mail system (Microsoft Exchange E-Mail Service) has become a mission-critical enterprise application, and it is managed and protected at that level of importance. Increased legal and public records requirements are dictating that information contained in the e-mail system should be retained for longer periods of time; however, the statewide Exchange E-Mail Service currently does not perform true e-mail archiving. It presently offers a 30-day rolling tape backup capability for disaster recovery purposes.

Because of the limitations in the size of an e-mail data store for operational reasons (such as time to recover) and the increasing costs to store large mailboxes on the statewide system, many agencies have their users move the messages off the statewide e-mail system. This movement is often to a personal message storage folder on the desktop computer or to a network file server. Although most e-mail systems support archiving old messages to personal message folders (usually on the desktop system), every folder and subfolder must be set up individually. These messages are usually not backed up, often grow to take up a large amount of disk space, and have limits on size, which when exceeded, can cause corruption. In addition, these growing personal libraries of e-mail messages are creating legal concerns regarding the State's exposure to costly legal discovery processes. Important evidential, entitlement, and historical information contained in e-mail messages are often lost as users do not necessarily know how to use the tools. Often Information Technology professionals are unaware of the records retention value, and these files are wiped from machines when the machine is being set up for another user.

The regulatory, legal discovery, and records retention challenges are becoming the key drivers for the procurement and implementation of a central e-mail archiving service for the State. Business within the State can be carried out in a highly litigious and regulated world in which it can unexpectedly face legal discovery, public records requests, or audit demands. Any existing electronically stored information is subject to legal discovery, whether it is a record or not, and this includes e-mail, instant messages, blogs, wikis and all other data that the State has. However, there are no special rules regarding storage, search-and-retrieval, media, or methodology for these data types. The State must pay attention to the retention and disposition of e-mails, as it represents a category of data that is both voluminous and frequently the subject of information requests for legal discovery, litigation, and public record purposes.

## **Background of Exchange E-Mail Service**

Currently, there are approximately 21,000 subscribers to the statewide Exchange E-Mail Service with another 20,000 users in the immediate 6-month on boarding pipeline. A transition to a single statewide e-mail system will encompass another 19,000 users across several agencies who presently maintain their own email systems today. Therefore, the potential user base for the statewide Exchange E-Mail Service will exceed 61,000 subscribers. Any email archiving solutions considered must be able to scale to this size and beyond.

## **Background of the State CIO, ITS, and ITS Hosting Services**

The State CIO has two primary areas of responsibility in the management of IT for state government. Statewide duties cut across agency boundaries, and they include project approval and oversight, the procurement of IT goods and services, security, and the review of and recommendations regarding agency IT expansion budget requests. The operational position has responsibility for ITS, much like other Governor Cabinet Secretaries.

ITS provides business, infrastructure, and hosting services to state agencies and local governments on a fee-for-service basis. ITS receives almost no direct General Fund appropriations; therefore, in order to remain fiscally healthy, it must offer desired services of acceptable and affordable quality in a timely manner and at competitive rates. ITS does this by:

- Employing economies of scale that spread fixed expenses of infrastructure over combined transaction volumes to minimize unit costs.
- Aggregating purchasing demand to obtain maximum volume discounts.

- Leveraging scarce and expensive technical personnel and hardware and software resources for statewide use, so these are available at the lowest costs to all customers.

Because of increased demand for technical services, the consolidation of the state's technical infrastructure, and the State CIO's increased statutory requirements, ITS and the Office of the State CIO have grown substantially in recent years. Today, ITS and the State CIO's Office comprise two data centers (eastern in Raleigh and western in Rutherford County), have more than 600 employees, and an annual budget approaching \$250 million.

Additional information about ITS, including its service catalog, can be found at <http://www.its.state.nc.us/About/AboutITS.asp>. Details regarding hosting and other services pertinent to this RFP can be found by clicking on Table of Contents.

## Section II: Bidding Information

### A. Instructions to Vendors

Additional acronyms, definitions and abbreviations may be included in the text of the RFP.

- 1) Proposals submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) EXECUTION: Failure to sign under EXECUTION section will render proposal invalid.
- 3) TIME FOR CONSIDERATION: Unless otherwise indicated on the first page of this document, Vendor's offer must be valid for 90 days from the date of proposal opening
- 4) FAILURE TO MEET PROPOSAL REQUIREMENTS: While it is not anticipated that the awarded Vendor will fail to meet the proposal requirements, if such should occur, the right is reserved to further evaluate the responses to this RFP and then to recommend an award to the next Vendor response that represents the best interest of the State.
- 5) 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.
- 6) 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.
- 7) 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. Online registration and other purchasing information are available through our Internet web site: <http://www.its.state.nc.us/ITProcurement/>
- 8) ORGANIZATION: Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 9) E-PROCUREMENT: **This is an e-procurement solicitation.** See paragraphs #46 of the attached Information Technology Terms and Conditions for Goods and Related Services. The 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, the 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.

- c. As of the RFP 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 RFP.

## B. General Conditions for Proposals

Definitions, Acronyms and Abbreviations. Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:

- a) **The State:** Is the State of North Carolina, and its Agencies.
  - b) **ITS:** Office of Information Technology Services.
  - c) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
  - b) **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
  - c) **Open Market Contract:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
  - d) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
  - e) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
  - f) **RFP:** Request for Proposal
- 2) Read and Review. It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from the State's contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
  - 3) Vendor Responsibility. The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs thereof. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying services, maintenance, warranties, value added services or other criteria identified herein.
  - 4) Oral Explanations. The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.
  - 5) Insufficiency of References to Other Data. **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.
  - 6) Conflict of Interest. Applicable standards may include: N.C.G.S. §§ 147-33.100, 14-234, and 133-32. The Vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract.

- 7) Contract Term. A contract awarded pursuant to this RFP 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 four (4) additional one (1) year periods at its sole discretion.
- 8) Effective Date. This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing Vendor for goods provided nor services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. 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.
- 9) Recycling and Source Reduction. It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 10) Historically Underutilized Businesses. Pursuant to General Statute 143-48 and Executive Order #13, 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. Additional information may be found at: <http://www.doa.state.nc.us/doa/hub/>
- 11) Clarifications/Interpretations. Any and all amendments or revisions to this document shall be made by written addendum from the IT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 12) Rights Reserved. While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
- a) waive any formality;
  - b) amend the solicitation;
  - c) cancel or terminate this RFP;
  - d) reject any or all proposals received in response to this document;
  - e) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal;
  - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
  - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
  - h) if all responses are deficient, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more Vendors.
- 13) Alternate Bids. Vendor may submit alternate bids for various levels of service(s) or products meeting specifications. Alternate bids must specifically identify the RFP requirements and advantage(s) addressed by the alternate bid. Any alternate proposals must be clearly marked with the legend as shown herein. Each proposal must be for a specific set of services or products and bid at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be bid

with a different price and a separate proposal response. Vendors may also provide multiple proposals for software or systems coupled with support and maintenance options, provided, however, all proposals must satisfy the specifications.

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Alternate bids must be clearly marked

**“Alternate Bid for ‘name of Vendor’”**

and numbered sequentially with the first bid if separate proposals are submitted.

This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal.

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- 14) Co-Vendors. Vendors may submit offers as partnerships or other business entities. Such partners or other “co-Vendors”, if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.
- 15) Submitting a Proposal. Each Vendor submitting a proposal warrants and represents that:
- a) The proposal is based upon an understanding of the specifications and requirements described in this RFP.
  - b) Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their proposals.
- 16) All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and Vendor resulting from this RFP process.
- 17) A proposal may not be unilaterally modified by the Vendor for a 90-day period following the delivery of the proposal, or of any best and final offer.

## C. Evaluation Process

- 1) “Best Value” procurement methods are authorized by N.C.G.S. §143-135.9. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's proposal; the Vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of “Best Value” Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement.
- 2) Source selection. A one-step process shall be used. Vendors shall submit offers combining technical and price information together. A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
- i. The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or in part, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send

qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the proposal.

- ii. The evaluation committee will establish a competitive range after reviewing the Vendor proposals. The evaluation committee may invite and require vendors in the competitive range to ITS to perform structured presentations and/or demonstrations of its proposed products, systems and services. Demonstrations will be structured based on detailed questions or scenarios presented by ITS in advance of demonstrations. A failure of the Vendor to perform a structured product demonstration may be grounds for rejecting or dismissing the Vendor's bid from further consideration.
  - iii. Evaluation Process Explanation. State Agency employees will evaluate all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Proposal shall have specific page numbers and sections stated in the reference.
  - iv. To be eligible for consideration, a Vendor must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the State. Responses that do not meet the full intent of all requirements listed in this RFP may be subject to point or other reductions during the evaluation process or may be deemed non-responsive. Further, a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
  - v. Vendors are advised that ITS and the evaluation committee is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 3) **Best and Final Offers (BAFO).** If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of proposals, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional points to the Vendors' respective scores. Points awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned points to attain final scores.
- 4) **Evaluation Method.** ITS will evaluate Vendor proposals utilizing Best Value methodology. An award will be made to the Vendor with the offer which meets the requirements of this RFP and represents the Best Value for the State. The State reserves the right to adjust evaluation results based upon structured demonstrations, if any, provided by Vendors comprising the competitive range. Vendor proposals will be evaluated based on a variety of qualitative and quantitative Evaluation Criteria consistent with Best Value procurement as listed below in order of priority:

| Evaluation Criteria                                                                                                                                                                                                                                                                                                                                                 |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Effectiveness and efficiency of proposed e-mail archiving solution</b> , including the ability to meet the needs of the State as indicated in the specifications and considerations in Section III below together with the business objectives and backgrounds of Section I. Vendor performance history (including references) is also a part of this criterion. |  |
| <b>Solution implementation approach</b> , including the offered approach for installing the archiving solution.                                                                                                                                                                                                                                                     |  |
| <b>Cost.</b> Information listed in <b>RFP Section IV</b> below. (See Section VI, 7) j).                                                                                                                                                                                                                                                                             |  |
| <b>Vendor's strengths, capabilities, and experience</b> , including corporate background and structure, past and current solution installations, and financial soundness. As reported in Section V; Section VI, 7) d) i) [current and prior implementations].                                                                                                       |  |

- 5) Vendor may be disqualified from any evaluation or award if Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 6) The Procurement Manager will make every effort to adhere to the following schedule:

| Action                                                    | Responsibility                  | Date            |
|-----------------------------------------------------------|---------------------------------|-----------------|
| Issue RFP                                                 | Statewide IT Procurement Office | June 22, 2009   |
| Deadline for Submission of Written Questions from Vendors | Prospective Vendors             | July 1, 2009    |
| Response to Written Questions                             | Statewide IT Procurement Office | July 14, 2009   |
| Proposal Submission                                       | Prospective Vendors             | July 27, 2009   |
| Proposal Evaluation                                       | Evaluation Committee            | August 1, 2009  |
| Presentations and Demonstrations from Finalist Vendors    | Selected Vendors                | August 10, 2009 |
| Final Selection                                           | Evaluation Committee            | August 14, 2009 |
| Procurement Approval                                      | Statewide IT Procurement Office | August 19, 2009 |
| Contract award                                            | Statewide IT Procurement Office | TBD             |

- 7) Award Of Contract. Qualified proposals will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS §143-135.9 and applicable administrative rules. The responsible Vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors herein, will be recommended for contract award. 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 proposal.
- 8) ITS has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: <http://www.ips.state.nc.us/ips/pubmain.asp>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number **ITS-** and then search. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 9) Protest Procedures: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. All protests will be governed by Title 9 of the North Carolina Administrative Code, Office of Information Technology Services, Subchapter 06B Sections .1102 - .1121.

### **Section III: Technical Specifications**

The technical considerations, initiatives and specifications below are relevant to the technical aspects of the proposed vendor solution. Vendor proposals should address these aspects and include an implementation plan, including training, and discuss how the solution will be implemented to address the business objectives and backgrounds presented in this RFP.

- 1) Architecture. The North Carolina Statewide Technical Architecture (NCSTA) is located at the following website: (<http://www.ncsta.gov/>). This provides a series of domain documents describing objectives, principles and best practices for the development, implementation, and integration of business systems. Agencies and Vendors should refer to these Architecture documents when implementing enterprise applications and/or infrastructure.
- 2) The proposed solution must externalize identity management and may be required to utilize the North Carolina Identity Service (NCID) for the identity management and authentication related functions performed by this application. NCID is the State's enterprise identity management (IDM) service. It is operated by the North Carolina Office of Information Technology Services. Additional information regarding this service can be found in the ITS Service Catalog at: <http://www.its.state.nc.us/ServiceCatalog/Index.asp> (see Identity Management - NC Identity Management under the main menu item Application Services) and the NCID Web site at: <https://www.ncid.its.state.nc.us/>.
- 3) All bids shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.
- 4) The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
- 5) Specifications: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specification"; otherwise, it will be considered that items offered are in strict compliance with these specifications, and Vendor will be held responsible. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or equivalent goods may be rejected; and if offered, must be supported by independent documentary verification of equivalence to the specified goods.**
- 6) Technical Requirements/Specifications: Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Compliance with technical specifications is mandatory.
- 7) Technical Requirements/Specifications and Considerations: The following are technical requirements, specifications, and/or considerations that Vendor's proposed solution should address to meet the business objectives, technical environment, and background presented in this RFP. If Vendor considers that an additional explanation will be helpful in evaluating a Yes/No response, Vendor should provide it in the "Description" block:

| Item No.   | Consideration Description                                                                                                                         | Response (Y/N) | Response Description |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------------|
| <b>1.0</b> | <b>General</b>                                                                                                                                    |                |                      |
| 1.1        | Describe your suggested implementation time frame                                                                                                 | N/A            |                      |
| 1.2        | Describe installation services to be provided by your organization                                                                                | N/A            |                      |
| 1.3        | Describe your staffing recommendations for in-house support of the system                                                                         | N/A            |                      |
| 1.4        | What professional services are available to further help with design, rollout and tuning?                                                         | N/A            |                      |
| 1.5        | Describe any value-added functions or services that your solution may include                                                                     |                |                      |
| <b>2.0</b> | <b>Architecture</b>                                                                                                                               |                |                      |
| 2.1        | Describe solution architecture and components for proposed design, including hardware, operating systems, and 3 <sup>rd</sup> - party components. | N/A            |                      |
| 2.2        | Describe capture methodology. Note whether your solution uses journaling or log shipping, etc.                                                    | N/A            |                      |
| 2.3        | Describe Agents required for desktop and servers and functions supported by agents vs. functions supported without.                               | N/A            |                      |
| 2.4        | Does your solution provide a secure Web access tool to access the archive?                                                                        |                |                      |
| 2.5        | If answer was yes above, please describe what browsers (Microsoft Internet Explorer, FireFox and Safari) are supported along with their versions. | N/A            |                      |
| 2.6        | Describe the recommended backup and restoration process for the                                                                                   | N/A            |                      |

| Item No. | Consideration Description                                                                                                                              | Response (Y/N) | Response Description |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------------|
|          | archive.                                                                                                                                               |                |                      |
| 2.7      | Describe any Disaster Recovery features which are built in to the proposed solution                                                                    | N/A            |                      |
| 2.8      | Describe expected Recovery Time Objectives (RTO) and Recovery Point Objects (RPO) in the event of a major disaster.                                    | N/A            |                      |
| 2.9      | Describe architecture of backend database/repository (SQL, Oracle, etc.)                                                                               | N/A            |                      |
| 2.10     | Describe any virtualized environments that your product is certified for.                                                                              | N/A            |                      |
| 2.11     | Please describe how your solution keeps up with operating system changes (versions, patches, etc.) and with updates to the Microsoft Exchange software | N/A            |                      |
| 2.12     | Describe any Application Programming Interfaces (API) that you support that allows access to the archived messages.                                    |                |                      |
| 2.13     | Describe performance and load testing procedures and their results that have been performed on your solution.                                          |                |                      |
| 3.0      | <b>Hardware / Software Requirements</b>                                                                                                                |                |                      |
| 3.1      | Describe suggested hardware requirements, along with hardware sizing guide to implement solution and tools to help predict future expansion.           | N/A            |                      |
| 3.2      | What software components, i.e. Java, .NET, etc. are required? How quickly do you certify critical updates for required software components?            | N/A            |                      |

|            |                                                                                                                                                       |     |  |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--|
| 3.3        | Describe how services such as single-instance storage, de-duplication and compression work in your product.                                           | N/A |  |
| 3.4        | What types of storage solutions (NAS, SAN, etc.) does your solution support?                                                                          | N/A |  |
| 3.5        | What are your suggested minimum desktop configurations for system administration/management users and for e-discovery users?                          | N/A |  |
| 3.6        | What versions of Microsoft Outlook are supported?                                                                                                     | N/A |  |
| <b>4.0</b> | <b>Data Capture</b>                                                                                                                                   |     |  |
| 4.1        | Describe your integration and support with the Microsoft Exchange 2007 SP1 platform, and will it accommodate upgrades to that platform?               | N/A |  |
| 4.2        | Does your solution capture mail for groups or end users who are in a policy?                                                                          |     |  |
| 4.3        | Does your solution allow for the capture of mail for both individuals and entire data stores?                                                         |     |  |
| 4.4        | Does your solution dynamically update the archive retention policies as the directory changes?                                                        |     |  |
| 4.5        | Does your solution capture all emails before they reach the recipient's mailbox?                                                                      |     |  |
| 4.6        | Does your solution allow for the ability to import personal folders (PST) files from various locations (tape, local storage, CD/DVD) into the archive |     |  |
| <b>5.0</b> | <b>Data Storage and Security</b>                                                                                                                      |     |  |

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| 5.1        | List any Federal/State regulations that your product complies with including but not limited to HIPAA regulations, IRS 1075 guidelines, FERPA and CJIS | N/A |  |
| 5.2        | Does your solution allow archived data to be stored in encrypted format?                                                                               |     |  |
| 5.3        | Does the solution allow for the encryption of data during transport?                                                                                   |     |  |
| 5.4        | Does the solution allow Active Directory password authentication for user access?                                                                      |     |  |
| 5.5        | Does the solution allow administrators to add users by individual user name, by team, and by membership group?                                         |     |  |
| 5.6        | Does the solution allow administrators to automatically revoke access privileges when a user is disabled in the Active Directory?                      |     |  |
| 5.7        | Does the solution support contemporaneous indexing of email and all attachments?                                                                       |     |  |
| 5.8        | Does your solution scale to support 25 Exchange mailbox servers and higher?                                                                            |     |  |
| 5.9        | Does your solution scale to support 61,000 Exchange users and higher?                                                                                  |     |  |
| <b>6.0</b> | <b>Retention Policy Management</b>                                                                                                                     |     |  |
| 6.1        | Does your solution allow retention policies to be set to any length (i.e. 1 day, 15 days, 1 month, 2 years, 10 years, perpetuity, etc.)                |     |  |
| 6.2        | Does your solution allow retention policies to be applied to individual users, teams, departments, groups, divisions and/or entire agencies?           |     |  |

|            |                                                                                                                                                                                               |  |  |
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| 6.3        | Does your solution allow for retention policies that can be explicitly prioritized to determine which policy takes precedence?                                                                |  |  |
| 6.4        | Does your solution allow new users to automatically be placed under the appropriate retention policy based on their group membership?                                                         |  |  |
| 6.5        | Does your solution allow for the retention of emails for employees who are no longer with the agency?                                                                                         |  |  |
| 6.6        | Does your solution provide for the creation of retention policies allowing mail to be retained based on the membership of the user at the time of capture?                                    |  |  |
| 6.7        | Does your solution allow the creation of retention policies allowing mail to be retained based on the current job function, distribution list membership, or geographical location of a user? |  |  |
| 6.8        | Does your solution allow unlimited retention of historical data?                                                                                                                              |  |  |
| 6.9        | Describe any records management solutions that your email archiving solution may integrate with.                                                                                              |  |  |
| <b>7.0</b> | <b>Data: Legal Hold</b>                                                                                                                                                                       |  |  |
| 7.1        | Does your solution provide for the automatic designation of mailboxes and distribution lists for legal hold?                                                                                  |  |  |
| 7.2        | Does your solution provide for the automatic flagging of messages for legal hold?                                                                                                             |  |  |
| 7.3        | Does your solution provide for the ability to add a policy per case for legal hold?                                                                                                           |  |  |
| <b>8.0</b> | <b>Data Recovery</b>                                                                                                                                                                          |  |  |
| 8.1        | Does your solution allow data to be recovered back to the primary to restore only a single server?                                                                                            |  |  |
| 8.2        | Does your solution allow data to be                                                                                                                                                           |  |  |

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|             | recovered back to the primary to restore only a single storage group?                                                                                        |  |  |
| 8.3         | Does your solution allow data to be recovered back to the primary to restore only a single database?                                                         |  |  |
| 8.4         | Does your solution allow data to be recovered back to the primary to restore only a single mailbox?                                                          |  |  |
| <b>9.0</b>  | <b>Data: End User Access</b>                                                                                                                                 |  |  |
| 9.1         | Does your solution allow end users to perform searches of their own archived mail from a browser?                                                            |  |  |
| 9.2         | Does your solution allow end users to perform searches of their own archived mail from Microsoft Outlook?                                                    |  |  |
| 9.3         | Does your solution allow users to search their personal archive from Microsoft Outlook without an additional login?                                          |  |  |
| 9.4         | Does your solution allow users to reply and forward email from their personal archive if their primary mail server is unavailable?                           |  |  |
| 9.5         | Does your solution allow users to determine a retention period for particular e-mails or groups of e-mail?                                                   |  |  |
| 9.6         | Does your solution allow users to forward individual messages in their personal archive to their primary mailbox?                                            |  |  |
| <b>10.0</b> | <b>eDiscovery and Search Permissions</b>                                                                                                                     |  |  |
| 10.1        | Does your solution grant or restrict access to a user, a set of users, or groups to search across a specified set of mailboxes as defined by administrators? |  |  |
| 10.2        | Does your solution grant or restrict access to a user, a set of users, or groups to search across a specified server, database, or distribution list         |  |  |

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|             | as defined by administrators?                                                                                                                                                                                   |  |  |
| 10.3        | Does your solution grant or restrict access to a user, a set of users, or groups to search across a body of email specified by keywords or any search engine criteria?                                          |  |  |
| <b>11.0</b> | <b>eDiscovery and Search Criteria and Functionality</b>                                                                                                                                                         |  |  |
| 11.1        | Does your solution allow end user and eDiscovery searches by sender and/or recipient?                                                                                                                           |  |  |
| 11.2        | Does your solution allow end user and eDiscovery searches across all sender or recipient alias and distribution lists?                                                                                          |  |  |
| 11.3        | Does your solution allow end user and eDiscovery searches by date range?                                                                                                                                        |  |  |
| 11.4        | Does your solution allow end user and eDiscovery searches by message only?                                                                                                                                      |  |  |
| 11.5        | Does your solution allow end user and eDiscovery searches by the content of any attachments to the email?                                                                                                       |  |  |
| 11.6        | Does your solution allow search results to be exported back to a native mail format?                                                                                                                            |  |  |
| 11.7        | Does your solution allow search results to be exported to a single mailbox or to users' individual mailboxes?                                                                                                   |  |  |
| 11.8        | Does your solution allow an entire mailbox/data base/storage group and/or server be exported to PST files or other data stores? Please include a list of file formats that may be exported from your solution.. |  |  |
| 11.9        | Does your solution allow end user and eDiscovery searches to provide lemmatization[??], full wildcard and quoted searches?                                                                                      |  |  |
| 11.10       | Does your solution allow for the                                                                                                                                                                                |  |  |

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|             | listing of the most common terms used in found documents and allowing subsequent searches based on those terms?                                                                       |     |  |
| 11.11       | Does your solution allow end user and eDiscovery searches to provide relevance ranking?                                                                                               |     |  |
| 11.12       | Does your solution allow end user and eDiscovery searches to be based on message header properties?                                                                                   |     |  |
| 11.13       | Does your solution allow searches to be based on the email policy that has been applied to the message?                                                                               |     |  |
| 11.14       | Does your solution provide simple and complex search results to be returned in under five seconds?                                                                                    |     |  |
| 11.15       | Does your solution support queries using Boolean logic?                                                                                                                               |     |  |
| 11.16       | Does your solution support queries for user mailboxes based upon AD attributes including aliases and distribution lists?                                                              |     |  |
| 11.17       | Does your solution allow search results to be ordered by sender, recipient, date, subject, relevance, and other fields?                                                               |     |  |
| 11.18       | Describe any additional capabilities or functionality of your solution to facilitate retrieval of potentially responsive documents to eDiscovery requests.                            | N/A |  |
| 11.19       | Describe the capabilities or functionality of your solution to facilitate preparation of retrieved documents for production (e.g., electronic redaction, sequential numbering, etc.). | N/A |  |
| <b>12.0</b> | <b>Storage Management</b>                                                                                                                                                             |     |  |
| 12.1        | Does your solution support single-instance storage or data de-duplication?                                                                                                            |     |  |
| 12.2        | Does your solution allow for the stubbing of attachments, reducing                                                                                                                    |     |  |

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|-------------|----------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|             | storage demands on the primary server?                                                                                                       |  |  |
| 12.3        | Does your solution use the same data store for e-discovery, storage management and retention?                                                |  |  |
| 12.4        | Does your solution provide for the stubbing of attachments based on attachment age rules?                                                    |  |  |
| 12.5        | Does your solution provide for the stubbing of attachments based on user and user group rules?                                               |  |  |
| 12.6        | Does your solution provide for the stubbing of attachments based on topology rules including server and routing group?                       |  |  |
| 12.7        | Does your solution provide for the stubbing of inline attachments?                                                                           |  |  |
| 12.8        | Does your solution provide for the stubbing of attachments based on any combination of the rules above?                                      |  |  |
| <b>13.0</b> | <b>Storage Management: End User Control</b>                                                                                                  |  |  |
| 13.1        | Does your solution allow access to stubbed attachments via Outlook?                                                                          |  |  |
| 13.2        | Does your solution allow access to stubbed attachments via OWA?                                                                              |  |  |
| 13.3        | Does your solution allow users to retrieve the entire message back from the archive and keep it local?                                       |  |  |
| 13.4        | Does your solution allow users to return attachments to the archive to reduce their mail server storage?                                     |  |  |
| 13.5        | Does your solution allow individual users to have emails auto archived without their involvement?                                            |  |  |
| 13.6        | Does your solution allow users to independently search and restore individual messages from their own archives without the assistance of IT? |  |  |

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| <b>14.0</b> | <b>Administration And Auditing</b>                                                                                                                                      |     |  |
| 14.1        | Does your solution support the ability to delegate administration of the archive at various hierarchical levels within the archive?                                     |     |  |
| 14.2        | Does your solution provide for logging and auditing of the granting of review privileges?                                                                               |     |  |
| 14.3        | Does your solution provide for the logging and auditing of all searches?                                                                                                |     |  |
| 14.4        | Does your solution provide for the logging and auditing of all changes to retention policies?                                                                           |     |  |
| <b>15.0</b> | <b>Reporting Functionality</b>                                                                                                                                          |     |  |
| 15.1        | Please describe the reporting features and functionality of your solution.                                                                                              | N/A |  |
| 15.2        | Does your solution contain predefined reports for email volume and space used?                                                                                          |     |  |
| <b>16.0</b> | <b>Historical Import</b>                                                                                                                                                |     |  |
| 16.1        | Does your solution allow for the import of all email currently residing in the Exchange Email Service into the archive?                                                 |     |  |
| 16.2        | Does your solution allow for the import of all email currently residing outside the Exchange Email Service (PST files, shared network drives, CD/DVD) into the archive? |     |  |
| 16.3        | Does your solution allow for the import of all email bounded by date?                                                                                                   |     |  |
| 16.4        | Does your solution automatically associate imported emails with the correct mailbox and distribution lists?                                                             |     |  |
| <b>17.0</b> | <b>Availability</b>                                                                                                                                                     |     |  |

|             |                                                                                                                                                                                                                                 |     |  |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--|
| 17.1        | Does your solution continue to function even if Exchange and Active Directory are unavailable?                                                                                                                                  |     |  |
| 17.2        | Does your solution continue to allow users to send and receive and retrieve email during internal infrastructure outages?                                                                                                       |     |  |
| 17.3        | Does your solution allow for the automatic recovery to primary exchange servers after any outage?                                                                                                                               |     |  |
| 17.4        | Does your solution integrate with a business continuity system to provide for full recovery of data from the point of corruption?                                                                                               |     |  |
| <b>18.0</b> | <b>Infrastructure</b>                                                                                                                                                                                                           |     |  |
| 18.1        | If solution is hosted by vendor please describe your organizational infrastructure, including location and type of facilities that we would rely on for services and maintenance.                                               | N/A |  |
| 18.2        | If solution is hosted by vendor can customer request that capacity be added to the solution? In what timeframe does this happen? Describe process and if additional hardware or services will be needed to expand the solution. | N/A |  |
| 18.3        | Please describe any routine maintenance that is required, and if this maintenance is included in the proposed pricing.                                                                                                          | N/A |  |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |     |  |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--|
| 18.4        | If solution is hosted by vendor then the solution must be hosted in secure data center designed for high availability. The data center should provide UPS, diesel power generators, temperature controls, and state-of-the-art fire suppression equipment. Please describe your design.                                                                                                                                                                                                                             | N/A |  |
| 18.5        | <p>If solution is hosted by vendor then please provide a physical security profile for company locations where services would be provided. Include a description of the following security controls:</p> <ul style="list-style-type: none"> <li>• Access</li> <li>• Network/Internet communications</li> <li>• Physical Security</li> <li>• Security Architecture (firewalls, DMZ, etc.)</li> <li>• Intrusion Detection</li> <li>• Virus Protection</li> <li>• Data Back-up</li> <li>• Disaster Recovery</li> </ul> | N/A |  |
| 18.6        | If solution is hosted by vendor then the service provider must monitor 24/7/365 all aspects of the solution to ensure it is always in working order. Describe how the service is configured for 24/7/365 availability and how patches and updates are licensed and deployed                                                                                                                                                                                                                                         | N/A |  |
| 18.7        | If solution is hosted by vendor then at the termination of the contract, all data must be returned to the State in machine readable form. Describe how this will be done and any other provisions or aids that will assist the State in in-sourcing or changing outsource vendors.                                                                                                                                                                                                                                  | N/A |  |
| 18.8        | If solution is hosted by vendor, describe in detail processes and procedures for an internal/external security breach                                                                                                                                                                                                                                                                                                                                                                                               | N/A |  |
| <b>19.0</b> | <b>Support</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |     |  |
| 19.1        | Describe post-installation support types and hours for this product set, e.g. telephone, Web, etc.                                                                                                                                                                                                                                                                                                                                                                                                                  | N/A |  |
| 19.2        | Is there a Web-accessible service site with information on bug fixes,                                                                                                                                                                                                                                                                                                                                                                                                                                               |     |  |

|             |                                                                                                                                                                              |     |  |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--|
|             | known problems, frequently asked questions and call tracking?                                                                                                                |     |  |
| 19.3        | Provide a summary of resources (support personnel and otherwise) devoted specifically to technical issues, involving notification technology, as well as support procedures. | N/A |  |
| <b>20.0</b> | <b>Training</b>                                                                                                                                                              |     |  |
| 20.1        | Describe required and suggested training for administrators, discovery staff, and users.                                                                                     | N/A |  |
| 20.2        | How is training accomplished - online?<br>On-site? Training facilities?                                                                                                      | N/A |  |
| <b>21.0</b> | <b>Licensing</b>                                                                                                                                                             |     |  |
| 21.1        | Describe licensing scheme. Include any support for other applications such as SharePoint, SQL, and file system archiving/discovery. Include how inactive users are licensed. | N/A |  |
| 21.2        | For all required 3rd party products, such as SQL, clarify whether the associated licensing costs are included in your proposal.                                              | N/A |  |
| 21.3        | Does your solution require the use of an additional client for auditing / e-discovery processes?                                                                             |     |  |

## Section IV: Cost Proposal

The Vendor must list and describe any applicable proposal costs associated with the software product(s) and services offered in response to this RFP. Prices, costs, and/or cost schedules should be submitted per the table below.

| Time Period               | Cost Description                | Amount | Annual Total |
|---------------------------|---------------------------------|--------|--------------|
| Implementation and Year 1 | Implementation and Year 1 Costs |        |              |

Optional Year Cost Proposal: (Note that the State may or may not exercise these options)

| Time Period | Cost Description | Amount | Annual Total |
|-------------|------------------|--------|--------------|
| Year 2      | Year 2 Costs     |        |              |
|             |                  |        |              |
| Year 3      | Year 3 Costs     |        |              |
|             |                  |        |              |
| Year 4      | Year 4 Costs     |        |              |
|             |                  |        |              |
| Year 5      | Year 5 Costs     |        |              |
|             |                  |        |              |

## Section V: Other Requirements and Special Terms

- 1) VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.: In accordance with NC General Statute 147-33.97, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers. 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 proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:
  - a) The location of work performed under a 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 a 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

|                                                                           |           |          |
|---------------------------------------------------------------------------|-----------|----------|
| Will any work under this contract be performed outside the United States? | YES _____ | NO _____ |
| Where will services be performed: _____                                   |           |          |

- 2) Financial Statements - If requested by the State, the Vendor shall provide evidence of financial stability with its response to this RFP as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements.

- a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, vendor must explain the reason why they are not available.
  - b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.
  - c) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.
- 3) Disclosure of Litigation – The Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.
- a) The Vendor shall notify the State in its bid proposal, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract or any Scope Statement awarded to Vendor.
  - b) Vendor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its bid proposal, or which may occur during the term of any awarded to Vendor pursuant to this solicitation, that involve (1) services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
  - c) All notices under subsection A and B herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the ITS General Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.
- 4) Criminal Conviction - In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of North Carolina employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor's business integrity and such vendor shall be prohibited from entering into a contract for goods or services with any department, institution or agency of the State.

- 5) Security and Background Checks - The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.
- 6) Assurances – In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:
  - a) the ability of the Vendor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
  - b) whether the Vendor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of law, regulation or public policy, then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.
- 7) Confidentiality of Data and Information. All financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Vendor in order to carry out this Contract, or which become available to the Vendor in carrying out this Contract, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Vendor. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

## Section VI: Proposal Content and Organization

The State is receptive to various options for implementing an e-mail archiving solution; therefore, prospective vendors may offer any or all of the following approaches for providing this solution:

- Provide a vendor-hosted e-mail archiving solution.
- Provide an ITS-hosted e-mail archiving solution.
- Combination of the above.

Vendors offering multiple approaches must submit a separate proposal for each approach.

- 1) This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Proposals will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.
- 2) Information and Descriptive Literature. Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous proposal will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.
- 3) Proposal Content. Demonstrate compliance with all RFP conditions, requirements and terms of performance. Vendor proposals should be organized in the exact order listed below under item 7 (below) of this Section.
- 4) Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
- 5) Proposal Format. The proposals should be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The proposal should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the Vendor's proposal. All proposals should be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.
- 6) Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal and subsequent evaluation process:
  - a) Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
  - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 7) Proposal Organization: The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.
  - a) Section 1 - Letter of Transmittal. Each proposal must be accompanied by a letter of transmittal that provides the following information:
    - i) Identify the submitting organization;
    - ii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized by the organization to contractually obligate the organization;

- iii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the contract on behalf of the organization;
  - iv) Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;
  - v) Acknowledge receipt of any and all amendments to this RFP.
- b) Section 2 - Table of Contents.
- c) Section 3 – Conflict of Interest.
  - i) Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP;
  - ii) State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
  - iii) State the employing State Agency, individual's title at that State Agency, and termination date.
- d) Section 4 – Corporate Background.
  - i) Description of Vendor's capability to provide the products and/or implementation services that will meet the business and technical situation of the State as described in this RFP.
    - (a) Items to address include:
      - (i) Corporate history
      - (ii) Corporate size
      - (iii) Organization structure
      - (iv) Management philosophy
    - ii). Overview of installation of product(s) offered
    - iii). Financial Statement - (last three years' audited financial statements)
- e) Section 5 - Executive Summary. Summarizes the proposed product(s) and implementation services plus vendor qualifications and experience. Vendors are encouraged to include differentiators, i.e., what characteristics or features distinguish their proposed approach from that of other vendors.
- f) Section 6 – Business Functionalities and Technical Descriptions. By sub-sections below describe the business functionalities and explain how these are technically accomplished by the offered product(s) and related implementation services.
  - i) Functional features and capabilities for meeting the business problems, challenges, and needs covered by this RFP.
  - ii) Technical descriptions of the product(s) offered for meeting the business problems, challenges, and needs covered by this RFP.
  - iii) Completed considerations table of Section III: Technical Specifications.
- g) Section 7 – Implementation Approach. Provide proposed implementation approach that will address the business requirements of this RFP.
  - i) Describe the approach (including training) for implementing the offered product(s).
  - ii) Schedules and timeframes
  - iii) Approach for managing the implementation
- h) Section 8 – Vendor Team. Provide the proposed vendor team members, listing roles, responsibilities, qualifications and experiences. Include a description of the proposed process for managing and approving any changes to the vendor team during the implementation of the offered product(s).
- i) Section 9 – References. The following information should be provided for each of the three references:
  - Name of company or government entity. The State prefers government entity references due to the intent of this bid.
  - Product(s) and related implementation services provided.

- Scope and approximate dollar value of product(s) and related implementation services provided.
  - Contact names, with titles/responsibilities, telephone numbers and email addresses.
  - Purposes and/or business processes for which the reference product(s) and related implementation services were performed and how the product(s) and implementation services benefited these.
  - Dates of purchase for product(s) and related implementations.
  - How the product(s) and the related implementation approaches are relevant to the State's situation described in this RFP.
- j) Section 10 – Cost Proposal. Provide detailed Cost Proposal which will reflect the State's Total Cost of Ownership (refer to Section IV).
- k) Section 11 - Copy of Vendor's License and Maintenance Agreements
- l) Section 12 - Other Supporting Material Documentation
- Training and Other Material, Samples or Examples
- m) Section 13 – (Optional) Appendix. Any additional materials or items vendors desire to submit.

Within each section of their proposal, Vendors should address the items in the order in which they appear in this RFP. Forms, if any provided in the RFP, must be completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must be presented with the cost response.

- 8) Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.
- 9) Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

## **Section VII: North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services**

**Definitions:** As used herein;

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.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

**1) Standards:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required by:

- State or Federal Regulation,
  - The Chief Information Officer's (CIO) policy or regulation, or
  - Acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.
- a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
- b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by

Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.

- c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

**2) Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.

**3) Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

b) This contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

- i) Such use does not conflict with the terms, specifications or any amendments to this Contract, or
- ii) Such use does not conflict with any procurement law, regulation or policy or
- iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

**4) Subcontracting:** The Vendor may subcontract the performance of required services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

**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 shall be free from defects in materials, in good working order and be maintained in good working order.

**6) Software License (for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto):** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

**7) Maintenance/Support Services:** Reserved.

**8) Travel Expenses:** Vendor may be reimbursed for travel expenses arising under the performance of this Contract 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 Contract.

**9) Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.

**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. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B.1102 (f), 06B.1030, or other provision of law.

**11) Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract 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 Contract or Purchase Order. If the term of this Contract extends into fiscal years, subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**12) Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

**13) Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State

may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

**14) 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.

**15) Inspection at Vendor's Site:** Reserved.

**16) 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.

**17) Confidentiality:** In accordance with 9 NCAC 06B.0103, 06B.0207 and 06B.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. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. 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 a 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. ***However, under no circumstances shall price information be designated as confidential.*** 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. Gen. Stat. §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. 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. Gen. Stat. §132-9 or other applicable law.

a) **Care of Information:** Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.

b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the

Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

**18) Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software licenses, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

**19) Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

**20) Patent, Copyright, and Trade Secret Protection:**

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

c) 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 Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action. 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.

d) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make

every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

e) 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 (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**21) Access to Persons and Records:** Pursuant to N.C. General Statute 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 Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. 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.

**22) Assignment:** Vendor may not assign this Contract 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 Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. 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.

**23) 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.

**24) Dispute Resolution:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. 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.

**25) Default:** In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) herein, 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 Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. 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 Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

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 bid 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.

c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

**26) 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 40) herein below.

**27) 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.

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 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material 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 Paragraphs 28) and 29) herein. 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 and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and 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 products delivered in conformance with the Contract up to the date of termination.

**28) Limitation of Vendor's Liability:**

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to 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.

**29) Vendor's Liability for Injury to Persons or Damage to Property:**

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

**30) General Indemnity:** The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

- a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

**31) Changes:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

**32) Stop Work Order:** The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Vendor. The 90-day period may be extended for any further period for which the parties may agree.

- a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order

during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

- i) Cancel the Stop Work Order, or
  - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
  - ii) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

**33) Price Adjustments for Term Contracts:** Reserved.

**34) Time is of the Essence.** Time is of the essence in the performance of this Contract.

**35) Date and Time Warranty:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

**36) Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

**37) Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

**38) Notices:** Any notices required under this Contract 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 or by hand.

**39) Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

**40) Amendment:** This Contract 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 in conformance with Paragraph 31) herein.

**41) 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 Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

**42) Governing Laws, Jurisdiction, and Venue:**

- a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract 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 Contract, 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.

b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

**43) 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.

**44) 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. In providing Services and Deliverables, and without limiting or modifying in any respect the Vendor's obligations, Vendor shall comply, and shall cause each of its employees and subcontractors to comply at all times, with State policies that are of general application to State contractors or that Vendor has otherwise agreed to, comply with, including, without limitation, the Statewide Information Security Manual and ITS Security Standards and Policies.

**45) Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract 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 Contract 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.

**46) 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.

**47) Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

a) **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which

payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

**47) Electronic Procurement (Applies only to Statewide Term Contracts):** Reserved.

## **Section VIII: North Carolina Office of Information Technology**

### **Supplemental Terms and Conditions for Software Services**

**1) Supplement:** The additional terms and conditions set forth herein shall supplement the General Terms and Conditions for Goods and Related Services. In the event of a conflict between this Supplement and the General Terms and Conditions, or any other document, the order of precedence shall be determined by the State's solicitation document(s).

**2) License Grant:** This paragraph recites the scope of license granted, if not superseded by a separate licensing agreement as follows:

**a)** Vendor grants to the State, its Agencies and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the State, its Agencies and lawful customers. This license shall be perpetual for the term of the contract), unless terminated as provided herein. The State agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, a State Entity shall be defined as any department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.

**b)** Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.

**c)** The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.

**d)** The State may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 2, and applicable terms in the solicitation documents or statements of work.

**3) Restrictions.** State's use of the Software is restricted as follows:

**a)** The license granted herein is granted to the State and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Office of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.

**b)** No right is granted hereunder to use the Software to perform services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State is permitted.

**c)** The State may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and State will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.

**d)** State shall not remove, obscure or alter Vendor's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

**4) Vendor's Retained Rights:** Subject only to the rights granted to State hereunder, Vendor retains all right, title and interest in and to the Software and all copies of the Software, including without limitation all modifications, enhancements, upgrades and new versions with respect to any of the foregoing, all patent rights, copyrights and trade secret rights embodying any of the foregoing, and all know-how, concepts, inventions and ideas related to the foregoing. State shall provide Vendor with access to State's facilities, at reasonable times and upon reasonable notice, to verify State's compliance with the terms of this Agreement.

**5) Support or Maintenance Services:** This paragraph recites the scope of maintenance services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be stated in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the State, Vendor agrees to provide the following support services ("Support Services") for the current version and one previous version of the Software commencing upon delivery of the Software:

**a) Error Correction:** If the error conditions reported by the State pursuant to the General Terms and Conditions are not corrected in a timely manner, the State may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the State's request at no added expense to the State.

**b) Other Agreement:** This Paragraph 6 may be superseded by agreement provided that: Support and maintenance services shall be fully described in a separate agreement annexed hereto and incorporated herein

**c) Temporary Extension of License:** If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the State and continue until the earlier of:

- i) Return of the inoperative CPU to full operation, or
- ii) Termination of the license.

**d) Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The State will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the State within 24 hours; unless otherwise agreed.

**e) Updates.** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.

**f) Telephone Assistance.** Vendor shall provide the State with telephone 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 Program maintenance service, within four (4) hours, for calls made at any time

**6) Termination of Support or Maintenance:** If the State fails to pay Support or Maintenance Services for the Software or choose not to pay for Support or Maintenance Services, the State may continue to use the Software pursuant to the license granted hereunder, but will not be entitled to receive routine Support Services for such Software. If the State does not subscribe or purchase Support or Maintenance Services effective with the date of this Contract, Support or Maintenance Services may be subsequently subscribed or purchased at any time during the term of this Contract by payment of Support Service or Maintenance Fees at Vendor's then current prices. During the term of this Agreement, the State may also purchase implementation services, consulting and training from Vendor at Vendor's then current prices.

**7) Program Retirement:** Vendor retains the right to retire a version of the Program and stop providing Maintenance, Updates or Services, upon providing 180 day written notice to the State of its intent to do so. The decision to stop maintaining a version of the Program is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Program 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 Program that supports substantially the same functionality as the licensed version of the Program. Newer versions of the Program containing substantially increased functionality will be made available to the State for an additional fee.

**8) Services Provided by Vendor:** As appropriate, depending on the nature of the solution, Vendor shall provide the State with implementation services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The services intended hereunder are related to the State's implementation

and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement").

**9) Payment Terms:** Reserved

**10) Acceptance:** Acceptance testing is required for all Vendor supplied 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 software or services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of software or services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within a reasonable time following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.

**11) Warranty Terms:** Notwithstanding anything in this Contract or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the State.

**a)** Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the State) for a period of 90 days from the date of acceptance ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.

**b)** Vendor warrants to the best of its knowledge that:

**i)** The licensed Software and associated materials do not infringe any intellectual property rights of any third party;

**ii)** There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;

**iii)** The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.

**iv.)** The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.

**c)** UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

**12) Escrow of Code:** Reserved.

**13) Confidentiality:** Vendor shall employ security measures and standards, including encryption technologies, as may be necessary or proper, and as mutually agreed by the State and Vendor during performance of this Agreement. Vendor and its agents, if any, shall not have access to any information except as required to perform Vendor's obligations under this Contract.

**14) State Property and Intangibles Rights:** The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the State (the "Deliverables"). To the extent that any Vendor Technology is contained in any of the Deliverables, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first

originated and prepared by the Vendor for delivery to the State.

**15) License Rights:** All licenses granted to either party include the right to make, have made, use, have used, import, offer to sell, sell, lease or otherwise transfer any apparatus, or practice and have practiced any method and shall include the right to grant, directly or indirectly, revocable or irrevocable sublicenses to affiliates of such party; and nothing contained in this contract shall be deemed to grant any license under any other patents or patent applications arising out of any other inventions of either party.

**16) Default:** If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 13 of the General Terms and Conditions for Goods and Related Services is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract pursuant to the Default terms in the General Terms and Conditions.

**17) Limitation of Liability for Software Deliverables:**

a) Where equipment is under the State's exclusive management and control, Vendor shall not be liable for any damages caused by the State's failure to fulfill any State responsibilities including, without limitation, those relating to assuring the proper use, management and supervision of the equipment and programs, audit controls, operating methods, office procedures or for establishing all property checkpoints necessary for the State's intended use of the machines.

b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed two times the value of the contract, but in no event shall the liability for damages be less than the total value of the contract.

c) WITH THE EXCEPTIONS OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ACTIONS, THE STATE'S CONSTITUTIONAL RIGHTS AS A SOVEREIGN, AND PENALTIES IMPOSED UPON THE STATE BY ANY FEDERAL ENTITY OR EXPENDITURES OF PUBLIC FUNDS REQUIRED OR RESULTING FROM AN OPERATIONAL FAILURE OF THE DELIVERABLE(S) OR SERVICES PROVIDED HEREUNDER, BUT NOTWITHSTANDING ANY OTHER TERM TO THE CONTRARY CONTAINED IN THIS CONTRACT, NEITHER PARTY NOR THEIR RESPECTIVE AFFILIATES SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES (I) FOR ANY CLAIM BASED UPON ANY THIRD PARTY CLAIM, (II) FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR OTHER ECONOMIC CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR OTHERWISE, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (III) FOR ANY PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE WHATSOEVER.

**18) Vendor Obligations:** In the event the State does not perform the State Obligations in a timely manner; Vendor may revise the applicable SOW and/or amount it is charging for Services, and present it as a Change pursuant to Paragraph 31 of the General Terms and Conditions for Goods and Related Services, or terminate this Agreement, at Vendor's option. For each SOW, Vendor will designate one (1) Vendor point of contact who shall be responsible for responding to the State's questions and issues relating to the Services. The State understands and agrees that Vendor may subcontract with third parties to perform all or part of the Services in conformance with Paragraph 4 of the General Terms and Conditions for Goods and Related Services.

**19) Qualified Personnel:** Each party shall provide sufficient, qualified, knowledgeable personnel capable of: (i) performing obligations set forth in this Agreement and each SOW; (ii) making timely decisions necessary to move the Services forward; (iii) participating in the project and assisting Vendor in rendering the Services; and (iv) facilitating development, testing and implementation of Vendor software, if applicable. Vendor warrants that qualified personnel will perform the services in a professional manner. As used in this Paragraph, "professional manner" means that the personnel performing the services will be of a skill and competence consistent with prevailing norms of company providers in the information technology industry.

**20) Responsibility for Breach.** Vendor shall not be responsible for any alleged breach of the foregoing Paragraph 17) that is attributable to (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.

**21) Transportation:** Transportation of software 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.