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| <b>STATE OF NORTH CAROLINA</b><br><br><b>NORTH CAROLINA STATE PORTS AUTHORITY</b>                  | <b>INVITATION FOR BIDS NO. 53-26-034</b>                 |
|  | <b>Title:</b> Avigilon Network Video Recording Systems   |
|  | <b>Bid Opening: Thursday, May 21, 2026 at 4:00 PM ET</b> |
| <b>Refer all inquiries to:</b><br><br>Marie Humphrey<br>Marie.Humphrey@ncports.com<br>910-746-6420 | <b>Issue Date:</b> Wednesday, May 6, 2026                |
|  | <b>Commodity Number:</b> 204                             |
|  | <b>Using Agency:</b> NCSPA                               |
|  | <b>Requisition No.:</b>                                  |

**OFFER AND ACCEPTANCE**

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

**EXECUTION**

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

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

|                                  |      |                  |
|----------------------------------|------|------------------|
| OFFEROR                          |      |                  |
| STREET ADDRESS                   |      | PO BOX, ZIP CODE |
| CITY, STATE, ZIP CODE            |      | TELEPHONE NUMBER |
| NAME and TITLE OF PERSON SIGNING |      |                  |
| AUTHORIZED SIGNATURE             | DATE | E-MAIL           |

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

**ACCEPTANCE OF OFFER**

If any or all parts of this IFB are accepted, an authorized representative of the North Carolina State Ports Authority (NCSPA) shall affix a signature hereto. A copy of this acceptance will be forwarded to the Vendor.

|   |  |
|---|--|
| <b><u>FOR STATE USE ONLY</u></b><br><br><i>Offer accepted and contract awarded on this date as indicated on the attached certification,</i><br><br>by _____ Date _____<br>Authorized representative of North Carolina State Ports Authority |  |
|---|--|

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## 1.0 INTENT, USE, DURATION AND SCOPE

The purpose of this IFB is to obtain pricing for and procure new Avigilon Network Video Recording Systems equipment, software licenses, and optional installation services to support critical port security operations for the North Carolina State Ports Authority (NCSPA).

The NCSPA, encompassing both the Wilmington and Morehead City Port locations, has utilized Avigilon-branded video management systems and camera units for the past decade. To maintain operational continuity and port security, NCSPA is updating from the older generation of Avigilon Network Video Recording Systems to the new Avigilon NVR6 Network Video Recording Systems. This comprehensive replacement will modernize the current environment with current-generation hardware and software, maintain compliance with established security standards, and prevent operational disruptions associated with potential hardware failure.

Goods and Services will be provided in accordance with the terms and conditions with this IFB.

## 2.0 GENERAL INFORMATION

### 2.1 VENDOR QUESTIONS

All inquiries regarding this IFB must be emailed to [Marie.Humphrey@ncports.com](mailto:Marie.Humphrey@ncports.com).

Written questions will be received until **May 12, 2026 at 4:00 pm** Eastern Time.

Please put "Questions – IFB 53-26-034" in the subject line of the email. Questions should be submitted in the following format:

| REFERENCE                | VENDOR QUESTION |
|--------------------------|-----------------|
| IFB Section, Page Number |                 |

Vendor communications with anyone other than the person named above may be grounds for rejection of said Vendor's offer.

### 2.2 ADDENDUM

The Agency will issue an Addendum to provide a response to all questions received in accordance with Section 2.1 above.

The Agency may issue additional Addenda as needed to modify the specifications, requirements, terms and conditions, etc.

All Addenda will be posted on the electronic Vendor Portal (eVP) website at <https://evp.nc.gov> and will become Addenda to this IFB.

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

### 2.3 OFFER SUBMITTAL

Due Date: **Thursday, May 21, 2026**

Time: **4:00 PM Eastern Time**

The offer, subject to the conditions made a part hereof, will be received at the email address below for furnishing and delivering the Goods and/or Services as described herein. It is the responsibility of the Vendor to deliver the offer by the specified time and date of opening.

Deliver **one (1) signed copy** of the offer via email to [Marie.Humphrey@ncports.com](mailto:Marie.Humphrey@ncports.com).

The offer must be submitted on the forms provided herein. The Vendor must return all the pages of this IFB with its offer.

The Execution Page must be signed and dated by an official authorized to bind the Vendor's firm.

The file must not be password-protected and must be capable of being copied to other media.

## **2.4 BASIS FOR REJECTION**

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers in whole or in part by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this solicitation with anyone other than the person listed on Page 1 may also be grounds for rejection of said Vendor's offer.

## **2.5 LATE OFFERS**

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

## **2.6 NON-RESPONSIVE OFFERS**

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

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

## **2.7 NOTICE TO VENDORS**

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

## **2.8 NC ePROCUREMENT**

NCSPA does not utilize the NC eProcurement system to process requisitions or issue purchase orders. Paragraph 47 of the NC Department of Information Technology Terms and Conditions has been reserved.

## **2.9 DISTRIBUTORS AND RESELLERS**

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

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

## **2.10 POSSESSION AND REVIEW**

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

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

## **2.11 BEST AND FINAL OFFER**

The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendor(s) within this range (i.e., Finalist Vendors). If negotiations or subsequent offers are solicited, the Vendor(s) shall provide BAFO(s) in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State will evaluate BAFO(s), oral presentations, and product demonstrations as part of the Vendors’ respective offers to determine the final rankings.

## **2.12 CONTRACT AWARD**

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

After award of contract, award information will be posted in eVP at <https://evp.nc.gov>. The complete bid file will be available to any interested individuals with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule.

**2.13 POINTS OF CONTACT**

Contact with the persons shown below for contractual and technical matters related to this IFB is only permitted if expressly agreed to by the person listed on page 1 or upon award of contract:

| Vendor Contractual Point of Contact                              | Vendor Technical Point of Contact                                |
|--|--|
| Name:<br><br>Address:<br><br><br><br>Email:<br><br>Phone Number: | Name:<br><br>Address:<br><br><br><br>Email:<br><br>Phone Number: |

| State Contractual Point of Contact  | State Technical Point of Contact  |
|---|---|
| Marie Humphrey<br>NCSPA Purchasing Department<br>2508 Burnett Blvd<br>Wilmington NC 28401<br>Marie.Humphrey@ncports.com | Daniel Blackburn<br>NCSPA IT Department<br>2202 Burnett Blvd<br>Wilmington NC 28401<br>Daniel.Blackburn@ncports.com |

**3.0 SPECIFICATIONS**

**3.1 VENDOR STANDARD AGREEMENTS**

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

A license agreement for Avigilon Unity Software is currently in the process of being finalized by and between Avigilon Corporation and NCSPA and will be applicable to this

IFB. A fully executed copy of the license agreement shall be incorporated by reference and attached to the final version of this IFB.

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

In accordance with the Statewide Information Security Manual (SISM), the State restricts the location of information systems that receive, process, store, or transmit State and Federal data to the United States which includes the US States, US Territories, US Embassies, and US Military installations (stateside or overseas). This restriction applies to the Vendor and to any subcontractors engaged to provide Services under this Agreement or with access to State Data. The Vendor must ensure that its subcontractor agreements contain the same restrictions and will be responsible for monitoring and enforcing subcontractor compliance at all times.

- a. Will any work under this contract be performed outside the United States?  YES  NO
  
- b. 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 Vendor, its affiliates or any other subcontractors.
  
  
  
  
  
  
  
  
  
  
- c. The Vendor agrees to provide notice if the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract relocate(s) outside of the United States during the contract term.  
  
 YES  NO
  
  
- d. The Vendor agrees that 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.  
  
 YES  NO

The use of resources or workers located outside the United States is a critical security exception that must be escalated to the State Chief Information Officer for review pursuant to N.C.G.S. §§ 143B-1376(c) and 143B-1320(c). These critical security exceptions are approved only in rare and extenuating circumstances. The Vendor should account for this when preparing its response.

### **3.3 E-VERIFY**

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

### 3.4 **BRAND SPECIFIC PRODUCT**

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

### 3.5 **SOLUTION HOSTED ON STATE INFRASTRUCTURE**

The Solution will be required to receive and securely manage data that is classified as **Low Risk**.

Refer to the North Carolina Statewide Data Classification and Handling Policy for more information: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls.

Offerors should submit with their Offers a Vendor Readiness Assessment Report for a State-Hosted Solution: <https://it.nc.gov/documents/vendor-readiness-assessment-report>

An Offeror that is selected as a Finalist must submit this report within seven (7) business days of request if it is not already included with the Offer. The Offer will be considered non-responsive if the report is not received by the requested date.

### 3.6 **ENTERPRISE ARCHITECTURE SPECIFICATIONS** – Reserved.

### 3.7 **PRODUCT RECALL**

The Vendor assumes full responsibility for prompt notification of both the contract administrator and purchaser of any product recall in accordance with the applicable state and federal regulations.

### 3.8 **WARRANTY**

**Manufacturer's standard warranty shall apply.** Upon request by the State, the Vendor shall provide a copy of the manufacturer's standard warranty within two (2) business days.

The Vendor warrants that all equipment furnished under this IFB will be new, of good material and workmanship. The manufacturer's warranty will be for a minimum period of twelve (12) months from date equipment is put into operation. Such warranty shall cover the cost of all defective parts replacement, labor, freight, and technicians travel at no additional cost to the State.

The report of a problem does not presuppose that every call must result in an "on-site" visit for service/repair. The Vendor and/or service subcontractor shall utilize best efforts to resolve problems in a timely fashion through the use of acceptable servicing methods to include, but not limited to, verbal problem analysis and remote diagnosis. The warranty requirement does not impose any additional duty on the State to make other than normal and good faith problem resolution efforts or expenditures of time. Vendor is responsible for compliance with warranty terms by any third-party service provider.

Is Vendor authorized by the manufacturer to repair equipment offered during the warranty period?

YES  NO

Will Vendor provide warranty service?

YES  NO, an authorized third party will perform warranty service

Contact Information for warranty service provider:

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Contact Person Phone Number: \_\_\_\_\_

Contact Person Email: \_\_\_\_\_

### **3.9 CONTRACT TERM**

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The term shall be one (1) year and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award or unless terminated earlier.

The State retains the option to extend the term for two (2) additional one (1) year periods at its sole discretion.

### **3.10 DELIVERY**

The Vendor shall deliver Avigilon Network Video Recording Systems equipment and software licenses to the following locations within thirty (30) consecutive calendar days after receipt of purchase order.

NCSPA Port of Wilmington  
2508 Burnett Blvd  
Wilmington NC 28401

NCSPA Port of Morehead City  
General Cargo Terminal  
113 Arendell Street  
Morehead City NC 28557

If NCSPA chooses to procure installation services, the installation services shall be completed within thirty (30) consecutive calendar days after receipt of purchase order for installation services.

Upon completion of the installation, the Vendor shall remove and properly dispose of all waste and debris from the installation site. The Vendor shall be responsible for leaving the installation area clean and ready to use.

If circumstances beyond the control of the Vendor result in a late delivery and/or installation, it is the responsibility and obligation of the Vendor to notify the Agency, in writing, immediately upon determining delay of shipment. The written notification should indicate the anticipated delivery date.

### **3.11 SPECIFICATIONS**

#### **A. Equipment**

This project requires brand specific equipment to ensure the integrity of the existing end-to-end analytic environment. The Vendor must provide the following Avigilon brand hardware and licenses:

##### **1. Network Video Recorder**

###### **a. Morehead City Port**

- i Avigilon Unity Network Video Recorder (NVR6-PRM-FORM-D-120TB-S22-NA) – quantity: three (3)
- ii Four-Port, 10G Base-T Network Expansion Card (NVR6-AINVR2-FORM-D-10GBASET) – quantity: three (3)

###### **b. Wilmington Port**

- i Avigilon Unity Network Video Recorder (NVR6-PRM-FORM-D-160TB-S22-NA) – quantity: four (4)
- ii Four-Port, 10G Base-T Network Expansion Card (NVR6-AINVR2-FORM-D-10GBASET) – quantity: four (4)

##### **2. Software License**

ACC Smart Assurance Plan License Subscription (ACC-ENT-SMART-1YR)

- a. Morehead City Port: one (1) year term, 120 licenses
- b. Wilmington Port: one (1) year term, 241 licenses

#### **B. Installation Services**

The Vendor must specify the cost of installing the equipment at the Morehead City Port and the Wilmington Port. The Agency may not procure any installation services, however, if it determines that it is capable of installing the equipment.

1. Pre-Installation Documentation: Document all existing port licenses and configuration details at each facility.
2. System Configuration and Load Balancing: Effectively load balance the new NVRs to ensure uniform data processing and storage retention times across the environment.
3. Uninterruptible Power Supply (UPS): Provide and install a suitable UPS for the NVRs at each location. The UPS solution must provide a minimum of fifteen (15) minutes of uptime at full load in the event of sudden power loss to facilitate a graceful system shutdown or transition to port generator power.
4. Software Upgrade (Avigilon Unity): Upgrade all existing client software to the latest version of Avigilon Unity.

- Physical Installation: Provide rack-mounting, cabling, and validation of 10G network connections.

**C. Operational Security and Data Integrity**

- Forensic Integrity and Hardware Handover: Upon decommissioning, all legacy NVR units shall be delivered directly to Port IT personnel at their respective locations to maintain chain of custody for recorded video.
- Operational Continuity (Phased Cutover): Provide a phased cutover plan. The Vendor shall develop a phased cutover plan prior to installation. NCSPA will review and approve this plan to ensure that no more than the specified number of cameras or any designated high security zone such as the Main Gate are offline at any time during the transition.
- System Hardening Coordination: Provide NCSPA staff with administrative access and technical support to enable NCSPA staff to perform all final system hardening.

**4.0 FURNISH AND DELIVER**

| ITEM                      | QTY | UNIT | DESCRIPTION  | UNIT COST | EXTENDED COST |
|---------------------------|-----|------|--|-----------|---------------|
| <b>MOREHEAD CITY PORT</b> |     |      |  |           |               |
| 1                         | 3   | each | Network Video Recorder: NVR6 PRM FORM D 120 TB<br>2U Rack Mount: WS22:57 Onsite 4HMC: NA     |           |               |
| 2                         | 3   | each | Network Card: QP 10G-Base-T NVR6/AINVR FORM D<br>(excluding second CPU for NVR6/AINVR2)      |           |               |
| 3                         | 120 | each | Software License: ACC Enterprise Smart Plan - Year 1   |           |               |
| <b>WILMINGTON PORT</b>    |     |      |  |           |               |
| 4                         | 4   | each | Network Video Recorder: NVR6 PRM FORM D 160TB<br>2U Rack Mount: WS22::5Y Onsite 4HMC: NA     |           |               |
| 5                         | 4   | each | Network Card: QP10 G-Base-T NVR6/AINVR2 FORM D<br>(excluding second CPU for NVR6/AINVR2-STD) |           |               |
| 6                         | 241 | each | Software License: ACC Enterprise Smart Plan - Year 1   |           |               |

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

**OPTIONAL ITEMS** – may or may not be purchased by the Agency

**A. Software License Renewal**

| ITEM                      | QTY | UNIT | DESCRIPTION                       | UNIT COST | EXTENDED COST |
|---------------------------|-----|------|-----------------------------------|-----------|---------------|
| <b>MOREHEAD CITY PORT</b> |     |      |                                   |           |               |
| 1                         | 120 | each | Year 2: ACC Enterprise Smart Plan |           |               |
| 2                         | 120 | each | Year 3: ACC Enterprise Smart Plan |           |               |
| <b>WILMINGTON PORT</b>    |     |      |                                   |           |               |
| 4                         | 241 | each | Year 2: ACC Enterprise Smart Plan |           |               |
| 5                         | 241 | each | Year 3: ACC Enterprise Smart Plan |           |               |

**Total Cost: \$** \_\_\_\_\_

**B. Installation Services** (including Travel Expenses)

| ITEM | DESCRIPTION                             | COST:<br>MOREHEAD CITY PORT | COST:<br>WILMINGTON PORT |
|------|---|-----------------------------|--------------------------|
| 1    | Pre-Installation Documentation          |                             |                          |
| 2    | System Configuration and Load Balancing |                             |                          |
| 3    | Uninterruptable Power Supply            |                             |                          |
| 4    | Software Upgrade                        |                             |                          |
| 5    | Physical Installation                   |                             |                          |
| 6    | Other Services: must itemize in detail  |                             |                          |
|      | <b>Sub-Total</b>                        |                             |                          |

**Total Cost: \$** \_\_\_\_\_

**5.0 HISTORICALLY UNDERUTILIZED BUSINESSES**

Pursuant to N.C.G.S. §§ 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this solicitation. For more information, see <http://ncadmin.nc.gov/businesses/hub>

Is Vendor a Historically Underutilized Business?  YES  NO

If yes, specify classification: \_\_\_\_\_

## 6.0 NC DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS**
  - **NCDIT:** The North Carolina Department of Information Technology
  - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT Goods or Services. These contracts are in place for the convenience of the State and use of them is optional.
  - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
  - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.
  - **THE STATE:** The State of North Carolina and its agencies.
  - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **INFORMATION AND DESCRIPTIVE LITERATURE:** The Vendor is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this solicitation, each Vendor must submit with its offer sketches, descriptive literature and/or complete specifications covering the products offered. Only information that is received in response to this RFQ will be evaluated. Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Offers which do not comply with these requirements will be subject to rejection.
- 5) **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 commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the relevant purchasers in the State those products or packaging they offer which have recycled content and that are recyclable.
- 6) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this solicitation can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 7) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

- 8) **AWARD OF CONTRACT**: Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. § 143-135.9, and in accordance with N.C.G.S. § 143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards where it is advantageous to award separately by items; where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; or other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
- 9) **SAMPLES**: Reserved.
- 10) **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.
- 11) **PROTEST PROCEDURES**: An offeror who wants to protest a contract awarded pursuant to this solicitation that is over \$25,000.00 must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award and must contain specific sound reasons and any supporting documentation for the protest. Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Award notices are posted on at <https://evp.nc.gov/>. All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.
- 12) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: Reserved.
- 13) **DIGITAL IMAGING**: Reserved.

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

- 1) **DEFINITIONS**: As used herein:
  - a) **Deliverable/Product Warranties** shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraphs 7 and 8 and included in Paragraph 29 c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to the Vendor's License or Support Agreements.
  - b) **Purchasing State Agency or Agency** shall mean the Agency purchasing the goods or Services.
  - c) **Services** shall mean the duties and obligations accepted by the Vendor to carry out the requirements, and meet the specifications, of this procurement.
  - d) **State** shall mean the State of North Carolina, the Department of Information Technology as an Agency or in its capacity as the Award Authority.
- 2) **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. The 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,
- by 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 the Vendor for the duration of the Agreement 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 an Agreement 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 the 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 non-compliance provided by the State, the Vendor shall supply proof of compliance with the specifications. The 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 the 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.

3) **WARRANTIES:** The Vendor shall assign all applicable third-party warranties for Deliverables to the Purchasing State Agency.

4) **PERSONNEL:** The Vendor shall not substitute key personnel assigned to the performance of this Agreement without prior written approval by the Agency Contract Administrator with the exception of events outside of the Vendor's control such as key personnel death, injury, illness, or termination of employment. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of the 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 Agreement. 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 Agreement shall not prevent the Vendor or any of its personnel supplied under this Agreement from performing similar Services elsewhere or restrict the Vendor from using the personnel provided to the State, provided that such use does not conflict with:
  - i) the terms, specifications or any amendments to this Agreement;
  - ii) any procurement law, regulation or policy; or
  - iii) any non-disclosure agreement, or term thereof, by and between the State and the Vendor or the Vendor's personnel.

5) **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 Purchasing State Agency. The Vendor shall provide the State with complete copies of any agreements made by and between the 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, the Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

6) **VENDOR'S REPRESENTATION:** The 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. The Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Agreement. The Vendor will serve as the prime Vendor under this Agreement. 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 the Vendor may appear for purposes of convenience in contract documents and shall not limit the Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to the Vendor. The 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.** The 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. The 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 Agreement are required for the Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Agreement, 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 Agreement to the same extent and in the same manner as if specifically described in the Agreement. Unless otherwise expressly provided in the Agreement, the 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) The Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Agreement; that the Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against the Vendor that could materially

adversely affect performance of this Agreement; and that entering into this Agreement is not prohibited by any contract or order by any court of competent jurisdiction.

- d) **Warranty as to Equipment; Hardware.** The Vendor warrants that the equipment and hardware that it provides pursuant to this Agreement shall be free from defects in materials, in good working order and be maintained in good working order.

7) **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 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. The 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, non-exclusive, 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 (1) 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 the Vendor or the 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.

8) **MAINTENANCE/SUPPORT SERVICES:** Unless otherwise mutually provided herein, for the first year after the expiration of any warranty coverage (and for all subsequent Agreement years for which Support is purchased), the Vendor agrees to provide the following Support Services for the Hardware and any Software provided with the Deliverables for any years in which the applicable support fees are paid, which may be more particularly described, e.g., under part numbers, in the Furnish and Deliver Table herein.

## **HARDWARE/EQUIPMENT**

- a) **Basic Services.** The Vendor will provide at least normal and usual Hardware support and maintenance Services generally provided to customers in a similar program, position or setting consistent with and subject to the payment of the support and maintenance fees agreed upon in this Contract, all as indicated by part numbers in the Furnish and Deliver Table. The Vendor warrants to the State that all items furnished will be new (unless otherwise requested in this solicitation), of good material and workmanship, and agrees to repair or replace any items which fail to comply with the specifications by reason of defective material or workmanship under normal use, free of State's negligence or accident for one year from date of installation. Such repair or replacement shall include any transportation costs free of any charge to the State. This statement is not intended to limit any additional coverage, which may normally be associated with a product, such as any "hot switch" or similar replacement warranty program applicable as indicated by the Vendor's support description in the Furnish and Deliver Table. Any available warranties applicable to replacement Hardware equipment or parts will be passed on to the using agency.

- b) **Telephone Assistance.** The 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 Support problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Standard Time, Monday - Friday. The Vendor shall respond to the telephone requests for Program maintenance service within four (4) hours for calls made at any time.

## **SOFTWARE**

- a) **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), the Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of the Vendor in attempts to correct an error or defect in the Program. The Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance Services under this Paragraph.
- b) The Vendor shall notify the State of any material errors or defects in the Deliverables known or made known to the Vendor from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results. The Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
- c) **Updates.** The Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by the Vendor and made generally available to its other customers at no additional charge. All such Changes shall become a part of the Software and Documentation and, as such, will be governed by the provisions of this Agreement.
- d) **Telephone Assistance.** The 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 Standard Time, Monday through Friday. The Vendor shall respond to the telephone requests for Program maintenance service within four (4) hours for calls made at any time.
- 9) **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. § 138-6 as amended from time to time. The Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt, and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.
- 10) **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 Agreement. The State may advise the 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, the 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 Agreement and compensate the Vendor for sums due under the Agreement.

**11) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** The 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. The 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 Agreement or award in question. Each individual signing below warrants that he/she is duly authorized by his/her respective Party to sign this Agreement and bind the Party to the terms and conditions of this Agreement. The Vendor and its 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 Agreement, obligation, or contract for future award of compensation as an inducement or consideration for making this Agreement. 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 09 NCAC 06B.1206, or other provision of law.

**12) AVAILABILITY OF FUNDS:** Any and all payments to the 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 Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to the Vendor. If the Agreement is terminated under this paragraph, the Vendor agrees to take back any affected Deliverables and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**13) 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 thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. 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 the Vendor's written request of not less than thirty (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 the 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.

**14) ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional contract documents, the State shall have the obligation to notify the Vendor in writing ten (10) calendar days following installation of any Deliverable described in the Agreement 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 Agreement 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 the Vendor as provided herein.

- 15) EQUAL EMPLOYMENT OPPORTUNITY:** The 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.
- 16) INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect during the Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to contract award, and during the Agreement term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Agreement.
- 17) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 18) CONFIDENTIALITY:** In accordance with N.C.G.S. §§ 143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 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.G.S. § 132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. § 66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. § 132-1.2. The 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 the Vendor's confidential information and not as an arbiter of claims against the Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. § 132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of the 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 the Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. § 132-9 or other applicable law.

- a) Care of Information: The 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) The 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. The Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by the Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws provided that the Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. § 132-1 *et seq.* The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for the 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 Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Non-Disclosure: The 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 Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

**19) DELIVERABLES:** Deliverables, as used herein, shall comprise all Services, 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 except where licensed or leased to the State. Proprietary Vendor materials licensed to the State shall be identified to the State by the 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 the 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 the Licensor and is licensed non-exclusively 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.

**20) LATE DELIVERY, BACK ORDER:** The Vendor shall advise the Purchasing State Agency immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, the Vendor shall state the projected delivery time and date. In the event the delay projected by the Vendor is unsatisfactory, the Agency shall so advise the Vendor and may proceed to procure substitute Deliverables or Services.

**21) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION**

- a) The 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) The Vendor shall not acquire any right, title, or 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 the Vendor. The State hereby grants the Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for the 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; damages shall be limited as provided in N.C.G.S. § 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
  - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or software supplied by the 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 non-infringing 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 the 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 Agreement impractical, the State shall then have the option of terminating the Agreement, 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 the Vendor less any reasonable amount for use or damage.
- e) The 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 goods or Services and Deliverables after receiving notice that they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect the Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.
- g) Sole and Exclusive Remedy. The remedies provided represent the sole and exclusive remedy available to the State under this section.

**22) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. § 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.

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

**24) INSURANCE COVERAGE:** During the term of the Agreement, 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 Agreement. At 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 the Vendor's employees who are engaged in any work under the Agreement. 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 Agreement; 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 Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/underinsured 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 Agreement. 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 Agreement. 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 Agreement.

**25) 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 Agreement. 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 Agreement or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**26) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Agreement term fail to conform to any material requirement(s) of the Agreement specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the Agreement. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

- a) If the Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Agreement, the State shall provide written notice of said failure to the Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. § 143B-1340(f). The Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which the Vendor's performance is conditioned, the Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. The Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offers 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) The Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.

**27) 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 Agreement unless so stated in writing and signed by authorized representatives of the Agency and the Vendor and made as an amendment to this Agreement pursuant to Paragraph 40) herein below.

**28) TERMINATION:** Any notice or termination made under this Agreement 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 Agreement by written agreement at any time.
- b) The State may terminate this Agreement, in whole or in part, pursuant to Paragraph 26) 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 Agreement term fails to conform to any material requirement of the

Agreement, and the failure is not cured within the specified time after providing written notice thereof to the Vendor, the State may cancel and procure the articles or Services from other sources holding the Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 29) and 30) 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 Agreement. The Vendor shall not be relieved of liability to the State for damages sustained by the State arising from the Vendor's breach of this Agreement 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 the 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 thirty (30) days' prior notice in writing to the Vendor. The Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Agreement. In the event the Agreement is terminated for the convenience of the State, the Agency will pay for all work performed and products delivered in conformance with the Agreement up to the date of termination.
- c) The Vendor may terminate the Agreement if the State breaches its payment obligations under this Agreement and fails to cure such default within thirty (30) days after receiving written notice specifying such default.

## **29) 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 arising under the Agreement shall be limited to two (2) times the value of the Agreement.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including, but not limited to, Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by the Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. § 1B-1 *et seq.*, or 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 Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Agreement are intended to provide the sole and exclusive remedies available to the State under the Agreement for the Vendor's failure to comply with the requirements stated therein.

## **30) 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 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 Agreement, 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 Agreement.
- c) The 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.

**31) CHANGES:** This Agreement and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Agreement, and all conditions and instructions of the Agreement or offer on which it is based. Any changes made to this Agreement 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 the Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (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 ninety (90) days after a Stop Work Order is delivered to the 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 Agreement.
- 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 Agreement 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 Agreement, and
  - ii) The Vendor asserts its right to an equitable adjustment within thirty (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 an offer submitted at any time before final payment under this Agreement.
- 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 Agreement.

**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 Agreement.

**36) INDEPENDENT CONTRACTORS:** The Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Agreement 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 Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

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

**40) AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and the 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 the Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

**42) GOVERNING LAWS, JURISDICTION, AND VENUE**

- a) This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. The Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters.

b) Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Agreement. To the extent the Agreement 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.

**45) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirements, 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:** Reserved.