



STATE OF NORTH CAROLINA

Administrative Office of the Courts (NCAOC)

Invitation for Bid #: 02-2024006

Brother Printers & Equipment Kits

Date Issued: 4/10/2024

Bid Opening Date: 4/24/2024

At 2:00 PM ET

Direct all inquiries concerning this IFB to:

Buyer: Jeff Conken

Position: Procurement Specialist III

Jeffrey.A.Conken@nccourts.org

Phone: (919) 890-1535



STATE OF NORTH CAROLINA

Invitation for Bids

02-2024006

For internal State agency processing, including tabulation of bids, provide your company's eVP (Electronic Vendor Portal) Number. Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page shall be filled out and returned with your bid.
Failure to do so shall be sufficient cause to reject your bid.**

Vendor Name

Vendor eVP #

Note: For a contract to be awarded to you, your company (you) must be a North Carolina registered vendor in good standing. You must enter the vendor number assigned through eVP (Electronic Vendor Portal). If you do not have a vendor number, register at <https://vendor.ncgov.com/vendor/login>

Electronic responses ONLY will be accepted for this solicitation.

STATE OF NORTH CAROLINA
Administrative Office of the Courts

| | |
|--|--|
| Refer ALL Inquiries regarding this IFB to: Jeffrey.A.Conken@nccourts.org Phone: (919) 890-1535 | Invitation for Bids # 02-2024006 |
| | Bids will be publicly opened: 4/24/2024 at 2:00pm EST> |
| Using Agency: NC Administrative Office of the Courts (NCAOC) | Commodity No. and Description: 880 |
| Requisition No.: RQ104620 | |

EXECUTION

In compliance with this Invitation for Bids (IFB), and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein.

By executing this bid, the undersigned Vendor understands that false certification is a Class I felony and certifies that:

- this bid is submitted competitively and without collusion (G.S. 143-54),
- that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this bid, the undersigned certifies to the best of Vendor’s knowledge and belief, that:

- it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency.

As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this IFB, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

As required by Executive Order 24 (2017), the undersigned vendor certifies will comply with all Federal and State requirements concerning fair employment and that it does not and will not discriminate, harass, or retaliate against any employee in connection with performance of any Contract arising from this solicitation.

G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this bid response to the IFB, the undersigned certifies, for Vendor’s entire organization and its employees or agents, that Vendor are not aware that any such gift has been offered, accepted, or promised by any employees or agents of Vendor’s organization.

By executing this bid, Vendor certifies that it has read and agreed to the **INSTRUCTION TO VENDORS** and the **NORTH CAROLINA GENERAL TERMS AND CONDITIONS incorporated herein**. These documents can be accessed from the ATTACHMENTS page within this document.

Failure to execute/sign bid prior to submittal may render bid invalid and it MAY BE REJECTED. Late bids cannot be accepted.

| | | |
|---|-------------------|--------------------|
| COMPLETE/FORMAL NAME OF VENDOR: | | |
| STREET ADDRESS: | P.O. BOX: | ZIP: |
| CITY & STATE & ZIP: | TELEPHONE NUMBER: | TOLL FREE TEL. NO: |
| PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21): | | |
| PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR: | FAX NUMBER: | |
| VENDOR’S AUTHORIZED SIGNATURE: | DATE: | E-MAIL: |

Bid Number: 02-2024006

Vendor: _____

VALIDITY PERIOD

Offer shall be valid for at least sixty (60) days from date of bid opening, unless otherwise stated here: _____ days, or if extended by mutual agreement of the parties. Any withdrawal of this offer shall be made in writing, effective upon receipt by the agency issuing this IFB.

BID ACCEPTANCE

If your bid is accepted, all provisions of this IFB, along with the written results of any negotiations, shall constitute the written agreement between the parties ("Contract"). The NORTH CAROLINA GENERAL TERMS AND CONDITIONS are incorporated herein and shall apply. Depending upon the Goods or Services being offered, other terms and conditions may apply, as mutually agreed.

FOR STATE USE ONLY: Offer accepted and Contract awarded this ____ day of _____, 20____, as indicated on the attached certification, by _____
(Authorized Representative of NC Administrative Office of the Courts)

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1.0 PURPOSE AND BACKGROUND

The purpose for this Invitation for Bid (IFB) is to procure Brother Pocketjet 8 Printers and other hardware to be shipped as kits. The intent of this solicitation is to award an Agency Specific Contract.

2.0 GENERAL INFORMATION

2.1 INVITATION FOR BID DOCUMENT

The IFB is comprised of the base IFB document, any attachments, and any addenda released before Contract award, which are incorporated herein by reference.

2.2 E-PROCUREMENT FEE

ATTENTION: The E-Procurement fee may apply to this solicitation. See paragraph entitled ELECTRONIC PROCUREMENT of the North Carolina General Terms and Conditions.

General information on the E-Procurement Services can be found at: <http://eprourement.nc.gov/>.

2.3 NOTICE TO VENDORS REGARDING IFB TERMS AND CONDITIONS

It shall be the Vendor’s responsibility to read the Instructions to Vendors, the North Carolina General Terms and Conditions, all relevant exhibits and attachments, and any other components made a part of this IFB and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this IFB.

If Vendors have questions or issues, or exceptions regarding any component within this IFB, those must be submitted as questions in accordance with the instructions in the BID QUESTIONS Section. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an IFB addendum. The State may also elect to leave open the possibility for later negotiation of specific provisions of the Contract that have been addressed during the question-and-answer period, prior to contact award.

Other than through this process or negotiation under 01 NCAC 05B.0503, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor’s bid. This applies to any language appearing in or attached to the document as part of the Vendor’s bid that purports to vary any terms and conditions or Vendors’ instructions herein or to render the bid non-binding or subject to further negotiation. Vendor’s bid shall constitute a firm offer that shall be held open for the period required herein (“Validity Period” above).

The State may exercise its discretion to consider Vendor proposed modifications. By execution and delivery of this IFB Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded unless expressly agreed upon through negotiations and incorporated by way of a Best and Final Offer (BAFO). Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor’s bid as nonresponsive.

2.4 IFB SCHEDULE

The table below shows the *intended* schedule for this IFB. The State will make every effort to adhere to this schedule.

| Event | Responsibility | Date and Time |
|--------------------------------|----------------|---------------------|
| Issue IFB | State | 4/10/2024 |
| Submit Written Questions | Vendor | 4/17/2024 @4pm EST |
| Provide Responses to Questions | State | 4/18/2024 |
| Submit Bids | Vendor | 4/24/2024 @ 2pm EST |
| Contract Award | State | 4/26/2024 |

2.5 Reserved

2.6 BID QUESTIONS

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB in order to submit the best bid possible. To accommodate the Bid Questions process, Vendors shall submit any such questions by the “Submit Written Questions” date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum.

Written questions shall be e-mailed to Jeffrey.a.conken@nccourts.org by the date and time specified above. Vendors will enter “IFB # 02-2024006 Questions” as the subject for the email. Question submittals will include a reference to the applicable IFB section and be submitted in a format shown below:

| Reference | Vendor Question |
|--------------------------|----------------------|
| IFB Section, Page Number | Vendor question ...? |

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to *the electronic Vendor Portal (eVP)*, <https://evp.nc.gov>, and shall become an Addendum to this IFB. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this IFB, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this IFB.

2.7 BID SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Vendor shall bear the risk of late submission due to unintended or unanticipated delay. It is the Vendor’s sole responsibility to ensure its bid has been received as described in this IFB by the specified time and date of opening. The date and time of receipt will be marked on each bid when received. Any bid or portion thereof received after the bid submission deadline will be rejected.

[eVP]

If applicable to this IFB and using eVP, all proposal responses shall be submitted electronically via the electronic Vendor Portal (eVP). Additional information can be found at the eVP updates for Vendors link: <https://eprocurement.nc.gov/news-events/evp-updates-vendors>.

Failure to submit a bid in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor’s bid(s). Vendors are strongly encouraged to allow sufficient time to upload bids.

Critical updated information may be included in Addenda to this IFB. It is important that all Vendors responding on this IFB periodically check the State’s eVP website for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in this IFB and all Addenda thereto.

2.8 BID CONTENTS

Vendors shall populate all attachments of this IFB that require the Vendor to provide information and include an authorized signature where requested. Failure to provide all required items, or Vendor’s submission of incomplete items, may result in the State rejecting Vendor’s bid, in the State’s sole discretion

Vendor IFB responses shall include the following items and attachments, which shall be arranged in the following order:

- a) Title Page: Include the company name, address, phone number and authorized representative along with the Bid Number.

- b) Completed and signed version of EXECUTION PAGES, along with the body of the IFB.
- c) Signed receipt pages of any addenda released in conjunction with this IFB, if required to be returned.
- d) Vendor Response *[Indicate relative section references as a guide to responding to sections requiring additional responses outside of the solicitation document. If not required, delete.]*
- e) Completed version of ATTACHMENT A: PRICING
- f) Completed version of ATTACHMENT B: LOCATION OF WORKERS UTILIZED BY VENDOR
- g) Completed version of ATTACHMENT C: INSTRUCTIONS TO VENDORS
- h) Completed version of ATTACHMENT D: NORTH CAROLINA JUDICIAL BRANCH GENERAL CONTRACT TERMS AND CONDITIONS
- i) Completed and signed version of CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS and OMB STANDARD FORM LLL

2.9 RESERVED

2.10 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- a) TERM CONTRACT: A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity
- b) BAFO: Best and Final Offer, submitted by a Vendor to alter its initial bid, made in response to a request by the NCAOC.
- c) BUYER: The employee of the State or Other Eligible Entity that places an order with the Vendor.
- d) COMMUNITY COLLEGE: Any of the fifty-eight (58) public North Carolina Community Colleges.
- e) CONTRACT LEAD: Representative of the NC Administrative Office of the Courts (NCAOC) identified on the first page of this IFB who will correspond with potential Vendors concerning solicitation issues and will contract with the Vendor providing the best offer to the State, and is the individual who will administer The Contract for the State.
- f) E-PROCUREMENT SERVICES: The program, system, and associated services through which the State conducts electronic procurement.
- g) FOB-DESTINATION: Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request a Vendor to separately identify freight charges in its bid, but no amount or charge not included as part of the total bid price will be paid.
- h) IFB: Invitation for Bids.
- i) LOT: A grouping of similar products within this IFB
- j) NC BIDS: The North Carolina Business Invitation Delivery System provides vendors the opportunity to submit bid responses electronically.
- k) ON-TIME DELIVERY: The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
- l) QUALIFIED BID: A responsive bid submitted by a responsible Vendor.
- m) STATE: The Judicial Branch of the State of North Carolina.
- n) STATE DEPARTMENTS: Department of Administration, Department of Agriculture, Department of Commerce, Department of Cultural and Natural Resources, Department of Environmental Quality, Department of Health and Human Services, Department of Information Technology, Department of Insurance, Department of Justice, Department of Labor, Department of Military and Veteran Affairs, Department of Public Instruction, Department of Public Safety, Department of Revenue, Department of State Treasurer, Department of the Secretary of the State, Department of Transportation, Wildlife Resources Commission, Office of Budget and Management, Office of the Governor, Office of the Lieutenant Governor, Office of The State Auditor, Office of the State Controller.

- o) THE CONTRACT: A contract resulting from or arising out of Vendor responses to this solicitation document.
- p) VENDOR: Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to an Invitation for Bids. Following award of a contract, the term refers to an entity receiving such an award.

3.0 METHOD OF AWARD AND BID EVALUATION PROCESS

3.1 METHOD OF AWARD

North Carolina G.S. 143-52 provides a general list of criteria the State shall use to award contracts, as supplemented by the additional criteria herein. The Goods or Services being procured shall dictate the application and order of criteria; however, all award decisions shall be in the State’s best interest.

All responsive bids will be reviewed, and award or awards will be based on the responsive bid(s) offering the lowest price that meets the specifications to include any required verifications set out herein such as but not limited to past performance, references, and financial documents.

While the intent of this IFB is to award a Contract(s) to a single Vendor for all line items, the State reserves the right to make separate awards to different Vendors for one or more line items, to not award one or more line items or to cancel this IFB in its entirety without awarding a Contract, if it is considered to be most advantageous to the State to do so.

If a Vendor selected for award is determined by the State to be a non-resident of North Carolina, all responsive bids will be reviewed to determine if any of them were submitted by a North Carolina resident Vendor who requested an opportunity to match the price of the winning bid, pursuant to Executive Order #50 and G.S. 143-59 (for more information, please refer to ATTACHMENT H: VENDOR REQUEST FOR EXECUTIVE ORDER #50 PRICE MATCHING. If such bid(s) are identified, the State will then determine whether any such bid falls within the price-match range, and, if so, make a Contract award in accordance with the process that implements G.S. 143-59 and Executive Order #50.

The State reserves the right to waive any minor informality or technicality in bids received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

While this IFB is under evaluation, the responding Vendor, including any subcontractors and suppliers, is prohibited from engaging in conversations intended to influence the outcome of the evaluation. See the Paragraph 29 of the Instructions To Vendors entitled COMMUNICATIONS BY VENDORS.

Each Vendor submitting a bid to this IFB, including its employees, agents, subcontractors, suppliers, subsidiaries and affiliates, is prohibited from having any communications with any person inside or outside the using agency; issuing agency; other government agency office or body (including the purchaser named above, any department secretary, agency head, members of the General Assembly and Governor’s office); or private entity, if the communication refers to the content of Vendor’s bid or qualifications, the content of another Vendor’s proposal, another Vendor’s qualifications or ability to perform a resulting contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals, the award of a contract, or both.

Any Vendor not in compliance with this provision shall be disqualified from evaluation and award. A Vendor’s proposal may be disqualified if its subcontractor and/or supplier engage in any of the foregoing communications during the time that the procurement is active (*i.e.*, the issuance date of the procurement until the date of contract award or cancellation of the procurement). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this IFB or inquiries directed to the purchaser named in this IFB regarding requirements of the IFB (prior to proposal submission) or the status of the award (after submission) are excepted from this provision.

3.3 BID EVALUATION PROCESS

Only responsive submissions will be evaluated.

The State will conduct an evaluation of responsive Bids, as follows:

Bids will be received according to the method stated in the Bid Submittal section above.

All bids must be received by the issuing agency not later than the date and time specified in the IFB SCHEDULE Section above, unless modified by Addendum. Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the State.

At the date and time provided in the IFB SCHEDULE Section above, unless modified by Addendum, the bids from each responding Vendor will be opened publicly and all offers (except those that have been previously withdrawn, or voided bids) will be tabulated. The tabulation shall be made public at the time it is created. When negotiations after receipt of bids is authorized pursuant to G.S. 143-49 and 01 NCAC 05B.0503, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. If negotiation is anticipated, cost and price shall become available for public inspection at the time of the award. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

At their option, the evaluators may request oral presentations or discussions with any or all Vendors for clarification or to amplify the materials presented in any part of the bid. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all bids should be complete and reflect the most favorable terms available from the Vendor. Prices bid cannot be altered or modified as part of a clarification.

Bids will generally be evaluated, based on completeness, content, cost and responsibility of the Vendor to supply the requested Goods and Services. Specific evaluation criteria are listed in Section 3.1 METHOD OF AWARD.

Upon completion of the evaluation process, the State will make Award(s) based on the evaluation and post the award(s) to the State's eVP website under the IFB number for this solicitation. Award of a Contract to one Vendor does not mean that the other bids lacked merit, but that, all factors considered, the selected bid was deemed most advantageous and represented the best value to the State.

The State reserves the right to negotiate with one or more Vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement, and in either case to require Vendor to submit a Best and Final Offer (BAFO) based on discussions and negotiations with the State.

3.4 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this IFB, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a) Total cost to the State
- b) Level of quality provided by the Vendor
- c) Process and performance capability across multiple jurisdictions
- d) Protection of the State's information and intellectual property
- e) Availability of pertinent skills
- f) Ability to understand the State's business requirements and internal operational culture
- g) Particular risk factors such as the security of the State's information technology
- h) Relations with citizens and employees
- i) Contract enforcement jurisdictional issues

3.5 INTERPRETATION OF TERMS AND PHRASES

This IFB serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the State; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the State will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the State’s needs as described in the IFB. Except as specifically stated in the IFB, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the State exercising its discretion to reject a bid in its entirety.

4.0 REQUIREMENTS

This Section lists the requirements related to this IFB. By submitting a bid, the Vendor agrees to meet all stated requirements in this Section, as well as any other specifications, requirements, and terms and conditions stated in this IFB. If a Vendor is unclear about a requirement or specification, or believes a change in a requirement would allow for the State to receive a better bid, the Vendor is encouraged to submit these items in the form of a question during the question and answer period in accordance with the Bid Questions Section above.

4.1 PRICING

Bid price shall constitute the total cost to the State for delivery fully assembled and ready for use, including all applicable charges for shipping, delivery, handling, administrative and other similar fees. Complete ATTACHMENT A: PRICING FORM and include in Vendor’s response.

4.2 ESTIMATED QUANTITIES

The quantities indicated herein are annual estimates only and are provided for informational purposes based on the anticipated usage. No maximum or minimum quantities are guaranteed. It shall be understood and agreed that the State may purchase more or less than the estimated quantities during the contract period. The State reserves the right to increase or decrease the quantities as needed. The State shall not be obligated to purchase more than its normal requirements. The State will be responsible only for items requested and received.

4.3 PRODUCT IDENTIFICATION

BRAND SPECIFIC

Manufacturer(s) name and product descriptions used in this solicitation are product-specific. The items offered in response to this solicitation shall be by the manufacturer and the type specified. These specific products are needed due to compatibility and continuity of support. Failure to comply with this requirement shall be a sufficient basis for disqualifying a bid from further consideration.

4.4 TRANSPORTATION AND IDENTIFICATION

The Vendor shall deliver Free-On-Board (FOB) Destination to any requested location within the State of North Carolina with all transportation costs and fees included in the total bid price.

When an order is placed using a purchase order, the purchase order number shall be shown on all packages and shipping manifests to ensure proper identification and payment of invoices. If an order is placed without using a purchase order, such as via phone, the Buyer’s name shall be show on all packages. A complete packing list shall accompany each shipment. Vendors shall not ship any products until they have received an order.

4.5 DELIVERY AND INSTALLATION

The Vendor shall deliver Free-On-Board (FOB) Destination to the following location(s):

North Carolina Judicial Center

Bid Number: 02-2024006
901 Corporate Center Drive
Raleigh, NC 27607

Vendor: _____

Successful Vendor shall complete delivery within 60 consecutive calendar days after receipt of purchase order. **Need by date is 6/30/2024. Vendors who cannot meet this delivery date will not be considered.**

For completion by Vendor: Delivery will be made from _____ (city, state) within _____ consecutive calendar days after receipt of purchase order. Promptness of delivery may be used as a factor in the award criteria.

4.6 AUTHORIZED RESELLER

The Vendor shall be authorized by the manufacturer to distribute or resell the products and/or maintenance offered in this IFB. **The Vendor shall provide a signed statement from the manufacturer confirming authorization with its bid response.** Failure to provide this statement shall constitute sufficient grounds for rejection of Vendor's offer, at the discretion of the State.

Vendor is the: Manufacturer Dealer Reseller Distributor

Authorized: Yes No Attached Manufacturer's Authority: Yes No

4.7 WARRANTY

Vendor warrants that all equipment furnished under this IFB will be newly manufactured, of good material and workmanship. The warranty will apply from date equipment is put into operation for a minimum period of twelve (12) months or the length of the manufacturer's warranty, whichever is longer. Such warranty shall cover the cost of all defective parts replacement, labor, freight, and technicians' travel at no additional cost to the State, or as specified by the Purchasing Agency herein. To the extent not superseded by the terms of this paragraph, manufacturer's warranty terms shall apply. Vendor's warranty shall be at least the level of coverage provided for its comparable customers.

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 sub-contractor shall utilize best efforts to resolve problems in a timely fashion by using 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 shall be responsible for compliance with warranty terms by any third-party service provider. Vendor shall provide contact information for warranty service provider, below.

Vendor is authorized by manufacturer to repair equipment offered during the warranty period? YES NO

Will the Vendor provide warranty service? YES NO, a manufacturer-authorized third party will perform warranty service.

Contact information for warranty service provider:

Company Name: _____

Company Address: _____

Contact Person (name): _____

Contact Person (phone number): _____

Contact Person (email): _____

4.8 MAINTENANCE OPTION

Following expiration of the above warranty, Vendor, or its third-party service provider, shall maintain the system specifications and performance level in accordance with the manufacturer's published specifications and those of this IFB. Maintenance shall include all parts, remedial maintenance labor, travel and living expenses incurred. Except as specifically provided for elsewhere herein, coverage shall be at least for 8:00 am ET to 5:00 pm ET, Monday through Friday, except State recognized holidays and

shall include a minimum of two (2) preventive and safety maintenance inspections per year. The State shall have the option to accept the maintenance coverage in this paragraph at the price offered in ATTACHMENT A: PRICING of this IFB, if applicable.

4.9 Reserved

4.10 Reserved

4.11 Reserved

4.12 VENDOR’S REPRESENTATIONS

If the bid results in an award, Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under the Contract. If any Services, deliverables, functions, or responsibilities not specifically described in this solicitation are required for Vendor’s proper performance, provision and delivery of the Service and deliverables under a resulting Contract, or are an inherent part of or necessary sub-task included within such 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 herein, 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/or other Deliverables.

4.13 Reserved

5.0 PRODUCT SPECIFICATIONS

5.1 SPECIFICATIONS

VENDOR’S RESPONSE

Kits should include:

| Part # | Specifications | Product/Service Offered Meets Specification |
|------------------|---|--|
| <i>PJ-823</i> | <i>Brother Pocketjet 8 - PJ-823 Printer - B/W - direct thermal - A4/Legal - 300 x 300 dpi - up to 13.5 ppm - USB-C - with 2 years. Premier Limited Warranty</i> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <i>LBX104001</i> | <i>Brother - Brother USB cable - USB (M) to 24 pin USB-C (M) - 4 ft - for RuggedJet RJ-3230BLCP, RJ-3250WBLCP</i> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <i>LB3834</i> | <i>Brother - Brother Power adapter - AC 110 V - for PocketJet PJ-673; PocketJet 6; RuggedJet RJ4030, RJ-4030, RJ-4040; RuggedJet 2</i> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <i>LBX110001</i> | <i>Brother - Brother USB cable - USB (M) to 24 pin USB-C (M) - 10 ft - for PocketJet 8; RuggedJet RJ-3230BL, RJ-3230BLCP, RJ-3250WBL, RJ-3250WBLCP</i> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <i>LB3691</i> | <i>Brother - Brother Car power adapter - for PocketJet 3; 8 PJ-862, PJ-863L</i> | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| <i>LB3662</i> | <i>Brother - 6PK STANDARD ROLL PAPER (1 pack of paper with 6 rolls)</i> | <input type="checkbox"/> YES <input type="checkbox"/> NO |

5.2 Reserved

5.3 DEVIATIONS

The nature of all deviations from the Specifications listed herein shall be clearly described by the Vendor. Otherwise, it will be considered that items offered by the Vendor are in strict compliance with the Specifications provided herein, and the successful Vendor shall be required to supply conforming goods. Deviations shall be explained in detail on an attached sheet. However, no implication is made or intended by the State that any deviation will be acceptable. Do not list objections to the North Carolina General Terms and Conditions in this section.

6.0 CONTRACT ADMINISTRATION

All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for the Vendor’s planning purposes

6.1 CONTRACT MANAGER AND CUSTOMER SERVICE

The Vendor shall be required to designate and make available to the State a contract manager. The contract manager shall be the State’s point of contact for Contract related issues and issues concerning performance, progress review, scheduling, and service.

| | |
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|---|--|
| The Vendor shall be required to designate and make available to the State for customer service. The customer service point of contact shall be the State’s point of contact for customer service-related issues (define roles and responsibilities). Customer Service Point of Contact | |
| Name: | |
| Office Phone #: | |
| Mobile Phone #: | |
| Email: | |

6.2 Reserved

6.3 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost the State. A continuous improvement effort consisting of various ideas to enhance business efficiencies as performance progresses.

6.4 Reserved

6.5 ACCEPTANCE OF WORK

Performance of the work and delivery of Goods shall be conducted and completed at least in accordance with the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Administrator.

The State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or delivery of a deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any specifications, acceptance criteria or otherwise fail to conform to the Contract, the State may exercise any and all rights hereunder, including, for Goods deliverables, such rights provided by the Uniform Commercial Code, as adopted in North Carolina.

6.6 INVOICES

Vendor shall invoice the Purchasing Agency. The standard format for invoicing shall be Single Invoices meaning that the Vendor shall provide the Purchasing Agency with an invoice for each order. Invoices shall include detailed line item information to allow Purchasing Agency to verify pricing at point of receipt matches the correct price from the original date of order. At a minimum, the following fields shall be included on all invoices:

Vendor's Billing Address, Customer Account Number, NC Contract Number, Order Date, Buyer's Order Number, Manufacturer Part Numbers, Vendor Part Numbers, Item Descriptions, Price, Quantity, and Unit of Measure.

INVOICES MAY NOT BE PAID UNTIL AN INSPECTION HAS OCCURRED AND THE GOODS ACCEPTED.

6.7 DISPUTE RESOLUTION

During the performance of the Contract, the Parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall agree to 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. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.8 PRODUCT RECALL

Vendor expressly assumes full responsibility for prompt notification to the Buyer listed on the face of this IFB of any product recall in accordance with the applicable state or federal regulations. The Vendor shall support the State, as necessary, to promptly replace any such products, at no cost to the State.

6.9 CONTRACT CHANGES

Contract changes, if any, over the life of the Contract shall be implemented by contract amendments agreed to in writing by the State and Vendor. Amendments to the contract can only be made through the contract administrator.

ATTACHMENT A: PRICING

FURNISH AND DELIVER:

| Item # | Est QTY. | UOM | DESCRIPTION | UNIT PRICE | EXTENDED PRICE |
|--------|----------|-----|---|------------|----------------|
| 1 | 485 | EA | Brother PocketJet 8 Printer Kits. Kits should include all items in table 5.1. | \$ _____ | \$ _____ |

TOTAL EXTENDED PRICE: \$ _____

****NOTE: Quantities are estimates only. Quantity ordered could be less or more, depending on pricing.**

ATTACHMENT B: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with NC General Statute 143-59.4, the Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of The Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Vendor shall complete items a) and b) below.

a) Will any work under this Contract be performed outside the United States? YES NO

If the Vendor answered “YES” above, Vendor shall complete items 1 and 2 below:

1. List the location(s) outside the United States where work under The Contract will be performed by the Vendor, any sub-Contractors, employees, or other persons performing work under the Contract:

2. Describe the corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other sub-Contractors that will perform work outside the U.S.:

b) Vendor shall identify all U.S. locations at which performance will occur:

Vendor shall provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-Contractors of the Vendor, or other persons performing services under the Contract to a location outside of the United States.

NOTE: All Vendor or sub-Contractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall disclose** to inbound callers the location from which the call or contact center services are being provided.

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ATTACHMENT C: INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this IFB document.
2. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely delivery of bids at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. 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. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.
4. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, 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 any 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.
5. **EXECUTION:** Failure to execute page 1 of the IFB (Execution Page) in the designated space shall render bid non-responsive, and it will be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this IFB, including any negotiated terms; (2) requirements and specifications and administration provisions in Sections 4, 5 and 6 of this IFB; (3) North Carolina General Contract Terms and Conditions in ATTACHMENT D: NORTH CAROLINA JUDICIAL BRANCH GENERAL CONTRACT TERMS AND CONDITIONS; (4) Instructions in ATTACHMENT C: INSTRUCTIONS TO VENDORS; (5) ATTACHMENT A: PRICING, and (6) Vendor's Bid.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature and/or complete specifications covering the products and services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the 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 Vendor remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
9. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.

- 10. SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
- All copies of the bid are printed double sided.
 - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
 - Unless absolutely necessary, all bids and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
- 11. HISTORICALLY UNDERUTILIZED BUSINESSES:** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.
- 12. RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any bid from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the bid of a vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.
- 13. INELIGIBLE VENDORS:** As provided in G.S. 147-86.60 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.
- 14. CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its bid that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
- 15. PROTEST PROCEDURES:** When a Vendor wishes to protest the award of The Contract awarded by the Judicial Branch in an awarded amount of at least \$10,000, a Vendor shall submit a written request addressed to the Procurement Services Officer at: NC Administrative Office of the Courts, Procurement Services Division, PO Box 2448, Raleigh, NC 27602. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters **shall** contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. **Note:** Contract award notices are sent only to the Vendor actually awarded the Contract, and not to every person or firm responding to a solicitation. Proposal status and Award notices are posted on the Internet at <https://www.ips.state.nc.us/ips/>.
- 16. MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read

and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

17. **COMMUNICATIONS BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the Judicial Branch until after the award of the Contract or cancellation of this IFB. All Vendors are forbidden from having any communications with the Judicial Branch, or any other representative of the State concerning the solicitation, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the Judicial Branch any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's bid and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this IFB. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the Judicial Branch authorized by this IFB are permitted.
18. **TABULATIONS:** Bid tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after the bid opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.
19. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services of potential interests to them available on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website: <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.
20. **WITHDRAWAL OF BID:** Bids submitted electronically may be withdrawn at any time prior to the date for opening bids identified on the cover page of this IFB (or such later date included in an Addendum to the IFB). Bids that have been delivered by hand, U.S. Postal Service, courier or other delivery service may be withdrawn **only** in writing and if receipt is acknowledged by the office issuing the IFB prior to the time for opening bids identified on the cover page of this IFB (or such later date included in an Addendum to the RFP). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of bids shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
21. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this IFB and in formal Addenda issued through IPS.
22. **COST FOR BID PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the State of North Carolina will not reimburse any Vendor for any costs incurred or associated with the preparation of bids .
23. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's bid.
24. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment, item, plant or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

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ATTACHMENT D: NORTH CAROLINA JUDICIAL BRANCH GENERAL CONTRACT TERMS & CONDITIONS

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

- a. "Computer" means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the Data.
- b. "Computer Data Base" means a collection of data in a form capable of being processed and operated on a Computer.
- c. "Computer Program" means a series of instructions or statements in a form acceptable to a Computer, processor or controller that is designed to cause the Computer, processor or controller to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and maintenance/diagnostics programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer Programs may be either machine dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.
- d. "Computer Software" or "Software" means Computer Programs and Data Bases. Also, see, "Software" below.
- e. "Computer Software Documentation" means technical data and information comprising Computer listings and printouts, in human readable form that:
 - i. Documents the design or details the Computer Software
 - ii. Explains the capabilities of the Software, or
 - iii. Provides operating instructions for using the Software to obtain desired results from a Computer.
- f. "Custom or Modified Software" means Software that may be modified by the Judicial Branch, or by Vendor at the Judicial Branch's request or direction to perform in accordance with specifications.
- g. "Data" means recorded information, regardless of form or method of recording.
- h. "Deliverable"/"Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the Judicial Branch in Paragraph 2, of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- i. "Hardware" includes Computers, printers, attached equipment or peripherals or other equipment utilized for the Judicial Branch's intended purposes as expressed in the solicitation documents.
- j. "Infrastructure-as-a Service" (IaaS) means the capability provided to the consumer to provision storage, networks, processing, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which may include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed application, and possibly limited control of select networking components (e.g., host firewalls).
- k. "Judicial Branch Data" means any data derived therefrom, metadata, and data collected by Vendor in connection with services provided under the contract. All Judicial Branch Data shall be and remain the sole and exclusive property of the Judicial Branch.
- l. "Products" includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.
- m. "Services" means the obligations and duties undertaken by the Vendor to comply with the specifications and requirements in this solicitation including without limitation cloud services.
- n. "Software" is "Packaged Copyrighted Software Products" (unless otherwise identified) as used in 09 NCAC 06A.0102(13) and means Computer Software that is used regularly for other than governmental purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices, that is considered "shrink-wrap" or "clickwrap", that is or may be generally licensed by "shrink-wrap" or "clickwrap" licenses, or Computer Software that does not constitute Custom or Modified Software and is regularly sold, licensed or leased by the Vendor to governmental entities to meet governmental requirements.
- o. "The Judicial Branch" shall mean the Judicial Branch of North Carolina.
- p. "Support" includes Hardware maintenance and repair (outside any required by any applicable warranty), Software updates maintenance and support Services, consulting, training and other agreed support Services provided by or through Vendor.

- q. "Use", in the context of Computer Software execution and operation in Section 2 and 3 herein below, means storing, loading, installing, executing or displaying Software on a Computer, processor or controller, or making a copy of Software for archival or backup purposes only.

2. SOFTWARE LICENSE:

- a. Vendor grants the Judicial Branch a personal non-transferable and non-exclusive right to use, in object code form only, all Software and related documentation furnished to the Judicial Branch under this Agreement. This license grant shall be limited to use with the Hardware (if any) or Products (if any) for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed in writing. 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 Vendor's standard agreement.
- b. Software provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the installation process for the Software. The sole purpose of any clickwrap agreement shall be to operate as the mechanism for the installation of the Software. All terms and conditions of any clickwrap agreement provided with any Software solicited herein shall have no force and effect and shall be non-binding on the Judicial Branch, its employees, agents, and other authorized users of the Software.
- c. The Judicial Branch agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. The Judicial Branch also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software; or portion thereof.
- d. The Judicial Branch 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, and consistent with the security, records retainage or other policy of the Judicial Branch for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly allowed by the Agreement or subsequent Statements of Work. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.
- e. Use of Software on any Products other than that for which it was obtained, removal of Software from the United States or any other material breach shall automatically terminate this license.
- f. The Judicial Branch's license includes the right to upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's licensees without a separate maintenance or support agreement. Vendor's right to a new license for new version releases of the Software shall not be abridged by the foregoing.
- g. Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Vendor or subsequently upgraded by Vendor.
- h. The Judicial Branch's license neither transfers, vests nor infers any title or other ownership right in any intellectual property right of Vendor, or any third party. The Judicial Branch's license neither transfers, vests nor infers any title or other ownership right in any source code associated with the Software unless otherwise agreed by the parties, and will not be construed as a sale of any ownership rights in the Software, unless Custom or Modified Software is being developed as a Work For Hire in response to the Judicial Branch's solicitation documents.
- i. The Judicial Branch may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the Judicial Branch. The Judicial Branch may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

3. USE OF SOFTWARE AND INFORMATION:

- a. The Judicial Branch agrees that any Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors and furnished to the Judicial Branch under this Agreement shall be and remain the property of the Vendor, or other party, respectively.
- b. All Software and information furnished to the Judicial Branch under this Agreement
 - i. Shall be used by the Judicial Branch only to install, operate or maintain the Product for which they were originally furnished;
 - ii. Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and

- iii. Shall, together with any copies except copies for the Judicial Branch's archival purposes containing the Judicial Branch's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and
 - c. All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. §132-1, *et seq.*
 - d. Transfer of Software or program license:
 - i. Software may be transferred within the United States to any location for the Judicial Branch's normal operations upon written notice to the Vendor without additional cost(s). Transfers for temporary uses arising as a result of a disaster or disaster recovery test may be effected without notice to the Vendor; provided, however, that the Judicial Branch will employ its best efforts to advise the Vendor of any disaster related transfer requiring more than ten (10) business days. All other transfers may be permitted only with Vendor's prior written consent, and such consent shall not be unreasonably withheld. Transfers requiring Vendor's consent may be subject to an additional license fee.
 - ii. The rights granted herein are restricted for use solely by the Judicial Branch. The Judicial Branch may not authorize or allow the use or marketing of the Software/Products by or to a third party, and may not assign or transfer the Software or Products to a third party without the prior written consent of Vendor. Any assignee or transferee must execute a separate agreement with Vendor. Any such assignment or transfer shall terminate the obligations of the Judicial Branch under this Agreement
 - e. Custom or Modified Software, if solicited by the Judicial Branch, is being developed or modified exclusively for the Judicial Branch, and such Custom or Modified Software, all related data, all copyrights in the Custom or Modified Software and derivative works belong exclusively to the Judicial Branch and shall be transferred to the Judicial Branch upon creation.
- 4. **WARRANTY:** At a minimum, Vendor shall warrant that:
 - a. Vendor has acquired any and all rights, grants, assignments, conveyances, licenses, permissions, and authorizations necessary for Vendor to provide the Service to the Judicial Branch;
 - b. The Service shall perform materially as described in the contract;
 - c. Vendor shall provide to the Judicial Branch commercially reasonable continuous and uninterrupted access to the Service, and shall not interfere with the Judicial Branch's access to and use of the Service during the term of the contract;
 - d. The Service is compatible with and shall operate successfully with any environment (including web browser and operating system) specified by Vendor in its documentation;
 - e. The Service shall be performed in accordance with industry standards, provided however that, if a conflicting specific standard is provided in this contract or the documentation provided by Vendor, such specific standard shall prevail;
 - f. Vendor shall maintain adequate and qualified staff and, if approved by the Judicial Branch, subcontractors to perform its obligations under this contract and shall require criminal record and background checks on its staff, subcontractors, and subcontractors' staff; and
 - g. Vendor and its employees, subcontractors, partners, and third-party providers have taken all necessary and reasonable measures to ensure that all software provided under this contract shall be free of Trojan horses, back doors, known security vulnerabilities, malicious code, degradation, or breach of privacy or security.
- 5. **INTELLECTUAL PROPERTY INDEMNITY:**
 - a. The Vendor, at its own expense, shall defend any action brought against the Judicial Branch to the extent that such action is based upon a claim that the Software or Products supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the Judicial Branch 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 Judicial Branch 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 Judicial Branch shall have the option to participate in such action at its own expense.
 - b. If any modifications to the Software applied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the Judicial Branch the right to continue using the Software, or to replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to take back any affected Software modifications, and refund any sums the Judicial Branch has paid

Vendor for Services and the Judicial Branch shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge.

- c. Vendor will not be required to defend or indemnify the Judicial Branch if any claim by a third party against the Judicial Branch for infringement or misappropriation results from the Judicial Branch's alteration of any Vendor-branded Software, or from the continued use of the good(s) or Services after receiving notice they infringe on an intellectual property right of a third party.

6. SUPPORT AND MAINTENANCE:

- a. Except as specifically provided herein or in an approved attachment hereto, and unless otherwise consistently provided by Vendor's standard agreement for support, and except for the provisions in the Vendor License Agreements paragraph above, an order for support will constitute the Judicial Branch's acceptance of the terms of the Vendor's standard agreement for Support in effect on the date of the order, subject to the order of precedence and the limitations in the Vendor's Standard Agreement(s) paragraph (above) as set forth in the Solicitation. Unless otherwise indicated herein, Support and Maintenance acquired herein will begin at the end of any applicable warranty period.
- b. To be eligible for support, Products or Software must be in good operating condition and at then current specified revision levels, having all enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Product(s) or Software do not conform to the specified revision levels.

7. SOFTWARE RETIREMENT:

- a. Unless otherwise provided in the Vendor's standard agreement, Vendor retains the right to retire a version of the Software and stop providing Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the Judicial Branch of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Software provided to the Judicial Branch and if the Judicial Branch has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the Judicial Branch shall be entitled to receive, at no additional charge, a newer version of the Software that supports substantially the same functionality as the licensed version of the Software. Newer versions of the Software containing substantially increased functionality will be made available to the Judicial Branch for an additional fee.
- b. Vendor may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.
- c. Relocation of Software is the Judicial Branch's responsibility and may result in additional support charges and modified service response times. Software moved to another Judicial Branch facility or Judicial Branch may continue to be serviced subject to availability of a Vendor authorized support provider.
- d. Vendor is not required to provide support for non-qualified Software, nor Software not supplied under this Agreement. "Non-Qualified Software" is Software not supplied or approved by Vendor, and Software for which the Judicial Branch does not allow Vendor to incorporate modifications. The Judicial Branch is responsible for removing non-qualified Software to allow Vendor to perform Support Services.
- e. Support does not cover any damage or failure cause by:
- i. Media and supplies or use of items not designed or designated for use with Software; or
 - ii. Site conditions that do not conform to Vendor's previously established site specifications; or
 - iii. Neglect, improper use, fire or water damage, electrical disturbance, transportation by the Judicial Branch, work or modification by persons other than Vendor personnel, or other authorized parties.
- f. The Judicial Branch is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

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

- 9. TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §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 Judicial Branch within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the Judicial Branch. The Judicial Branch will reimburse

travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

10. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Judicial Branch for the purpose of obtaining any contract or award issued by the Judicial Branch. Subsequent discovery by the Judicial Branch of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 09 NCAC 06B.1207, or other provision of law.
11. **AVAILABILITY OF FUNDS:** Any and all payments to the Offeror shall be dependent upon and subject to the availability of funds to the Judicial Branch for the purpose set forth in this contract.
12. **ADVERTISING:** Vendor agrees not to use the existence of The Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
13. **GENERAL INDEMNITY:** The Offeror shall hold and save the Judicial Branch, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses 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, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Offeror in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the Offeror provided that the Offeror is notified in writing within 30 days that the Judicial Branch has knowledge of such claims. The Offeror represents and warrants that it shall make no claim of any kind or nature against the Judicial Branch's agents who are involved in the delivery or processing of Offeror goods or Services to the Judicial Branch. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
14. **PAYMENT TERMS:** Payment terms are Net not later than thirty (30) days after receipt of correct invoice or acceptances of goods, whichever is later. The Judicial Branch is responsible for all payments to the Offeror under the contract.
15. **ACCEPTANCE CRITERIA:** Acceptance testing is required for all Vendor supplied software and Services unless provided otherwise in the solicitation documents or a Statement of Work. The Judicial Branch may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the Judicial Branch'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 Judicial Branch shall have the obligation to notify Vendor, in writing and within ten (10) days following installation of any software deliverable or commencement of Services 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 Judicial Branch shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software and Services.
16. **CONFIDENTIALITY:** To the extent permitted by applicable statutes and rules, the Judicial Branch will maintain confidential trade secrets that the Offeror does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Offeror, with specific trade secret information enclosed in boxes or similar indication. **Cost information is not confidential.** Regardless of what an Offeror may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Offeror that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Offerors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.
17. **RECORDS AND AUDITS:**
 - a. Vendor shall maintain accurate, reasonably detailed records pertaining to:
 - i. The substantiation of claims for payment under this contract;
 - ii. Service Levels, including availability and downtime of the Service; and

- iii. All other books, records, and accounts of the Vendor insofar as they relate to transactions with the Judicial Branch.
- b. Audit of Records:
 - i. The Judicial Branch, 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 the Judicial Branch pursuant to the performance of this contract or to costs charged to this contract.
 - ii. The Judicial Branch or its designated agent shall have the right, upon reasonable notice to Vendor, to audit, review and copy, or contract with a third party to audit the following records:
 - 1. Records collected by Vendor pursuant to Section 16, Item 1 above;
 - 2. The performance records of Vendor including daily and weekly service quality statistics; and
 - 3. Other Vendor records that may reasonably relate to the Judicial Branch's use of the Service.
 - iii. Such records shall be made available at no cost in a format that can be downloaded or otherwise duplicated.
 - iv. Additional audit or reporting requirements may be required by the Judicial Branch if, in the Judicial Branch's opinion, such requirement is imposed by Federal or State law or regulation.
- c. Audit of Infrastructure, Systems, Hosting, Controls, and Security
 - i. The Vendor shall provide SSAE-16 SOC 2, Type II reports to the Judicial Branch annually or upon request. The Vendor shall provide corrective action plans or actions taken to resolve any exceptions, material weaknesses, and/or control deficiencies identified in the SOC report.
 - ii. The Judicial Branch shall have the right to request reasonable adjustments at the Vendor's expense where those requests are based upon audit findings pertaining to the system or hosting.
 - iii. The Judicial Branch shall have the right to initiate periodic vulnerability scans of the Vendor's solution. Additionally, the Judicial Branch has the right to request third-party audits and/or certifications related to infrastructure and security, including penetration testing and vulnerability assessments. Any reports produced from these audits and certifications shall be provided to the Judicial Branch for review.
 - iv. The Judicial Branch (or a third-party provider selected by the Judicial Branch) has a right to perform an onsite inspection of the Vendor's infrastructure and security practices.
 - v. The Judicial Branch (or a third-party provider selected by the Judicial Branch) shall have the right to review the infrastructure and security specifications in written format.
 - vi. Provide to the Judicial Branch copies of any and all audit reports relating to any of Vendor's cloud offerings for the preceding five (5) year period;
 - vii. Provide to the Judicial Branch copies of any and all certifications and accreditations in connection with the Vendor's cloud offerings along with any revocations, terminations, or restrictions thereof;
 - viii. Provide to the Judicial Branch copies of Vendor's policies with respect to criminal record and background checks on its employees and contractors;
 - ix. Provide to the Judicial Branch information as to whether Vendor has experienced any security breaches or loss of data in the preceding five (5) years and, if so, copies of documentation associated therewith;
 - x. Provide to the Judicial Branch copies of Voluntary Product Accessibility Templates or other results of accessibility testing;

18. ASSIGNMENT: Vendor shall not assign, outsource, or otherwise transfer any interests, rights, or obligations under this contract, notwithstanding whether voluntarily, by operation of law, change of control, or merger, without prior express written consent of the Judicial Branch. In the event that the Judicial

Branch gives express written consent, this contract shall be binding on Vendor's successor and continuity of the Service shall not be disrupted.

19. JUDICIAL BRANCH DATA:

- a. The Judicial Branch retains full right and title to data provided by the Judicial Branch in addition to any data derived therefrom, metadata, and data collected by Vendor in connection with Services provided under the contract (collectively, "Judicial Branch Data"). All Judicial Branch Data shall be and remain the sole and exclusive property of the Judicial Branch.
- b. The Judicial Branch shall be able to access and retrieve its data stored in the cloud at its sole discretion. The Judicial Branch shall have the right to access all data, regardless of who created the content and for what purpose, in order to ensure, for example, that individual employees cannot prevent access to data that would have traditionally resided on the Judicial Branch's servers.
- c. Vendor shall not collect, access, or use user-specific Judicial Branch Data except as strictly necessary to provide Services to the Judicial Branch. Vendor shall be provided a license to Judicial Branch Data hereunder for the sole and exclusive purpose of performing its obligations under the resulting Agreement. Vendor shall not use any information collected in connection with the contract, including Judicial Branch Data, for any purpose other than fulfilling its obligations under the contract.
- d. Vendor shall treat Judicial Branch Data as confidential information. No information regarding the Judicial Branch's use of Services may be disclosed, provided, rented, or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall extend beyond the term of the contract in perpetuity.
- e. At no time shall any data or processes which either belong to the Judicial Branch, or are intended for the Judicial Branch's exclusive use, be copied, disclosed, or retained by Vendor for subsequent use in any transaction that does not include the Judicial Branch.
- f. Judicial Branch Data and any copies thereof shall remain at all times within the continental United States. Vendor shall disclose to the Judicial Branch the identity of any third-party host of Judicial Branch Data prior to the signing of this contract.
- g. The Judicial Branch may export Judicial Branch Data at any time without costs or penalties during the term of the contract or for up to three (3) months after the term (so long as Judicial Branch Data remains in the Vendor's possession). Vendor shall assist the Judicial Branch in exporting and extracting Judicial Branch Data, in a format usable without the use of Services and as agreed to by the Judicial Branch, at no additional cost.
- h. At any time upon the Judicial Branch's request, Vendor shall within five (5) business days at its own expense destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of specified Judicial Branch Data, in whole or in part, and all copies thereof. Vendor shall then tender a certificate of destruction to the Judicial Branch in accordance with NIST Special Publication 800-88. The Judicial Branch or its designated agent may conduct an audit to ensure the data has been destroyed.
- i. Upon termination or expiration of the contract, Vendor shall at its own expense destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of all Judicial Branch Data and all copies thereof within five (5) business days of the earlier of: (a) three (3) months after the termination or expiration of the contract or (b) the Judicial Branch's written confirmation that it has exported and recovered all Judicial Branch Data. Vendor shall then tender a certificate of destruction to the Judicial Branch in accordance with NIST Special Publication 800-88. The Judicial Branch or its designated agent may conduct an audit to ensure the data has been destroyed.
- j. To the extent that any applicable law prevents Vendor from destroying or erasing Judicial Branch Data as described in the preceding subsections, Vendor shall retain, in its then current state, all such Judicial Branch Data then within its right of control or possession in accordance with the confidentiality, security and other requirements of this contract, and perform its obligations with respect to destruction and erasure and give notice thereof to the Judicial Branch as soon as such law no longer prevents it from doing so.

- 20. NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 21. 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.
- 22. 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 Judicial Branch and Vendor.
- 23. DISASTER RECOVERY AND BUSINESS CONTINUITY:**
- a. Vendor agrees to maintain and follow a disaster recovery plan designed to maintain the Judicial Branch's access to the Service and to prevent the unintended destruction or loss of Judicial Branch Data. The disaster recovery plan shall provide for and be followed by Vendor such that in no event shall the Service be unavailable to the Judicial Branch for a period in excess of twenty-four (24) hours.
 - b. Vendor shall review and test the disaster recovery plan regularly, at minimum twice annually.
 - c. Vendor shall back up Judicial Branch Data no less than twice daily in an off-site "hardened" facility located within the continental United States.
 - d. In the event of Service failure, Vendor shall be able to restore the Service, including Judicial Branch Data, with loss of no more than twelve (12) hours of Judicial Branch Data and transactions prior to failure.
 - e. In the event of Service failure, Vendor shall immediately (and in no event more than two (2) hours after discovery) notify the Judicial Branch.
 - f. Vendor shall reimburse the Judicial Branch for service interruptions/cessations as well as data losses or breaches.
- 24. INSURANCE COVERAGE:** Unless otherwise agreed in an Addendum, Vendor shall, during the term of this Agreement, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Agreement's termination. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:
- 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 \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.
 - b. Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.
 - c. Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
 - d. CLOUD MINIMUM INSURANCE COVERAGE - Level of Risk Data Breach and Privacy/Cyber Liability including Technology Errors and Omissions Minimum Insurance Coverage Low Risk Data \$2,000,000 Moderate Risk Data \$5,000,000 High Risk Data \$10,000,000 (3) Vendor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements. (4) Professional Liability. As applicable, Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to this Agreement. c. Vendor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Judicial Branch by the Vendor.

d. Prior to commencement of performance, Vendor shall provide to the State a written endorsement to the Vendor's general liability insurance policy or other documentary evidence acceptable to the State that (1) names the Judicial Branch as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the Judicial Branch has been given at least thirty (30) days prior written notice, and (3) provides that the Vendor's liability insurance policy shall be primary, with any liability insurance of the Judicial Branch as secondary and noncontributory. Unless otherwise agreed, the Judicial Branch's rights and Vendor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of the Judicial Branch authorizing it, the Vendor shall provide to the Judicial Branch who requests it the same information described in this subsection. e. Vendor shall furnish on request, copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Agreement or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology including policy period, policy number, limits of liability, exclusions and endorsements. Failure to provide evidence of coverage may, at sole option of the Judicial Branch result in this Agreement's termination f. Coverage and limits shall not limit Vendor's liability and obligations under this Agreement.

25. TAXES: The Judicial Branch 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. The Judicial Branch may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable state or local sales taxes shall be invoiced as a separate item.

26. 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. 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.

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

- a. If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the Judicial Branch shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures. Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the Judicial Branch shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

- 28. 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, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other restrictions on gatherings, or other catastrophic natural event or act of God.
- 29. 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.
- 30. 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 Judicial Branch may terminate this Contract, in whole or in part, pursuant to Paragraph 27, (Default) 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 fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the Judicial Branch may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby. The rights and remedies of the Judicial Branch 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 Judicial Branch for damages sustained by the Judicial Branch arising from Vendor's breach of this Contract; and the Judicial Branch 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 Judicial Branch may terminate Services and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the Judicial Branch, the Judicial Branch will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
- 31. DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Judicial Branch 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.
- 32. SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 33. FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Judicial Branch 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.

34. TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Contract.

35. 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 Judicial Branch, 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 Judicial Branch a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the Judicial Branch'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 Judicial Branch to Vendor. The Judicial Branch 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 Judicial Branch.
- c. The Vendor, at its own expense, shall defend any action brought against the Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch 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 Judicial Branch shall permit the Vendor, at its option and expense, either to procure for the Judicial Branch 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 Judicial Branch shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the Judicial Branch has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the Judicial Branch in procuring substitute Deliverables. If, in the sole opinion of the Judicial Branch, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the Judicial Branch 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 Judicial Branch has paid Vendor less any reasonable amount for use or damage.
- e. Vendor will not be required to defend or indemnify the Judicial Branch if any claim by a third party against the Judicial Branch for infringement or misappropriation (i) results from the Judicial Branch'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.

36. TRANSITION AND EXIT ASSISTANCE: Upon or prior to expiration, termination, or cancellation of the contract, Vendor shall work with the Judicial Branch and the new contractor (if any) to ensure an orderly transition of services and responsibilities under the contract and Vendor shall accept the Judicial Branch's

direction to ensure the continuity of the services required by the Judicial Branch. Specifically Vendor agrees to the following:

- a. Vendor shall assist the Judicial Branch in exporting and extracting Judicial Branch Data, in a format usable without the use of the Service and as agreed to by the Judicial Branch, at no additional cost.
- b. In the event that Vendor's successor contractor experiences delays in implementation of successor's system, Vendor shall extend the contract on a month-to-month basis as required by the Judicial Branch.
- c. Upon completion of the transition, Vendor agrees to destroy all Judicial Branch Data and tender a certificate of destruction to the Judicial Branch in accordance with NIST Special Publication 800-88.
- d. Any transition services requested by the Judicial Branch involving additional knowledge transfer and support may be subject to a separate transition statement of work (SOW) on a time and materials basis either for a fixed fee or at rates to be mutually agreed upon by the parties.
- e. If the Judicial Branch determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Vendor and the Judicial Branch shall jointly create a written Transition Plan Document identifying transition services to be provided and including an SOW if applicable. Both parties shall comply with the Transition Plan Document both prior to and after termination as needed.

37. 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, offers received, evaluation of offers 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.
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