

<p align="center">STATE OF NORTH CAROLINA</p> <p>Department of Information Technology (DIT)</p>	<p>INVITATION FOR BIDS NO. 41-501598</p>
	<p>Offers will be publicly opened: June 4, 2026, at 2:00 PM ET</p>
	<p>Issue Date: May 14, 2026</p>
<p>Refer <u>ALL</u> inquiries regarding this IFB to:</p> <p>Natalie Parraghi Natalie.parraghi@nc.gov</p>	<p>Commodity Number: 811620</p>
	<p>Description: Cloud-based software as a service</p>
	<p>Using Agency: NC DIT</p>
<p>See page 2 for mailing instructions.</p>	<p>Requisition No.:</p>

OFFER AND ACCEPTANCE

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

EXECUTION

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

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

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

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

ACCEPTANCE OF OFFER

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

<p><u>FOR STATE USE ONLY</u></p> <p>Offer accepted and contract awarded _____, as indicated on attached certification,</p> <p>by _____ (Authorized representative of NC DIT).</p>
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1.0 INTENT, USE, DURATION AND SCOPE

The purpose of this Solicitation is to obtain pricing for and procure BeyondTrust Bomgar Remote Cloud Support for NC Department of Information Technology (DIT). With this purchase, NC DIT will be migrating the current 90 RS Perpetual Licenses and 1 VM to 90 RS CLOUD licenses. Goods and Services will be provided in accordance to the terms and conditions of this Solicitation.

2.0 GENERAL INFORMATION

2.1 VENDOR QUESTIONS

All inquiries regarding the solicitation specifications or requirements are to be addressed to the contact person listed on Page One of this solicitation. Vendor contact regarding this Solicitation with anyone other than the contact person listed on Page One of this Solicitation may be grounds for rejection of said Vendor’s offer.

Written questions concerning this Solicitation will be received until May 26, 2026, at 2:00 PM Eastern Time. They must be submitted to the contact person listed on Page One of this Solicitation. Please enter “Questions IFB 41-501598” as the subject for the message and submit via the Ariba Sourcing Tool Message Board. Questions should be submitted in the following format:

REFERENCE	VENDOR QUESTION
IFB Section, Page Number	

2.2 ADDENDUM TO SOLICITATION

The State may issue addenda if Vendor questions are permitted as described below, or if additional terms, specifications, or other changes are necessary for this procurement. All addenda shall become an Addendum to this solicitation.

2.3 OFFER SUBMITTAL

Due Date: June 4, 2026
Time: 2:00 PM Eastern Time

IMPORTANT NOTE: It is the Vendor’s sole responsibility to upload their offer to the Ariba Sourcing Module by the specified time and date of opening. Vendor shall bear the risk for late electronic submission due to unintended or unanticipated delay, including but not limited to internet issues, network issues, local power outages, or application issues. Vendor must include all the pages of this solicitation in their response.

Sealed offers, subject to the conditions made a part hereof, will be received until 2:00pm Eastern Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted via the Ariba Sourcing Module with the Execution page signed and dated by an official authorized to bind the Vendor’s firm. Failure to return a signed offer shall result in disqualification.

Attempts to submit a proposal via facsimile (FAX) machine, telephone, email, email attachments, or in any hardcopy format in response to this Bid SHALL NOT be accepted and will automatically be deemed Non-Responsive.

- a) Submit **one (1) signed, original electronic offer** via Ariba Sourcing Tool.

- b) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows:
Vendor Name-your file name.
- c) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
- d) If the vendor's proposal contains any confidential information (as defined in Section 7.0, Paragraph #17), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

Questions or issues related to using the Ariba Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

2.3.1 PUBLIC BID OPENING

The public bid opening for this IFB will be held virtually via Microsoft Teams at the time and date specified in section 2.3 above. Vendors can attend the bid opening at the link below. Vendor participation in the bid opening is optional.

Microsoft Teams meeting

Join: <https://teams.microsoft.com/meet/236423973529391?p=qhKgDcgFw2lc5NxcP0>

Meeting ID: 236 423 973 529 391

Passcode: g32m6C98

[Need help?](#) | [System reference](#)

Dial in by phone

[+1 984-204-1487,,303701045#](tel:+19842041487303701045) United States, Raleigh

[Find a local number](#)

Phone conference ID: 303 701 045#

Join on a video conferencing device

Tenant key: nccgov@m.webex.com

Video ID: 119 596 267 8

[More info](#)

2.4 BASIS FOR REJECTION

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

2.5 LATE OFFERS

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

2.6 NON-RESPONSIVE OFFERS

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

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

2.7 NOTICE TO VENDOR(S)

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

2.8 E-PROCUREMENT SOLICITATION

This is an E-Procurement solicitation. See Paragraph #33 of the Section 7.0 Department of Information Technology Terms and Conditions.

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

2.9 DISTRIBUTORS AND RESELLERS

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

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

2.10 POSSESSION AND REVIEW

During the evaluation period and prior to award, possession of the bids and accompanying information is limited to personnel of the issuing agency, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence

the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

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

2.11 BEST AND FINAL OFFERS (BAFO)

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

2.12 AWARD

It is the general intent to award this contract to one (1) Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.

2.13 POINTS OF CONTACT

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

For Vendor completion:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
Name of Vendor:	Name of Vendor:
Street:	Street:
City, State, Zip:	City, State, Zip:
Attn:	Attn:
Email:	Email:
State Contractual Point of Contact	State Technical Point of Contact
Name of State Agency:	Name of State Agency:
Street:	Street:
City, State, Zip:	City, State, Zip:
Attn:	Attn:
Email:	Email:

3.0 SPECIFICATIONS

3.1 VENDOR STANDARD AGREEMENT(S)

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

The Addendum To the BeyondTrust Software License and Subscription Agreement v. 4.8.1.24 Exhibit B by and between BeyondTrust Corporation and the North Carolina Department of Information Technology, executed on December 14, 2024, is applicable to this IFB Number 41-501598 and is hereby incorporated by reference herein and attached as Attachment A.

3.2 VENDOR UTILIZATION OF WORKERS OUTSIDE U.S. – DISCLOSURE STATEMENT

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

Pursuant to N.C.G.S. §143B-1361(b), the Vendor must complete and return this Disclosure Statement with its solicitation response. The Vendor may attach additional pages to its response if needed. The State of North Carolina will evaluate Disclosure Statement for additional risks, costs, and other factors associated with its service prior to making an award for any such Vendor's offer. The Vendor must provide the following information in its bid response:

Vendor to complete a.-e. in their offer:

- a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

Vendor to enter text here to answer this disclosure question:

- b. The corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other subcontractors.

Vendor to enter text here to answer this disclosure question:

- c. Vendor agrees to provide notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States in the event such relocation occurs during the contract term.

Does Vendor agree to provide notice as defined above? YES NO

- d. Vendor agrees that any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Does Vendor agree to provide disclosure as defined above? YES NO

- e. Will any work under this contract be performed outside the United States? YES NO

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

3.3 **E-VERIFY**

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

3.4 **BRAND SPECIFIC PRODUCT**

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

3.5 **SECURITY SPECIFICATIONS**

3.5.1 **SOLUTIONS HOSTED ON STATE INFRASTRUCTURE – RESERVED**

3.5.2 **SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE**

Agency has selected:

The Agency (named on page one (1)) has designated this solicitation to receive and securely manage data that is classified as:

Agency has selected:

Restricted - Restricted data represents the highest risk to the State, State Agencies, and constituents if it is disclosed or compromised. This information is likely to be regulated by State or Federal law, and access to it is restricted to a limited audience (e.g., State and Federal Tax Information [FTI], Payment Card data, Protected Health Information [PHI], Criminal Justice Information [CJI], Social Security Administration provided information, etc.)

Confidential - Includes information that is limited to a small audience with a need-to-know or legitimate business case (e.g., State employee personnel records, trade secrets, student records, sensitive public security information, etc.). If exposed to unauthorized parties, data from this category will cause high impact consequences such as regulatory fines, inability to recruit talent, loss of confidence, and/or damage to vendor relationships. This is not a complete list and is subject to legislative changes.

Internal - This is information typically used within the agency and not for public sharing. Most documents are classified as Internal within the organization, and most State employees would have access. This type of data, if exposed to unauthorized parties, would have a very limited impact on an agency's reputation, compliance requirements or ability to achieve strategic goals. Internally classified data does not contain direct identifiers. Often, the effects of the loss of data can be recognized in very subtle ways and may not lead to clear negative consequences causing confusion due to lack of context or minor reputational harm.

Public - Data that is open to public inspection according to state and federal law, or readily available through public sources.

Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

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

This requirement additionally applies to all Vendor-provided, agency-managed Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions which will handle data classified as Internal, Confidential, or Restricted.

For Vendor Completion:

- (a) To comply with the State's Security Standards and Policies, cloud products are required to comply with applicable FedRAMP or GovRAMP security requirements, including but not limited to, continuous monitoring, incident response, and data classification as outlined in GovRAMP documentation.
- (b) To streamline and standardize this requirement the State has adopted GovRAMP which is a Risk and Authorization Management Program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. GovRAMP's security verification model is based on NIST 800-53 Rev. 5 (or current).
- (c) Statewide Information Security Manual or "SISM" means the North Carolina Statewide Information Security Manual, including all applicable policies, standards, and supplements thereto, including the Third-Party Cloud Service Risk Authorization & Management Policy. The required GovRAMP verified status will depend on the sensitivity of the data and processes supported by the solution as defined in the Statewide Data Classification and Handling Policy.
- (d) For purposes of this solicitation, in accordance with the North Carolina Department of Information Technology Statewide Information Security Manual, a GovRAMP verified status of Ready is required. At offer submission, if the protected system does not currently hold a validated GovRAMP status, the Vendor will be required to provide their GovRAMP Security Snapshot Score and upon request, the complete Snapshot Matrix. If awarded the contract, Vendor shall have an interim period from the effective date of the contract to achieve the verified GovRAMP status outlined above. The interim time periods for each data classification that requires a verified status are further described below. The Vendor shall provision access to the State to their continuous monitoring packages at an elevated access level within fourteen (14) days of contract award, and seven (7) days of any subsequent GovRAMP status changes. If a non-disclosure agreement (NDA) is required by the Vendor as a condition of providing elevated access through the GovRAMP platform, the Vendor must include a copy of such NDA with its response for review. Any such NDA shall be subject to review and must be consistent with applicable law, including but not limited to, N.C.G.S.

Chapter 132, and will only be considered for execution, if necessary, at the time of contract award. The State reserves the right to reject or require modification of such NDA.

- a. Public - For third-party cloud services where the highest category of information to be processed is Public data, the Vendor must submit an updated score for the product annually throughout the contract duration that meets or exceeds the original score at time of contract award. Products with GovRAMP Core, Ready, Authorized or Provisionally Authorized statuses or FedRAMP Rev. 5 authorization also satisfy the security requirement.
- b. Internal - For third-party cloud services where the highest category of information to be processed is Internal data, the Vendor must either achieve the status of GovRAMP Core prior to award, or agree to achieve GovRAMP Core status within an interim time period, no later than twelve (12) months from the effective date of the contract.
- c. Confidential - For third-party cloud services where the highest category of information to be processed is Confidential data, the Vendor must either achieve a status of GovRAMP Ready, or agree to achieve GovRAMP Ready status no later than fifteen (15) months from the effective date of the contract.
- d. Restricted - For third-party cloud services where the highest category of information to be processed is Restricted Data, the Vendor must either achieve a status of GovRAMP Authorized, or agree to achieve GovRAMP Authorized status no later than twenty-one (21) months from the effective date of the contract.

Upon contract award, Vendor's who submitted a GovRAMP Security Snapshot Score will be required to enroll in the GovRAMP Progressing Snapshot program prior to any data being transferred, stored or processed. The Vendor must complete their first Progressing Snapshot within ninety (90) days of award, with the expectation that progress will be made on a quarterly basis and access to progress reports must be provisioned to the State. Products must maintain their participation in the Progressing Snapshot program and continued access to progress reports must be provisioned to the State until such time that they have achieved the minimum verified status outlined above. The State will review the Vendor's progress on a quarterly basis and, in its sole discretion, may determine that the Vendor is not making satisfactory progress in the Progressing Snapshot program. Satisfactory progress shall be a material requirement of the contract.

- (e) If the Vendor holds a FedRAMP Rev. 5 authorization at time of award, this authorization can be accepted in lieu of a GovRAMP authorization. Authorizations obtained via the FedRAMP 20x Pilot Program will not be permitted.

If the Vendor's cloud product currently holds a FedRAMP Authorized designation, at the time of award, the State may require the Vendor to initiate and actively pursue, within thirty (30) days of award, the GovRAMP Fast Track Process, to achieve a GovRAMP Provisionally Authorized or Authorized status in order to satisfy Statewide continuous monitoring requirements.

- (f) Additional Security Documentation. Prior to contract award, the State may in its discretion require the Vendor to provide additional security documentation, including but not limited to, vulnerability assessment reports and penetration test reports. The awarded Vendor shall provide additional security documentation upon request by the State during the term of the contract.

Refer to: <https://it.nc.gov/documents/statewide-glossary-information-technology-terms> for descriptions of the Application Criticality categories.

Refer to: <http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.199.pdf> for descriptions of NIST system confidentiality, integrity, and availability categories.

3.6 ENTERPRISE ARCHITECTURE SPECIFICATIONS

3.6.1 ARCHITECTURE DIAGRAMS – RESERVED

3.6.2 SOLUTION ROADMAP – RESERVED

3.6.3 IDENTITY AND ACCESS MANAGEMENT – RESERVED

3.6.4 INTEGRATION APPROACH – RESERVED

3.6.5 DISASTER RECOVERY AND BUSINESS CONTINUITY – RESERVED

3.6.6 DATA MIGRATION – RESERVED

3.6.7 APPLICATION MANAGEMENT – RESERVED

3.6.8 ACCESSIBILITY

Describe how the proposed solution complies with industry accessibility standards.

Provide product documentation that demonstrates how the proposed solution is digitally accessible or if not fully accessible, provide the roadmap with timeline for remediation.

Standards include:

- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1: <https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®): <https://www.itic.org/policy/accessibility/vpat>
- <https://it.nc.gov/documents/digital-accessibility-usability-standard/open>

3.7 SPECIFICATIONS – RESERVED

3.8 DELIVERY

Successful Vendor will complete supply all items/services for their respective coverage term(s) as identified in the table within Section 4.0 FURNISH AND DELIVER.

If circumstances beyond the control of the contractor result in a late delivery [or installation], it is the responsibility and obligation of the contractor to notify the Purchasing Agent listed on the purchase order, in writing, immediately upon determining delay of shipment. The written notification should indicate the anticipated delivery date.

3.9 CONTRACT TERM

A contract awarded pursuant to this IFB shall have an effective date of October 1, 2026. The term shall be one (1) year and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for two (2) additional one (1) year periods at its sole discretion.

4.0 FURNISH AND DELIVER

For Vendor Completion:

YEAR 1:

ITEM #	QTY	UNIT	MANUFACTURER AND PART #	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	each	BeyondTrust Corporation PSPKG-RS-PSRE-T2	Remote Support - Remote Only - Tier 2 Cloud Implementation Package		
2	90	each	BeyondTrust Corporation RSU-CLOUD	Remote Support Concurrent User Cloud, Annual Term Dates: 10/01/2026 – 09/30/2027		

Total Year 1 Offer Cost _____

OPTIONAL COSTS: MAY OR MAY NOT BE PURCHASED

YEAR 2:

ITEM #	QTY	UNIT	MANUFACTURER AND PART #	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	each	BeyondTrust Corporation PSPKG-RS-PSRE-T2	Remote Support - Remote Only - Tier 2 Cloud Implementation Package		
2	90	each	BeyondTrust Corporation RSU-CLOUD	Remote Support Concurrent User Cloud, Annual Term Dates: 10/01/2027 – 09/30/2028		

Total Year 2 Offer Cost _____

YEAR 3:

ITEM #	QTY	UNIT	MANUFACTURER AND PART #	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	each	BeyondTrust Corporation PSPKG-RS-PSRE-T2	Remote Support - Remote Only - Tier 2 Cloud Implementation Package		
2	90	each	BeyondTrust Corporation RSU-CLOUD	Remote Support Concurrent User Cloud, Annual Term Dates: 10/01/2028 – 09/30/2029		

Total Year 3 Offer Cost _____

Grand Total Not-to-Exceed (NTE) Offer Cost Years 1-3: _____

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES

For Vendor completion:

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

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

Is Vendor a Historically Underutilized Business? YES NO If “YES”, specify classification. _____

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
 - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
 - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **THE STATE:** Is the state of North Carolina and its agencies.
 - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this IFB can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately

by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.

- 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000 they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. IFB status and Award notices are posted on the Internet at <https://evp.nc.gov>. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**
- 9) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM** The electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the eVP at the following web site: <https://evp.nc.gov>.
- 10) **DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

1) DEFINITIONS:

- a) "Data" includes means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State as included in Paragraph 7) c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- c) "Services" shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
- d) "State" shall mean the State of North Carolina, the Department of Information Technology as an agency, or the agency identified in this solicitation as the Purchasing Agency and Award Authority.
- e) "Support" includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2) ACCESS AND USE OF SAAS SERVICES:

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State 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 Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services 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.*
- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS tenants for similar Services. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided

for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third-party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.

- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user 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 process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.
- g) Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

3) WARRANTY OF NON-INFRINGEMENT; REMEDIES.

- a) Vendor warrants to the best of its knowledge that:
 - i) The Services do not infringe any intellectual property rights of any third party; and
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Should any Services supplied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Services, or replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected Services, and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute Services. If, in the sole opinion of the State, the cessation of use by the State of any such Services due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services 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 a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's material alteration of any Vendor-branded Services, or from the continued use of the good(s) or Services after receiving notice they infringe on a trade secret of a third party.

4) ACCESS AVAILABILITY; REMEDIES:

- a) The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. Vendor does not warrant that the operation of the Services will be

completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services.

- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State. If the Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to receive automatic credits as indicated immediately below, or the State may use other contractual remedies such as recovery of damages, as set forth herein in writing, e.g., in Specifications, Special Terms or in an SLA, and as such other contractual damages are limited by N.C.G.S. §143B-1350(h1) and the Limitation of Liability paragraph below. If not otherwise provided, the automatic remedies for nonavailability of the Subscription Services during a month are:

1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

If, however, Services meet the 99.9% service availability level for a month, but are not available for a consecutive 120 minutes during that month, the Vendor shall grant to the State a credit of a pro-rated one-day of the monthly subscription Services fee against future Services charges. Such credit(s) shall be applied to the bill immediately following the month in which Vendor failed to meet the performance requirements or other service levels, and the credit will continue to be deducted from the monthly invoice for each prior month that Vendor fails to meet the support response times for the remainder of the duration of the Agreement. If Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may also terminate the contract for material breach in accordance with the Default provisions hereinbelow.

- c) Support Services. If Vendor fails to meet Support Service response times as set forth herein or in an SLA for a period of three consecutive months, a 10% service credit will be deducted from the invoice in the month immediately following the third month, and the 10% service credit will continue to be deducted from the monthly invoice for each month that Vendor fails to meet the support response times for the remainder of the duration of the Agreement.

5) **EXCLUSIONS:**

- a) Except as stated above in Paragraphs 3 and 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- b) The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions or service failures substantially caused by:
- i) Actions of non-Vendor personnel;
 - ii) Failure to follow Vendor's written instructions relating to the Services provided to the State; or
 - iii) Force Majeure conditions set forth hereinbelow.
 - iv) The State's sole misuse of, or its own inability to use, the Services.

- 6) **PERFORMANCE REVIEW AND ACCOUNTABILITY.** N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of 10% of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

7) **LIMITATION OF LIABILITY: Limitation of Vendor's Contract Damages Liability:**

- a) Where Services are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Services and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Services.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

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

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

9) **MODIFICATION OF SERVICES:** If Vendor modifies or replaces the Services provided to the State and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.

10) **TRANSITION PERIOD:**

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
- d) Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
- e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.

11) **TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

12) **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 specifically agreed to in writing and arising under the performance of this Agreement, reimbursement will be at the out-of-state rates set forth in 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 State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

13) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with the Vendor. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1207, or other provision of law.

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

15) **PAYMENT TERMS:**

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein, but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
- b) Upon Vendor's written request of not less than 30 days and approval by the State, the State may:
 - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,
 - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon Vendor's receipt of a disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

16) **ACCEPTANCE CRITERIA:**

- a) Initial acceptance testing is required for all Vendor supplied Services before going live, unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of Services may be controlled by additional written terms as agreed by the parties.
- b) After initial acceptance of Services, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld, but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice have been successfully corrected.

17) **CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1, *et seq.* Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate information, Products, Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL.**” By so marking any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked “confidential” meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked “confidential,” the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys’ fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor’s confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

18) **SECURITY OF STATE DATA:**

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State’s written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.
- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State’s access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State’s infrastructure as the State requires or as may be provided by law.
- e) The Vendor shall certify to the State:
 - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
 - ii) The Vendor shall ensure that each system used to provide Services under this Agreement meets the applicable GovRAMP requirements based on the data classification level, as defined in the SISM and associated policies. For data classified as Public, the requirement shall be satisfied through a current

GovRAMP Security Snapshot Score. For data classified as Internal, Confidential, or Restricted the Vendor shall achieve, or agree to achieve within the required timeframe, the applicable GovRAMP verified status. A FedRAMP Rev. 5 authorization may be accepted in lieu of a GovRAMP verified status, where applicable.

iii) That the Services will comply with the following:

- (1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:
 - (a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
 - (b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;
- (2) Privacy provisions of the Federal Privacy Act of 1974;
- (3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);
- (4) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and
- (5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA);
- (6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.

f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.

g) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.

h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to

the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
 - (1) The scale and quantity of the State Data loss;
 - (2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
 - (3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
 - (4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

Vendor shall investigate of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.

- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

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

by any State, if in the State's opinion, such requirement is imposed by federal or state law or regulation. The Vendor shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days' advance written notice and shall not unreasonably interfere with the Service Provider's business.

- 20) **ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days of any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 21) **NOTICES:** Any notices required under this Agreement should be delivered to the Agreement 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.
- 22) **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.
- 23) **AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
- 24) **TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 25) **GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- 26) **DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the material requirements and specifications herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
 - a) If Vendor fails to deliver or provide correct Services within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide Services or other Deliverables.
 - b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such Vendor failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure. Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- 27) **FORCE MAJEURE:** Except as provided for herein, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 28) **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 and the provision of Services hereunder, including those of federal, state, and local agencies having jurisdiction and/or authority.

- 29) **TERMINATION:** Any notice or termination made under this Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. The parties may mutually terminate this Agreement by written agreement at any time.
- a) The State may terminate this Agreement, in whole or in part, pursuant to the Paragraph entitled "Default," above, or pursuant to 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, Services, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Agreement, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7), entitled "Limitation of Liability." The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
- ii) Termination for Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services performed in conformance with the Agreement. In the event the Agreement is terminated for the convenience of the State the State will pay for all Services and work performed or delivered in conformance with the Agreement up to the date of termination.
- 30) **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Agreement Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 31) **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.
- 32) **FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the State shall be entitled to any and all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
- 33) **ELECTRONIC PROCUREMENT:** (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. The E-Procurement fee does not normally apply to services.
- a) Reserved.
- b) Reserved.
- 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 Agreement. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

ATTACHMENT A

Addendum

To the

BeyondTrust Software License and Subscription Agreement v. 4 8.1.24 Exhibit B

This document (“Addendum”) amends the BeyondTrust Corporation (hereinafter “Licensor” or “Vendor” or BeyondTrust”) Software License and Subscription Agreement (v.4 8.1.24) and all other applicable agreements incorporated or referenced therein and is entered between BeyondTrust and the North Carolina Department of Information Technology (also referred to as “State” or “Agency”).

Certain terms and conditions are required by applicable North Carolina law and regulation and are set forth below. Such terms supersede all conflicting terms in BeyondTrust’s Software License and Subscription Agreement (v.4 8.1.24) incorporated therein (hereinafter, “Licensor’s Agreement” or “License Agreement”) from the date of execution set forth below. The Licensor’s Agreement, together with Addendum, are collectively referred to as the “Agreement.”

The Parties agree that the Software subject in this Addendum is BeyondTrust’s On-Premise Software licensed on a Subscription basis. Accordingly, the following provisions of the License Agreement have no force or effect: 1.1.(b) Cloud Services Subscription (applicable for cloud subscription offerings); 11.2 Data Processing Addendum; and Exhibit A, Defined Terms, “Cloud Services,” and “Cloud Service Level”.

The State acknowledges that the Licensor’s Agreement may include terms and conditions, hyperlinks, or similar references to additional license agreements, and that such additional license agreements address the proprietary and intellectual property rights of third parties for software or software services owned by parties other than the Licensor (“Third Parties”). The Agency further acknowledges that the proprietary and intellectual property rights of the Third Party are subject to a software license agreement. BeyondTrust represents that when the State uses the Software in conformance with this Agreement, then the State is in compliance with any license requirements of any third party Software.

- 1) The License Agreement is modified by this Addendum, and therefore, conflicts arising among the terms of the License Agreement and the terms of this Addendum shall be resolved by the following order of precedence:
 - a) This Addendum
 - b) The License Agreement
 - c) Terms and other documents incorporated by reference in the License Agreement.
- 2) Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in Licensor’s Agreement, the State shall not be obligated under the Licensor’s Agreement, or other agreements, to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees, termination costs, costs of audits, interest, or other similar costs.
- 3) General Modifications to the BeyondTrust Software License and Subscription Agreement:
 - a) Third Party Software, Open Source Software, and flow down terms: Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in

Licensor's Agreement, the State has no financial obligation or liability to Vendor or such third parties under such additional license agreements. The State will not knowingly violate the licensing limitations stated in such additional license agreements.

- b) Clickwrap / universal license by use or installation: Notwithstanding terms of the Licensor's Agreement conditioning the license grant upon acceptance of terms when downloading, installing, using, etc. the software (e.g. by using the software, you accept and agree to the terms and conditions of this agreement), such conditions shall not bind the State or its agencies, and such conditions shall be superseded by this Addendum to the License Agreement.
- c) Notwithstanding any payment terms in the Licensor's Agreement, the State's payment obligations in its contracts with Resellers for the purchase Licensor's Software or Services shall supersede the payment terms in the Licensor's Agreement, and the State shall have no payment obligation to Licensor pursuant to the payment terms in the Licensor's Agreement.
- d) IP Indemnity – notwithstanding the Licensor's rights to defend its IP and its obligations to indemnify the State, the State shall have the right to participate in any litigation, solely at their own expense and as stated in Section 9.3 of the License Agreement, the alternative dispute resolution and settlement, of such claims to the extent the State seeks to assert any immunities or defenses applicable to the State as a sovereign government.
- e) Neither party to this Agreement is entitled to seek judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party. Either party may seek such equitable relief, reasonable costs and fees as permitted by applicable law. For avoidance of doubt, provisions of the License Agreement granting equitable relief shall have no force or effect. Applicable law, and the State's compliance with laws, for the purpose of this Agreement and all services shall be solely limited to North Carolina law and United States Federal Law.
- f) Notwithstanding any term in the License Agreement prohibiting assignment or transfer of the agreement, transfers authorized by N.C.G.S. §143A-6 are not prohibited or limited.
- g) Notwithstanding any merger clauses in the License Agreement, this Addendum shall be read together with the License Agreement as the agreement of the Parties.
- h) The term "Affiliate", as defined in the License Agreement, as applicable to the State only, shall be interpreted as "State Agencies" defined by N.C.G.S. §143B-1320(a)(17). Notwithstanding language in the License Agreement, the North Carolina Department of Information Technology is not responsible or fully liable for any Affiliate's compliance with or breach of the License Agreement.
- i) Notwithstanding language in the License Agreement, to the limited extent the State owns intellectual property rights arising under applicable law, such rights shall not be conveyed to BeyondTrust by this Agreement. The State agrees to discuss providing access and licensing such rights to BeyondTrust. For clarity, the State shall never have any ownership rights in Licensor's Software.
- j) The term of this Agreement shall be for five (5) years.
- k) Notwithstanding language in the License Agreement, the State does not agree to automatic renewal of Software or Support Services.
- l) Notwithstanding language in the License Agreement the Licensor's prohibition on the use of its Software and Other Offerings for a service bureau arrangement shall not include nor be interpreted to prohibit the State's utilization of the Software or Other Offerings to provide services to other State Departments,

Agencies or political subdivisions of the State perform its governmental functions, to the extent permitted by the License Agreement.

4) Specific Modifications to the BeyondTrust Software License and Subscription Agreement:

- a) The term “Order” as used and defined in the License Agreement shall mean the State’s contract(s) with its Reseller(s) for the purchase of Licensor’s Software or Services. The definition of “Order” in Licensor’s Exhibit A Defined Terms shall have no force or effect.
- b) The License Agreement’s fourth introductory paragraph is modified as shown by strikethroughs for deletions and underlining for insertions:

This Agreement includes the Standard Terms & Conditions below (“Standard Terms & Conditions”); and Exhibit A, and any applicable Order, all of which are hereby incorporated into this Agreement by reference. Capitalized terms used but not defined in the Standard Terms & Conditions are defined in Exhibit A. In the event of a conflict between the terms of the Standard Terms & Conditions; and Exhibit A and/or any applicable Order, the order of precedence shall be: (i) the Standard Terms & Conditions, and then (ii) Exhibit A, ~~then (iii) the applicable Order.~~

- c) License Agreement Section 7.1 Indemnity from BeyondTrust is modified as shown by underlining for insertions and strikethroughs for deletions to subparagraphs (d) and (f) as follows:

7.1(d). Customer failure to use the Software or Other Offerings in accordance with the applicable Documentation and in a manner not reasonably anticipated or intended and the claim would not have occurred but for such use in a manner not reasonably anticipated in the Documentation and/or Customer’s use of the Software or Other Offerings outside the scope of the rights granted under this Agreement to the extent that such claim is based or arises directly from such Customer use and the claim would not have occurred but for such use;

7.1(f) ~~or Customer’s breach of this Agreement.~~

- d) License Agreement Section 8 IP Remedies, is modified by adding the following text to the end of the paragraph: For avoidance of doubt, Vendor’s obligations set forth in Section 8 and Section 7.1 Indemnity from BeyondTrust, apply to the State’s purchase of Licensor’s Software or Other Offerings in the State’s contract with its Reseller(s) and any refunds under Section 8 shall be based on the Fees paid to its Reseller(s).
- e) License Agreement Section 10.2 Compensation is modified as shown by underlining for insertions and strikethroughs for deletions:

If Customer has exceeded the rights granted under this Agreement, Customer shall pay additional fees ~~to BeyondTrust~~ for the excess usage at ~~BeyondTrust’s then-current~~ the rates set forth in the Customer’s contract(s) with its Reseller(s). Customer acknowledges and agrees that BeyondTrust may sell Subscription rights to Software or Other Offerings in unit multiples, and Customer shall pay the applicable Fees for the number of units that cover at least Customer’s usage.

- f) The following Sections of the License Agreement shall have no force or effect: 2.2 Professional Services, 6.2 Limitation of Damages, 9. Confidential Information; 12.5 Governing Law; Venue; 12.6 License to Government; and 12.8 Integration and Amendment.
- g) The following phrases or sentences are deleted or revised, as stated below from the License Agreement as follows:

- i) License Agreement Section 3.2 Customer Data, the last sentence is deleted and replaced in its entirety with the following sentence: “Customer hereby grants to BeyondTrust to the right to perform all acts including maintenance and support with respect to Customer Data as may be necessary for BeyondTrust to provide the Software or Other Offerings to Customer.” ii) License Agreement Section 3.3 Use of Customer Data, the following phrase in the first sentence shall be revised to only include : “and maintaining, supporting, new Software and Other Offerings”.
 - iii) License Agreement Section 5.1 Term, the first sentence, shall be deleted which reads:
“This Agreement is effective on the Effective Date and continues until terminated as provided herein (the “Term”).”
 - iv) License Agreement Section 5.2 Termination for Breach, the sentence shall be deleted which reads:
“Except for termination rights in this section and in Section 8 below, the Parties have no other right of early termination.”
 - v) License Agreement Section 6.1 Disclaimer, the phrase shall be deleted which reads:
“OR (c) THAT THE SOFTWARE OR OTHER OFFERINGS ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION.”
 - vi) License Agreement Section 10.1 Usage Verification, the phrase, shall be deleted which reads: “through online verification procedures, including without limitation by gathering product utilization information.”
 - vii) License Agreement Section 4. Fees and Payments, the phrase shall be deleted which reads:
“BeyondTrust has no obligation to provide any Software or Other Offerings, or other products or services, while any payment amount due and owing from Customer is delinquent.”
- 5) Certain terms and conditions are required by applicable North Carolina law and regulation and are set forth below. Such terms supersede all conflicting terms in the Licensor’s Agreement from the date of execution set forth below. State Terms and Conditions:
- a) By executing this Addendum, the undersigned Vendor certifies that: the Licensor’s Agreement and this Addendum are entered without collusion (G.S. 143B-1354; False certification is a Class I felony), 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 that it is not an ineligible Vendor as set forth in G.S. 143-59.1. Furthermore, by executing this Addendum, 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.
 - b) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**
In accordance with N.C.G.S. §143B-1361(b), Vendor must identify the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor’s offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors.

Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States.

Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States? YES NO

If yes, BeyondTrust to identify the capacity in which these employees serve. Answer: Help Desk Support, Technical Support

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

d) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

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

The Vendor's liability for damages to the State arising under the contract shall be limited to two times the annual value of the Contract giving rise to the claim during the twelve (12) month period. Annual value is defined as the total cost of goods, software and services procured by the State from one or more of Licensor's Resellers pursuant to the State's contract(s) with its Reseller(s).

The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, Vendor's obligations to defend and indemnify for infringement of intellectual property, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

- e) TRAVEL EXPENSES: 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 GS §138-6; as amended from time to time.
- f) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1206, or other provision of law.

- g) **AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- h) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
- i) **Confidentiality:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in the NC Public Records Act: N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Materials must be identified as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information and provide Vendor the opportunity to challenge such disclosure. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.
- i) The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC

6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

- ii) The Vendor shall take all reasonable measures to protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials. The Vendor shall not be required under the provisions of this section to keep confidential, (a) information generally available to the public, (b) information released by the State generally, or to the Vendor without restriction, (c) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- k) **ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Any assignee shall affirm this Agreement accepting the terms and conditions and duties as previously agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- l) **TERMINATION:** Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
 - i) The parties may mutually terminate the Agreement by written agreement at any time.
 - ii) **Termination For Convenience Without Cause:** The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
- m) **GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and

"Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

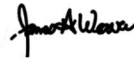
This Agreement is Effective as of the last date that a party affixes its signature.

BeyondTrust Corporation

State of North Carolina

Department of Information Technology

DocuSigned by:
Loretta Gaid
7BCEC1D464F746B...



Signature

Signature

Loretta Gaid

Jim Weaver

Printed Name

Printed Name

SVP, Legal

Secretary and State CIO

Title

Title

16 December 2024

12/17/2024

Date

Date

Exhibit B

BSOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT

IMPORTANT – PLEASE REVIEW CAREFULLY THE TERMS OF THIS SOFTWARE LICENSE AND SUBSCRIPTION AGREEMENT. BY CLICKING “ACCEPTED AND AGREED TO,” CUSTOMER ACCEPTS AND AGREES TO THESE TERMS AND CONDITIONS.

This Software License and Subscription Agreement (this “Agreement”) is a contract between BeyondTrust Corporation, a Delaware corporation (“BeyondTrust”) and the other business entity executing this Agreement” (“Customer”). BeyondTrust and Customer are also hereafter sometimes referred to individually as a “Party” and collectively as the “Parties”. Ina

This Agreement is effective as of the Effective Date, as that term is defined in Exhibit A (“Defined Terms”), which is attached to and made a part of this Agreement by this reference. Customer’s use, and BeyondTrust’s provision, of the “Software or Other Offerings” (as that term is defined in Exhibit A) is governed by the terms and conditions of this Agreement.

This Agreement includes the Standard Terms & Conditions below (“Standard Terms & Conditions”), Exhibit A, and any applicable Order, all of which are hereby incorporated into this Agreement by reference. Capitalized terms used but not defined in the Standard Terms & Conditions are defined in

Exhibit A. In the event of a conflict between the terms of the Standard Terms & Conditions, Exhibit A and/or any applicable Order, the order of precedence shall be: (i) the Standard Terms & Conditions, (ii) Exhibit A, then (iii) the applicable Order.

STANDARD TERMS & CONDITIONS

1. ACCESS AND USE

1.1 ACCESS AND USE OPTIONS AND RESTRICTIONS. Software offered by BeyondTrust to Customer under this Agreement is either via (i) an On-Premise Software perpetual license or Subscription, or (ii) a Cloud Services Subscription, as specified in the applicable Order.

(a) **License (applicable for On-Premise Software).** For On-Premise Software that is licensed to Customer either on a perpetual basis or via a Subscription, as specified in the applicable Order, subject to the terms and conditions of this Agreement and Customer's payment of all applicable Fees, BeyondTrust hereby grants to Customer a limited, non-exclusive, non-transferable, non-assignable, revocable, personal right and license in the Territory (defined below) to install and use the Software for internal use and in support of Clients (the "Permitted Use"), in accordance with the terms and conditions of this Agreement and as applicable and as specified on each Order, for the Subscription Term specified in the applicable Order (unless the applicable Order specifies a perpetual license), and limited to the number of deployed Instances, Assets, physical and virtual machine(s), and/or the physical location(s) specified in the applicable Order, and, in all cases, to use the Documentation provided in connection with such Software solely for the purpose specified in Section 1.2(a) below. "Territory" means worldwide unless otherwise agreed in the applicable Order (and subject always to Customer's compliance with applicable export laws, regulations and restrictions).

(b) **Cloud Services Subscription (applicable for cloud subscription offerings).** For Software that is provided to Customer via a Subscription for Cloud Services, subject to the terms and conditions of this Agreement and Customer's payment of all applicable Fees, BeyondTrust hereby grants to Customer a Subscription to access and use the Cloud Services in accordance with the terms and conditions of this Agreement, both for internal use and in support of Clients (the "Permitted Use"), for the Subscription Term specified in the applicable Order and consistent with the requirements and limited to the number of deployed Instances, Assets, physical and virtual machine(s), and/or the physical location(s) specified in the applicable Order, and, in all cases, to use the Documentation provided in connection with such Software solely for the purpose specified in Section 1.2(a) below. Customer may access the applicable Software through Cloud Services (instead of under an On-Premise Software license) solely to facilitate the use and administration of the applicable Software for the Permitted Use.

(c) **Restrictions on Software or Other Offerings.** All rights to Software or Other Offerings not expressly granted under this Agreement are hereby reserved to BeyondTrust, and no rights are granted by implication or otherwise. Without limiting the generality of the foregoing, Customer shall not (and Customer shall also ensure that Customer's Personnel and Affiliates shall not): (i) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense any Software or Other Offering, including without limitation through any loan, encumbrance, or lease; (ii) access or use any Software or Other Offering or BeyondTrust's Confidential Information to create a product or service similar to or competitive with any Software or Other Offering; (iii) time-share any Software or Other Offering or use such Software or Other Offering in a service bureau arrangement or for the benefit of any third party; (iv) permit or allow any person to remove any proprietary or other legend or restrictive notice on any Software or Other Offering or on any media containing such Software or Other Offering; (v) permit any person to reproduce any such media or Software or Other Offering except as specifically provided in this Agreement; (vi) use any Software or Other Offering to distribute or otherwise support any software or computer file that contains a virus, worm, Trojan horse, or other harmful component; (vii) use any Software or Other Offering for any illegal activity; (viii) use any Software or Other Offering to disrupt or interfere with any other networks, websites, or security; (ix) use any Software or Other Offering to infringe any third party's intellectual property rights; (x) use any Software or Other Offering to distribute any objectionable material of any kind; (xi) use any Software or Other Offering to gain unauthorized access to computer systems or devices; (xii) use any Software or Other Offering under false pretense to gain access to a third party's computer, network, or information; (xiii) in any manner or under any circumstances use, copy, modify, enhance, merge, reverse engineer, reverse assemble, decompile, disassemble or in any way alter any Software or Other Offering or any copy, adaptation, transcription, or merged portion thereof or otherwise attempt to derive source code therefrom; or (xiv) disclose to any third party the results of any benchmark or other tests of any Software or Other Offering. Customer shall maintain all of BeyondTrust's copyright, trademark, and other notices on the Software, Hardware, and Documentation and shall reproduce all such notices on any and all partial or full copies thereof.

1.2 **DOCUMENTATION & TEMPORARY USE SOFTWARE.**

(a) **Documentation.** Customer may access and use the Documentation solely in connection with the Permitted Use and to support use of the Software or Other Offerings as expressly authorized in this Agreement.

(b) **Beta & Evaluation Software (only if applicable).** BeyondTrust hereby grants Customer a limited, non-exclusive, nontransferable, non-assignable, revocable, personal right and license to install and use Beta Software and/or Evaluation Software (each as defined below) during the time period set forth on the applicable Order, or if no time period is stated, for 30 days from the effective date of the applicable Order. "Beta Software" refers to Software so designated as "Beta Software" on the applicable Order or provided to Customer for feedback by Customer to BeyondTrust. "Evaluation Software" refers to Software so designated as "Evaluation Software" on the applicable Order or provided to Customer for Customer's own internal evaluation purposes only. CUSTOMER IS NOT REQUIRED TO USE BETA SOFTWARE OR EVALUATION SOFTWARE. IF CUSTOMER

DOES SO CHOOSE TO USE SUCH BETA SOFTWARE OR EVALUTATION SOFTWARE, THEN NOTWITHSTANDING ANYTHING TO CONTRARY SET FORTH IN THIS AGREEMENT, THE FOLLOWING TERMS APPLY: (i) THE BETA SOFTWARE AND EVALUATION SOFTWARE ARE PROVIDED “AS IS,” AND WITH ALL FAULTS, AND WITH NO PROMISE, REPRESENTATION, WARRANTY, OR INDEMNITY WHATSOEVER; (ii) BEYONDTRUST HAS NO RESPONSIBILITY OR LIABILITY WHATSOEVER ARISING OUT OF, RESULTING FROM OR RELATED TO BETA SOFTWARE OR EVALUATION SOFTWARE; (iii) Customer shall reasonably answer BeyondTrust’s questions and requests regarding Customer’s use of the Beta Software; and (iv) Customer shall use Evaluation Software only for internal evaluation purposes, to decide whether to purchase a subscription to the underlying Software. BeyondTrust may suspend or terminate the license granted in this Subsection 1.2(b) at any time and for any reason. Customer recognizes and agrees that Beta Software or Evaluation Software may disable itself after a predefined time period. If Customer provides any suggestions, recommendations, ideas, or other feedback (collectively, “Feedback”) to BeyondTrust regarding the Beta Software, Customer hereby agrees that BeyondTrust may use and incorporate into the Software any Feedback that Customer provides to BeyondTrust, and Customer shall not be entitled to any compensation for such Feedback. Customer hereby grants to BeyondTrust, free of charge, all rights in and to the Feedback.

1.3 SOFTWARE OR OTHER OFFERINGS IN GENERAL. For clarification, Customer’s Affiliates may access and use the On-Premise Software and Cloud Services subject to such Affiliates’ adherence to and compliance with the terms and conditions of this Agreement. Customer shall be primarily responsible for any breach of this Agreement by any of Customer’s Personnel or Affiliates. Customer’s rights to use On-Premise Software in accordance with this Agreement are limited to object code. In its use of Cloud Services, Customer is solely responsible and liable for (1) preserving the secrecy of its usernames and passwords, and (2) any and all activity that occurs under Customer’s account. Customer agrees that, to the extent that any applicable mandatory laws give it the right to perform any activity forbidden in this Agreement without BeyondTrust’s consent in order to gain certain information about a Software or Other Offering, before exercising any such right, Customer shall first request such information from BeyondTrust in a writing detailing the purpose for which Customer needs the information. Only if BeyondTrust denies Customer’s request (which BeyondTrust may do at its sole discretion) shall Customer exercise such statutory right.

2. ADDITIONAL SERVICES.

2.1 SUPPORT SERVICES. BeyondTrust shall provide Support Services as a part of the Subscriptions for On-Premise Software and Cloud Services. Support Services shall begin on the date that, as applicable, BeyondTrust (i) delivers On-Premise Software to Customer, (ii) makes On-Premise Software available for download by Customer, or (iii) sends Customer a password for Cloud Services, and the Support Services shall continue for the remainder of the Subscription Term. For any On-Premise Software which is provided to Customer under a perpetual license and not under a Subscription, as specified in the applicable Order, upon expiration of the Support Term for the Support Services specified in the applicable Order, such Support Term shall automatically renew at BeyondTrust’s then-current rates and terms for subsequent one (1) year periods, unless either Party provides the other Party with notice of its intent not to renew such Support Term at least thirty (30) days before expiration of the then-current Support Term period. If Customer elects not to extend the Support Term for the Support Services and later seeks to reinstate such Support Services, Customer shall pay to Beyond Trust all Fees for all Support Services that Customer would have paid to BeyondTrust as though such Support Term and Support Services had continued uninterrupted, in addition to the Fees applicable for the next subsequent Support Term. Customer shall pay to BeyondTrust the applicable Fees for Support Services in advance of any applicable renewal of the Support Term. Any and all Upgrades provided through the Support Services will become and be construed as a part of the Software immediately upon installation of such Upgrades.

2.2 PROFESSIONAL SERVICES. BeyondTrust shall provide, and Customer shall pay the Fees for, such professional services that BeyondTrust has agreed to provide (“Professional Services”) as are specified in an Order specifically calling for “professional services”. The professional services performed shall be of professional quality and consistent with generally accepted industry standards for services of a similar nature. Unless otherwise provided on the Order or agreed by the Parties in writing, all Professional Services must be able to be completed within one hundred eighty (180) days of the Order effective date. Unless otherwise agreed between the Parties in writing, the Fees for Professional Services do not include expenses incurred by BeyondTrust in providing such Professional Services. Customer shall reimburse BeyondTrust’s reasonable and pre-approved travel and other expenses in connection with such Professional Services.

2.3 E-LEARNING SERVICES. If specified in an Order, BeyondTrust shall provide e-learning services related to the Software or Other Offerings that Customer receives pursuant to this Agreement (“E-Learning Services”), for up to one (1) year after execution of the applicable Order, to the extent that BeyondTrust makes such E-Learning Services generally available to its customers.

3. TITLE & IP.

3.1 OWNERSHIP IN GENERAL. The Software offered pursuant to this Agreement, and all copies thereof, are licensed (or otherwise made available and accessible as the case may be), not sold, and Customer receives no title to or ownership of the Software itself or any copies thereof. BeyondTrust retains exclusive ownership of the Software or Other Offerings, including any media on which they are provided to Customer, except to

the extent that this Agreement expressly transfers title to Hardware in accordance with Section 3.4 below of this Agreement. Customer receives no intellectual property license: (a) to any Software or Documentation provided through Cloud Services; or (b) to any other Software or Other Offering. Customer shall not (i) make any assertion contrary to the preceding sentence, (ii) jeopardize BeyondTrust's proprietary rights in the Software or Other Offerings, or (iii) attempt to acquire any rights to the Software or Other Offerings, other than the limited rights which are expressly provided by BeyondTrust in this Agreement. Customer hereby acknowledges that the Software and Documentation are works copyrighted under United States federal copyright law and protected by other intellectual property rights and embody valuable confidential and secret information of BeyondTrust and its third-party licensors. BeyondTrust shall own all rights in any copy, translation, modification, adaptation, or derivation of the Software or Other Offerings or other items of BeyondTrust Confidential Information, including any improvement or development thereof, and Customer shall, and hereby agrees to, execute such assignment documents as BeyondTrust reasonably requests to perfect, confirm, or transfer all such ownership rights.

3.2 CUSTOMER DATA. BeyondTrust acknowledges that, as between BeyondTrust and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to Customer Data. Customer hereby grants to BeyondTrust a non-exclusive, royalty-free, worldwide license to transmit and store Customer Data and perform all acts with respect to Customer Data as may be necessary for BeyondTrust to provide the Software or Other Offerings to Customer.

3.3 USE OF CUSTOMER DATA. BeyondTrust shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the provision of Software and Other Offerings, and maintaining, supporting, evaluating, improving and/or developing new Software and Other Offerings. Notwithstanding the foregoing, BeyondTrust may disclose Customer Data as required by applicable law or by proper legal or governmental authority. BeyondTrust shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense, unless such action or notice is prohibited by applicable law or by proper legal or governmental authority. In any event, BeyondTrust will not use Customer Data or derive information from it for any advertising or other marketing purposes without Customer's express written consent.

3.4 RIGHTS TO HARDWARE (if applicable). Title to purchased Hardware (excluding all software thereon, and also excluding any leased or evaluation Hardware), and the risk of loss for such Hardware, passes to Customer upon shipment of the Hardware from BeyondTrust's (or, as applicable, Reseller's) facility. For Hardware provided to Customer under a lease transaction for a limited time period or for evaluation purposes ("Temporary Hardware"), BeyondTrust retains title to such Temporary Hardware. Customer: (a) shall not offer or purport to sell, assign, sub-let, lend, pledge, mortgage, or otherwise part with personal possession of Temporary Hardware, or allow any lien or other encumbrance to attach to such Temporary Hardware; (b) shall maintain Temporary Hardware in a suitable environment and in good condition, subject to reasonable wear and tear; (c) shall return all Temporary Hardware to BeyondTrust at Customer's expense or pay the then-current retail value for any such Temporary Hardware that is not returned upon expiration of the lease term or evaluation period or which is damaged; and (d) shall not conceal, alter, or make any addition or alteration to Temporary Hardware without BeyondTrust's prior express written consent.

4. FEES AND PAYMENTS. Customer shall: (a) pay the Fees and other charges and expenses set forth in each Order; (b) make all payments in full and without deduction or set-off within thirty (30) days of the date of each invoice; and (c) pay such reasonable extra fees as BeyondTrust may charge for credit card payments. BeyondTrust may adjust the Fees for Software or Other Offerings at the end of the Initial Subscription Term (or, if applicable, any then-current Renewal Subscription Term) or the Support Term (or, if applicable, any then-current renewal period of the Support Term), as applicable, by providing written notice at least sixty (60) days before the beginning of any subsequent Renewal Subscription Term or, as applicable, any subsequent renewal period of the Support Term. For any Fees and other amounts remaining unpaid after the due date for such Fees and other amounts, Customer shall pay interest equal to the lesser of (i) 1.5% per month from the due date until the date such Fees and other amounts are paid in full, or (ii) the highest rate allowed under applicable law. All Fees and other amounts paid or payable to BeyondTrust are exclusive of federal, state, or local excise, sales, use, intangible, value added, or other taxes assessed or imposed with respect to the Software or Other Offerings. Customer is solely responsible for the payment of all taxes resulting from this Agreement, purchases under all Orders, or the use of any Software or Other Offering, including without limitation VAT, sales use, gross receipts tax, withholding taxes, and any similar tax, except for taxes based on BeyondTrust's income. BeyondTrust has no obligation to provide any Software or Other Offerings, or other products or services, while any payment amount due and owing from Customer is delinquent. Unless otherwise specified in the Order, all payments shall be made in U.S. Dollars, and Customer shall be responsible for all of Customer's bank fees in transmitting payment. If Customer is tax exempt from paying sales, use, or other taxes, Customer must provide BeyondTrust with appropriate evidence of tax exemption for all relevant jurisdictions prior to invoicing.

5. TERM; TERMINATION.

5.1 TERM. This Agreement is effective on the Effective Date and continues until terminated as provided herein (the "Term"). No Subscription Term or term for Hardware, Support Services, Professional Services or E-Learning Services, or other right to any BeyondTrust product or service will continue after any termination of this Agreement. In addition, any perpetual license for On-Premise Software shall also terminate upon any termination of this Agreement. The term for an On-Premise Software perpetual license shall begin on the date that, as applicable, BeyondTrust either (i) delivers such On-Premise Software to Customer, or (ii) makes such On-Premise Software available for download by Customer and shall continue until any termination of such license or this Agreement as provided herein. The initial term for any Subscriptions granted herein commences on the effective date of the applicable Order and continues for the term specified in each such Order, or for one (1) year from the effective date of the applicable Order if the Order is silent with regard to the term ("Initial Subscription Term"). For purposes of clarity, the Initial Subscription Term may be for multiple years if specified in the applicable Order. Upon expiration of the Initial Subscription Term, the term of each Order will automatically

renew thereafter for successive periods of one (1) year each, or for such other period as is stated on the applicable Order, (each, a “Renewal Subscription Term”), unless either Party notifies the other Party in writing of its intention to terminate an applicable Order at least thirty (30) days prior to the end of the Initial Subscription Term or, as applicable, the then-current Renewal Subscription Term. The Initial Subscription Term and all Renewal Subscription Term(s), if any, are collectively referred to as the (“Subscription Term”).

5.2 *TERMINATION FOR BREACH.* Either Party may terminate this Agreement thirty (30) days after notice to the other Party if the other Party has breached any material provision of this Agreement and fails to cure such breach within such thirty (30) day period. Notwithstanding the foregoing, BeyondTrust may terminate this Agreement immediately upon written notice if Customer materially breaches the provisions of the access and use restrictions set forth in this Agreement. Except for termination rights in this section and in Section 8 below, the Parties have no other right of early termination.

5.3 *EFFECTS OF TERMINATION.* Upon termination of this Agreement or of a Subscription Term or license for any reason, Customer shall immediately cease all use of all Software which is subject to such termination and any related Documentation and, within five (5) days of the effective date of such termination, return to BeyondTrust all such Software and Documentation, as well as any Temporary Hardware provided for use with such Software and any related BeyondTrust Confidential Information, or if BeyondTrust so requests, destroy the same and certify the manner, date, and time of destruction in writing. In the event of any such termination, Customer remains responsible for the payment of any Fees and other amounts incurred as of the effective date of such termination, including (except in the event of a termination for breach of this Agreement by BeyondTrust) payment of any applicable discounts provided for then-current Initial Subscription Term or Renewal Subscription Term, as applicable. The following provisions of this Agreement will survive any termination of this Agreement: (a) Sections 1, 3, 4, 5.3, 6, 7, 9, 10, 11, 12 and Exhibit A; and (b) and all other provisions which by their nature would extend beyond the Term of this Agreement.

6. DISCLAIMER AND LIMITATION OF LIABILITY.

6.1 *DISCLAIMER.* BEYONDTRUST HEREBY EXPRESSLY AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AS WELL AS ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, BEYONDTRUST DOES NOT WARRANT OR REPRESENT THAT: (a) THE OPERATION OF THE SOFTWARE OR OTHER OFFERINGS WILL BE UNINTERRUPTED OR ERROR-FREE; (b) THAT THE SOFTWARE OR OTHER OFFERINGS WILL OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT OR SERVICE; OR (c) THAT THE SOFTWARE OR OTHER OFFERINGS ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION. SOFTWARE AND OTHER OFFERINGS ARE PROVIDED “AS IS,” AND BEYONDTRUST MAKES NO PROMISES, REPRESENTATIONS, WARRANTIES, OR CONDITIONS, EXPRESSED OR IMPLIED, REGARDING THE SOFTWARE OR OTHER OFFERINGS. CUSTOMER HEREBY ACKNOWLEDGES THAT THE RECORDING FEATURES OF CERTAIN SOFTWARE MAY SUBJECT CUSTOMER TO LAWS AND/OR REGULATIONS REGARDING THE RECORDING OF COMMUNICATIONS, AND CUSTOMER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LAWS AND/OR REGULATIONS.

LIMITATION OF DAMAGES.

(a) ***Excluded Damages.*** NEITHER PARTY WILL HAVE LIABILITY FOR ANY LOSS OF DATA, LOSS OF PROFITS, OR INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR OTHER OFFERINGS.

(b) ***Dollar Cap.***, NEITHER PARTY’S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF, RESULTING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR OTHER OFFERINGS WILL EXCEED THE FEES PAID BY CUSTOMER FOR THE APPLICABLE SOFTWARE OR OTHER OFFERING GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO THE CLAIM.

(c) ***Clarifications.*** THE LIABILITIES LIMITED BY THIS SECTION 6.2 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF A PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF A PARTY’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NEITHER PARTY WILL BE LIABLE FOR CLAIMS MADE MORE THAN TWO (2) YEARS AFTER THE EVENT GIVING RISE TO THE CLAIM.

Notwithstanding the foregoing, the limitations of this Section 6.2 do not apply to infringement of intellectual property rights or to a Party’s obligations or liabilities set forth in Section 1 (Access and Use), Section 4 (Fees and Payments), Section 7 (Indemnification), and Section 9 (Confidential Information not related to a Data Privacy or Data Security breach), or to claims for attorney’s fees and other litigation costs either Party becomes entitled to recover as a prevailing party in any action. If applicable law limits the application of the provisions of this Section 6.2, a Party’s liability will be limited to the maximum extent permissible under such applicable law. For the avoidance of doubt, a Party’s liability limits, and other rights set forth in this Section 6.2 apply likewise to a Party’s Personnel and Affiliates, and to BeyondTrust’s licensors, suppliers, advertisers, sponsors, and other representatives, as well as to Resellers.

7. **INDEMNIFICATION.** As used below in this Section 7: (1) “Indemnified Claim” refers to any claim listed in the first sentence of Section 7.1, or to claims listed in Section 7.2; and (2) “Associates” refers to a Party’s officers, directors, shareholders, parents, subsidiaries, agents, Affiliates, successors, and assigns.

7.1 ***INDEMNITY FROM BEYONDTRUST.*** BeyondTrust shall defend at its own expense any third party action against Customer or its Associates to the extent based on a claim that the Software or Other Offerings, as made available to Customer by BeyondTrust and used in accordance with the terms and conditions of this Agreement, directly infringes a United States registered patent, copyright or trademark, and BeyondTrust shall pay the costs and damages finally awarded against Customer that are specifically attributable to such claim or those costs and damages agreed to by BeyondTrust in a monetary settlement of such action. Notwithstanding the foregoing, BeyondTrust has no responsibility pursuant to the preceding sentence for any Indemnified Claim arising out of or related to: (a) any modification to a Software or Other Offering not made by BeyondTrust; (b) compliance with Customer’s designs, specifications, or instructions; (c) any combination or use of the applicable Software or Other Offering with or in any third party software, hardware, process, firmware, or data, to the extent that such claim is based on such combination or use; (d) Customer failure to use the Software or Other Offerings in accordance with the applicable Documentation and/or outside the scope of the rights granted under this Agreement; (e) Customer’s continued use of the allegedly infringing Software or Other Offering after being notified of the alleged infringement claim or after being provided a modified version of the Software or Other Offering by BeyondTrust at no additional cost that is intended to address such alleged infringement; (f) or Customer’s breach of this Agreement.

7.2 ***INDEMNITY FROM CUSTOMER.*** Customer shall indemnify, defend, and hold harmless BeyondTrust and its Associates from and against any third-party claim, suit, or proceeding, and shall pay any and all damages and other costs incurred by BeyondTrust and its Associates, arising out of, resulting from or related to, or alleging: (a) any conduct by Customer or its Associates that would breach Section 1.1 of this Agreement; or (b) infringement of intellectual property by Customer or its Associates arising out of alleged acts or omissions listed in Subsections 7.1(a) through 7.1(f) above.

7.3 ***PROCEDURE.*** The Party requesting indemnification hereunder (“Indemnified Party”) shall: (a) provide the other Party (“Indemnitor”) with prompt notice of the Indemnified Claim, provided that failure to do so relieves Indemnitor of its obligations to the Indemnified Party above only to the extent of any material prejudice; (b) permit Indemnitor to control the defense and/or settlement of the Indemnified Claim; and (c) provide to Indemnitor all available information and assistance reasonably necessary for the defense. Indemnified Party shall have the right, at its sole cost and expense, to participate in the defense and settlement of an Indemnified Claim with counsel of its choice.

8. **IP REMEDIES.** If any Software becomes or, in BeyondTrust’s opinion, is likely to become the subject of an injunction preventing its use as contemplated herein, BeyondTrust may, at its option: (a) procure for Customer the right to continue using such Software; (b) replace or modify such Software so that it becomes non-infringing without substantially compromising its functionality; or if (a) and (b) are not commercially practical in BeyondTrust’s reasonable opinion, (c) terminate Customer’s rights to the allegedly infringing Software. In case of termination pursuant to this Section 8, BeyondTrust shall refund: (i) in the case of an On-Premise Software perpetual license, the license Fees paid by Customer for the allegedly infringing On-Premise Software, less depreciation at the rate of 1/3 of such license Fees per year, or, if licensed at the time by Customer for less than one (1) year, a pro rata portion of the license Fees for that part of the year from the date of payment by Customer to the date of termination of the perpetual license for such allegedly infringing On-Premise Software; or (ii) the prepaid and unused pro-rata portion of the Fees for the Subscription for the allegedly infringing On-Premise Software or Cloud Services. If BeyondTrust selects the option in Subsection 8(b) or 8(c) herein, Customer shall immediately cease use of the allegedly infringing Software. SECTION 7 AND THIS SECTION 8 SET FORTH BEYONDTRUST’S ENTIRE OBLIGATION AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES FOR ALLEGED OR ACTUAL INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION BY SOFTWARE OR OTHER OFFERINGS.

9. **CONFIDENTIAL INFORMATION.**

9.1 ***CONFIDENTIAL INFORMATION.*** “Confidential Information” refers to the following items one Party to this Agreement (“Discloser”) discloses to the other Party (“Recipient”): (a) any document Discloser marks “Confidential” or designates as “Confidential” in writing; or (b) any information Discloser orally designates as “Confidential” at the time of disclosure. In addition, BeyondTrust’s Confidential Information, as Discloser, includes the Software, any specifications regarding any Software or Other Offering, any pricing information regarding any Software or Other Offering, proprietary algorithms, SOC 2 reports and any information related to BeyondTrust research and development. However, Confidential Information does not include any information received from the Discloser that Recipient can demonstrate: (i) is in Recipient’s possession at the time of disclosure without an obligation of confidentiality; (ii) is independently developed by Recipient without use of or reference to the Discloser’s Confidential Information; (iii) becomes known publicly, before or after disclosure to the Recipient by Discloser, other than as a result of Recipient’s improper action or inaction; or (iv) is approved for release in writing by Discloser.

9.2 ***NONDISCLOSURE.*** Recipient shall not, without Discloser’s prior written consent (in each instance): (a) publish, disclose, or otherwise divulge Discloser’s Confidential Information; or (b) use Discloser’s Confidential Information for any purpose other than to support provision

and use of Software or Other Offerings as authorized by, and in accordance with, the terms and conditions of this Agreement. Recipient shall use at least the same level of care to protect Discloser's Confidential Information as it uses to protect its own sensitive non-public information, but in no event less than a commercially reasonable degree of care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Discloser's Confidential Information that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Discloser's Confidential Information as required by applicable law or by proper legal or governmental authority; provided, however, that Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense, unless such notice or action is prohibited by applicable law or proper legal or governmental authority. Recipient agrees that breach of this Section 9 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy at law or in equity, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security. This Agreement does not transfer ownership of Discloser's Confidential Information or grant a license thereto to Recipient or any other party. For clarity, this Section 9 relates only to the disclosure by one Party to the other Party of Confidential Information as defined herein and not to data that Customer or its Clients transmit or access through Software or Other Offerings provided by BeyondTrust.

10. USAGE COMPLIANCE.

10.1 *USAGE VERIFICATION.* Customer acknowledges and agrees that BeyondTrust may verify Customer's compliance with this Agreement through online verification procedures, including without limitation by gathering product utilization information. On no more than an annual basis, Customer shall provide BeyondTrust with a report detailing Customer's installation and usage of the Software with sufficient specificity to establish Customer's compliance (or non-compliance) with the access and use limitations set forth in the applicable Order or this Agreement.

10.2 *COMPENSATION.* If Customer has exceeded the rights granted under this Agreement, Customer shall pay additional fees to BeyondTrust for the excess usage at BeyondTrust's then-current rates. Customer acknowledges and agrees that BeyondTrust may sell Subscription rights to Software or Other Offerings in unit multiples, and Customer shall pay the applicable Fees for the number of units that cover at least Customer's usage.

11. SECURITY AND DATA PROCESSING.

11.1 *SECURITY.* BeyondTrust shall: (i) have in place administrative, physical and technical measures designed to ensure the protection of the security and confidentiality of Customer Data against any accidental or illicit destruction, alteration or unauthorized access or disclosure to third parties; and (ii) have commercially reasonable measures in place designed to protect the security and confidentiality of Customer Data, as more specifically set forth at www.beyondtrust.com/security-requirements.

11.2 *DATA PROCESSING ADDENDUM.* The DPA, which is hereby made a part of and incorporated into this Agreement by this reference, sets forth the terms and conditions which BeyondTrust may receive and process "Personal Data" (as defined in the DPA) received by BeyondTrust from Customer. To the extent applicable, the DPA shall apply with respect to BeyondTrust's processing of such Personal Data received by BeyondTrust as more specifically set forth at www.beyondtrust.com/dpa.

12. GENERAL PROVISIONS.

12.1 *INDEPENDENT PARTIES.* The Parties acknowledge that each Party is an independent contractor of the other Party, and each Party may engage in other business activities at its sole discretion. This Agreement does not in any way create or constitute a relationship of employment, partnership, or a joint venture between the Parties. Customer hereby acknowledges and agrees that: (a) Resellers and BeyondTrust are independent contractors; (b) BeyondTrust has no liability for any act or omission of any Reseller; and (c) Resellers have no power to modify this Agreement or to bind BeyondTrust in any manner whatsoever, including without limitation any power to make any representation, warranty, or indemnity on BeyondTrust's behalf.

12.2 *ASSIGNMENT.* Neither Party may assign or transfer any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement to any third party, other than to its Affiliates, without the other Party's prior written consent, except that an assigning Party may so assign, transfer or delegate without the other Party's consent pursuant to a transfer of all or substantially all of the assigning Party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise. Any attempted assignment or transfer in violation of the foregoing will be void. In the case of any permitted assignment or transfer of under this Agreement, this Agreement or the relevant provisions hereof shall be binding upon, and inure to the benefit of, the Parties and their respective successors, executors, heirs, representatives, administrators and permitted assigns. In the event BeyondTrust permits Customer to assign this Agreement or a license granted hereunder, then the transferee must accept in writing the terms and conditions of this Agreement, and Customer's license to use the Software shall automatically terminate immediately upon such transfer.

12.3 FORCE MAJEURE. Each Party will be excused from performance of any of its obligations under this Agreement for any period during which, and to the extent that, it is prevented from performing such obligation as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, due to acts or omissions of government or military authority, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, internet or other telecommunication delays, communication line failure and power failures. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to forgive Customer's failure, or Customer's obligation, to pay any and all Fees and other amounts when due which are owed to BeyondTrust under this Agreement.

12.4 NOTICES. All notices given pursuant to this Agreement shall be in writing and delivered by hand, by registered or certified mail with proper postage, by third party delivery service (e.g., FedEx, UPS) or by email (with confirmation copy sent by certified mail). Notices shall be delivered to the recipient Party and addressed to the signatory for such Party at the address for such Party that is set forth on the applicable Order, or to such other person and address as may be designated in writing by the recipient Party in accordance with this Section 12.4. All such notices will be deemed received upon the earlier of actual receipt or actual delivery to the notice address.

12.5 GOVERNING LAW; VENUE. This Agreement, and all claims arising out of or related to this Agreement, will be governed solely by the internal laws of the State of Delaware, and applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the Parties' rights or duties; (b) the United Nations Convention on Contracts for the International Sale of Goods; (c) the 1974 Convention on the Limitation Period in the International Sale of Goods (the "1974 Convention"); (d) the Protocol amending the 1974 Convention, done at Vienna April 11, 1980; or (e) other international laws. The Parties' consent to the personal and exclusive jurisdiction of the federal and state courts of Wilmington, Delaware and agree that such courts are convenient forums. This Section 12.5 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

12.6 LICENSE TO GOVERNMENT. The Software and any Documentation and e-learning systems are *commercial items*, as that term is defined in 48 CFR 2.101, consisting of *commercial computer software* and *commercial computer software documentation*, as those terms are used in 48 CFR 12.212. If the Software or any Documentation is acquired by or on behalf of the U.S. government or by a U.S. government contractor (including without limitation prime contractors and subcontractors at any tier), then in accordance with 48 CFR 227.7202-4 (for Department of Defense licenses only) and 48 CFR 12.212 (for licenses with all federal government agencies), the government's rights to the Software and such Documentation are limited to the commercial rights specifically granted in this Agreement, as restricted by this Agreement. The rights limited by the preceding sentence include, without limitation, any rights to reproduce, modify, perform, display, disclose, release, or otherwise use the Software or Documentation. This Section 12.6 does not grant Customer any rights not specifically set forth in this Agreement.

12.7 COMPLIANCE WITH LAWS. Each party shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information. Without limiting the generality of the foregoing, Customer acknowledges the Software is subject to U.S. export jurisdiction, and each party shall comply fully with all export and import laws, regulations, orders, and policies of the U.S. and any other applicable jurisdiction, including, without limitation, export licensing requirements, end user, end-use and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities Customer acknowledges and agrees that, with respect to applicable import and export restrictions, BeyondTrust has no further responsibility after the initial distribution to Customer within the original country of sale. Each party acknowledges and agrees that neither the U.S. Bureau of Industry and Security nor any other federal agency has suspended, revoked, or denied a party's export privileges. Customer agrees it shall not use or transfer Software or Other Offerings for end use relating to any nuclear, chemical, or biological weapons, or development of missile technology unless authorized by the U.S. Government by regulation or specific license. Customer further agrees it may not use, sell, lease, export, re-export, or transfer (in-country), either directly or indirectly, Software or Other Offerings to a prohibited destination and/or country under the U.S. Export Administration Regulations ("EAR") or U.S. sanctions regulations, which currently includes Cuba, Iran, North Korea, Syria, and the Donetsk People's Republic, Luhansk People's Republic, and Crimea regions of Ukraine. Please note that this list ("Embargoed Destinations") is subject to change by U.S. Government authorities, and Customer should independently verify which destinations are prohibited. In addition to the Embargoed Destinations, Customer may not use, sell, lease, export, reexport, or transfer (in-country), either directly or indirectly, Software or Other Offerings to a person or entity barred by the U.S. Government from participating in export activities. Denied persons/entities include, but are not limited to, persons and/or entities such as those listed on the U.S. Commerce Department's Denied Persons List, Entity List, and the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") Specially Designated Nationals List. Finally, Customer confirms that Customer is not the subject or target of economic sanctions of the United States or other applicable jurisdictions, and that Customer is not located in a country or territory subject to a U.S. Government embargo (including the "Embargoed Destinations") or that are located in the Peoples Republic of China or Russian Federation (collectively, an "Ineligible Customer"). BeyondTrust shall have the right to reject any Order from an Ineligible Customer.

12.8 INTEGRATION AND AMENDMENT. This Agreement and written documents referenced herein (including the Order)

constitute the entire agreement of the Parties and supersede and extinguish all prior agreements or understandings, representations or warranties, whether written or oral, relating to the subject matter hereof. The terms and conditions of this Agreement supersede those of any prior contract between the Parties related to the Software or Other Offerings, as of the Effective Date of this Agreement and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the Parties, except that prior and still active orders between the Parties related to the Software are incorporated into this Agreement and are considered Orders by this reference. This Agreement may not be modified, amended, nor may additional obligations be assumed, by either Party to this Agreement except (a) by written agreement specifically referring to this Agreement signed by the

respective authorized representatives of the Parties or (b) by Customer’s execution of a subsequent electronic agreement provided by BeyondTrust with respect to the same Software or Other Offerings. Customer represents and acknowledges that, in entering into this Agreement, it did not rely on any representations or warranties other than those explicitly set forth in this Agreement. CUSTOMER HEREBY

AGREES THAT ANY CONFLICTING, INCONSISTENT, VARYING OR ADDITIONAL TERMS CONTAINED IN ANY PURCHASE ORDER OR OTHER WRITTEN NOTIFICATION OR DOCUMENT ISSUED BY CUSTOMER IN RELATION TO THE SOFTWARE OR OTHER OFFERINGS WILL BE INAPPLICABLE AND OF NO FORCE OR EFFECT.

12.9 PUBLIC RELATIONS. *Intentionally omitted..*

12.10 CONSTRUCTION. This Agreement will be construed simply according to its fair meaning and not strictly for or against any Party by reason of authorship or for any other reason. References to “including” mean “including, without limitation.” If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect, provided that in such event the Parties agree to negotiate in good faith enforceable substitute provisions for such invalid or unenforceable provisions that most nearly effect the Parties’ original intent, and which are valid and enforceable under applicable law. No waiver of any breach or default hereunder will be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver will waive any subsequent breach or default. Nothing expressed or implied in this Agreement will be construed to give any rights or remedies to any third party, including without limitation any third-party beneficiary rights, except as applicable the Parties’ respective executors, heirs, representatives, administrators, successors, and assigns.

12.11 REPRESENTATIONS. Customer acknowledges that: (a) it has read and understands this Agreement; and (b) it has had an opportunity to have its legal counsel review this Agreement. In addition, the individual accepting this Agreement on Customer’s behalf personally represents that he or she is duly authorized to accept this Agreement on behalf of Customer and that this Agreement is binding upon Customer.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to sign this Agreement upon the date first set forth above.

BEYONDTRUST CORPORATION

**STATE OF NORTH CAROLINA
DEPARTMENT OF INFORMATION TECHNOLOGY**

By: _____ (Signature)

By: _____ (Signature)

Name: _____ (Print)

Name: _____ (Print)

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

DEFINED TERMS

In addition to any other terms defined elsewhere in this Agreement, the following terms have the following meanings:

“Active Login” means use of the BeyondTrust Remote Support Software as described in the applicable Order, by a single service representative, logged in directly or indirectly to the Remote Support server software, at any given time. The number of Active Logins is the number of service representatives accessing the Remote Support server software concurrently.

“Active Endpoints” means the number of Endpoints accessed by the BeyondTrust Privileged Remote Access Software, as described in the applicable Order. “Endpoint” means any network device or computer system, virtual or physical, such as, but in no event limited to, a router, server, storage array, database, or desktop, and/or any unique application made accessible via the Secure App feature included with the Software; and/or any unique URL made accessible through BeyondTrust Web jump feature published as an endpoint within the Software

“Affiliate(s)” means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, such entity or one or more of the other affiliates of that entity (or a combination thereof), as of the Effective Date or thereafter; provided, however, such entity shall be considered an Affiliate only for the time during which such control exists. Solely for the purposes of this definition, an entity shall “control” another entity if the first entity: (a) owns, beneficially or of record, more than fifty percent (50%) of the voting securities of the other entity, or (b) has the ability to elect a majority of the directors of the other entity. Each Party shall at all times be primarily responsible for the acts or omissions of its Affiliates.

“Asset” means a device, physical or virtual, that meets one of the descriptions for Active Login, Active Endpoints, Managed User and/or Computer Object, Managed Devices and Managed Servers.

“Client” means a direct customer of Customer.

“Cloud Services” means provision of access to and use of the Software, and in some cases the Documentation, remotely over the Internet. Cloud Services do not include or provide On-Premise Software.

“Cloud Service Level” located at <https://beyondtrust.com/cloud-service-level> as applicable, which will apply only to BeyondTrust’s provision of the Cloud Services and not to the provision of On-Premise Software.

“Customer Data” means all graphic user interface, text, content, images, video, designs, products, computer programs, drawings, documentation, and other materials of any kind posted, submitted, provided or otherwise made available to BeyondTrust by Customer in connection with the Software and Other Offerings.

“DPA” means the provisions detailed in the BeyondTrust Data Processing Addendum located at: www.beyondtrust.com/dpa

“Documentation” means the documents, help files, and other textual matter, in any form or media, that are included with the Software and describe its specifications, functionality, and limitations.

“Effective Date” means the earlier of the following: (i) execution of this Agreement by both Parties, (ii) the effective date of the first Order, or (iii) the date the Software is first made available to Customer.

“Fee(s)” means the fee(s) charged by BeyondTrust (as set forth on the applicable Order) for each Software or Other Offering.

“Hardware” means the computer equipment distributed by BeyondTrust, or by a Reseller on BeyondTrust’s behalf, pursuant to an Order. Hardware may contain firmware or software.

“Instance” means a single deployed application (e.g., production, test, or disaster recovery)

“Managed User and/or Managed Computer Object” is any physical, virtual, Container or computing device, wired or wireless and regardless of the number of IP addresses assigned, that will be either interacting with software rules, have an agent installed, or be targeted for an assessment. A

“Virtual Machine” is a virtual emulation of a physical computer. Virtual Machines exist in virtual environments including but not limited to VMware Server, Hyper-V, Azure VM’s, Amazon AWS VM’s, or zOS LPAR’s. “Container(s)” is an emulation that occurs at the OS level. This is a contrast to Virtual Machines, which emulate at the hardware level up.

“Managed Devices” means any network device being managed by a Software or Other Offering that is virtual or physical, such as a desktop PC, router, or switch that is not a server OS or functioning as a server of Customer and/or Clients.

“Managed Servers” means any network device being managed by a Software or Other Offering that is (a) acting as a server or running a server-based operating system, virtual or physical, (b) used for serving applications, websites, DNS, Directory Service, DHCP, files, storage arrays, databases or (c) filling any other server-related roles on behalf of Customer and/or Clients.

“On-Premise Software” means electronically delivered Software provided for installation on computers owned or managed by Customer. On-Premise Software does not include Cloud Services, or any Software provided through Cloud Services.

“Order” means an ordering document executed by Customer and BeyondTrust, or a Reseller, on BeyondTrust’s standard order form, referencing this Agreement and calling for provision of one or more Software or Other Offerings; provided a Customer purchase order for the second or later purchase under this Agreement will become an Order upon execution by BeyondTrust or a Reseller.

“Personnel” means individual employees, contractors, and agents of an entity.

“Reseller” means a reseller of the Software authorized by BeyondTrust. As between the Parties, BeyondTrust has sole and complete discretion to grant or terminate Reseller status.

“Software” means the applicable object code form of the BeyondTrust software as listed on the applicable Order.

“Software or Other Offering(s)” means: (a) Software and Documentation, in each case whether provided as or with On-Premise Software or via Cloud Services; (b) Hardware; (c) deliverables provided through Professional Services; and (d) the Professional Services, Support Services, and E-Learning Services.

“Subscription” means the purchase by Customer under an Order of either an On-Premise Software limited term license or Cloud Services.

“Support Services” means the then-current services provided by BeyondTrust as set forth in the “Support Guide” located at <https://www.beyondtrust.com/resources/datasheets/customer-support-guide>

“Support Term” means the time period specified in the applicable Order during which Support Services shall be provided by BeyondTrust to Customer in connection with an On-Premise Software perpetual license, which time period for Support Services is subject to renewal or termination in accordance with the Standard Terms & Conditions.

“Upgrade” means any modification, correction, enhancement, deletion, or substitution to the Software, including but not limited to, any data file or module thereto that may be provided by BeyondTrust.