

STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION Information Security Office (ISO)	INVITATION FOR BIDS NO. 54-12186705-ARS	
	Offers publicly opened: Friday, November 7, 2025	
Refer <u>ALL</u> inquiries regarding this IFB to: Allison R. Scott arscott3@ncdot.gov	Issue Date: Tuesday, October 28, 2025	
	Commodity Number: 811122	
	Description: Security WebInspect Software Maintenance and Support Renewal	
See page 3 for Offer Submittal instructions.	Using Agency: NC Department of Transportation	
	Requisition No.: PR25725 / 12186705	

OFFER AND ACCEPTANCE

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

EXECUTION

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

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

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

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

ACCEPTANCE OF OFFER

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

<u>FOR STATE USE ONLY</u>
Offer accepted and contract awarded this _____ day of _____, 20____, as indicated on attached certification, by _____ (Authorized representative of NC Department of Transportation).

TABLE OF CONTENTS

1.0 INTENT, USE, DURATION AND SCOPE 3

2.0 GENERAL INFORMATION 3

 2.1. VENDOR QUESTIONS 3

 2.2. ADDENDA..... 3

 2.3. OFFER SUBMITTAL 3

 2.4. BASIS FOR REJECTION 4

 2.5. LATE OFFERS 4

 2.6. NON-RESPONSIVE OFFERS 4

 2.7. NOTICE TO VENDORS 4

 2.8. E-PROCUREMENT SOLICITATION 5

 2.9. DISTRIBUTORS AND RESELLERS 5

 2.10. POSSESSION AND REVIEW 5

 2.11. AWARD 5

 2.12. BEST AND FINAL OFFERS (BAFO)..... 6

 2.13. POINTS OF CONTACT 6

3.0 SPECIFICATIONS 6

 3.1. VENDOR STANDARD AGREEMENT(S) 6

 3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S. 7

 3.3. E-VERIFY 7

 3.4. BRAND SPECIFIC PRODUCT 8

 3.5. CONTRACT TERM 8

4.0 FURNISH AND DELIVER 8

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES 9

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS 9

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS 11

1.0 INTENT, USE, DURATION AND SCOPE

The purpose of this Invitation for Bids (IFB) is to obtain pricing for and procure software maintenance and support for two (2) Security WebInspect Software Licenses, software previously licensed to the Information Security Office (ISO) within the North Carolina Department of Transportation. Services will be provided in accordance to the terms and conditions of this IFB.

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 **Monday, November 3, 2025 at 10:00AM Eastern Time**. They must be submitted to the contact person listed on Page One of this Solicitation via arscott3@ncdot.gov. Please enter “Questions Solicitation IFB 54-12186705-ARS” as the subject for the message. Questions should be submitted in the following format:

REFERENCE	VENDOR QUESTION
IFB Section, Page Number	

2.2. ADDENDA

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 IFB.

2.3. OFFER SUBMITTAL

Due Date: **Friday, November 7, 2025**

Time: **5:00PM Eastern Time**

IMPORTANT NOTE: Vendor shall bear the risk for late submission due to unintended or unanticipated delay. **Vendor must include all the pages of this solicitation in their response.** It is the Vendor’s sole responsibility to ensure its offer has been submitted in the Electronic Vendor Portal (eVP) <https://evp.nc.gov> by the specified time and date of opening. Any proposal delivered after the proposal deadline will be rejected.

Offer Submission Details:

Sealed offers, subject to the conditions made a part hereof, will be received until 5:00PM Eastern Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted 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, or any hardcopy format in response to this IFB shall NOT be accepted.

a) All File names should start with the Vendor's 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-IFB 54-12186705-ARS.

b) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .jpeg, or png format, and shall be capable of being copied to other sources.

c) If the Vendor's proposal contains any confidential information (as defined in Section 7.0, Paragraph#14), then the Vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

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

2.4. BASIS FOR REJECTION

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

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

2.8. E-PROCUREMENT SOLICITATION

This is not an E-Procurement solicitation (only Services will be procured). See Paragraph #33 of the attached Department of Information Technology Terms and Conditions. The Support Services Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide E-Procurement initiative. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature vendor acknowledges acceptance of all terms and conditions including those related to E-Procurement.

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

2.9. DISTRIBUTORS AND RESELLERS

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

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. AWARD

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

A link to the NC Electronic Vendor Portal (eVP) allows the public to retrieve contract award information electronically from the web site: <https://evp.nc.gov/> Results may be found by searching by IFB number or agency name. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.

2.12. 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.

2.13. 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 procurement officer named on page 5, or upon award of contract:

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: IT Business Office	Name:
Street: 1020 Birch Ridge Drive	Street:
City, State, Zip: Raleigh, NC 27610	City, State, Zip:
Attn: Allison R. Scott	Attn:
Email: itbusinessoffice@ncdot.gov	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 Vendor's Software Maintenance Program Handbook is incorporated by reference, Attachment A, as a supporting document to this IFB No. 54-12186705-ARS and does not supersede any terms or conditions from any existing agreements between OpenText and the North Carolina Department of Transportation for Licenses SW713221007 and SW71384177.

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.

For Security purposes, the State is requesting that all scope in this solicitation be sourced in the US or its territories.

Notwithstanding the statement above, in order to comply with N.C.G.S. §143B-1361(b), the Vendor must detail in its offer, the manner in which it intends to utilize resources or workers located outside the U.S. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:

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

Will any work under this contract be performed outside the United States or its territories?

YES NO

If Vendor answered "YES" above, list the location(s) outside the United States where work under this contract will be performed by Vendor, any sub-contractors, employees, or other persons performing work under the contract. Also identify the type of work the person will be doing (Help Desk, Technical Support, Architect, Developer, etc.)

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. CONTRACT TERM

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

4.0 FURNISH AND DELIVER

Year 1:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	year	Security WebInspect for 1 Named User SW E-LTU Support Maintenance Renewal Part#: SP-AK394 Serial#: SW71322107 Start Date: 08/01/2025 End Date: 07/31/2026	\$ _____	\$ _____
2	1	year	Security WebInspect for 1 Named User SW E-LTU Support Maintenance Renewal Part#: SP-AK394 Serial#: SW71384177 Start Date: 08/01/2025 End Date: 07/31/2026	\$ _____	\$ _____
3	1	each	Reinstatement Fee - Cybersecurity Part#: SU-AB355	\$ _____	\$ _____
TOTAL OFFER COST FOR YEAR 1:					\$ _____

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES

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

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

Is Vendor a Historically Underutilized Business? YES NO

If “YES”, specify classification. _____

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
 - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
 - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **THE STATE:** Is the state of North Carolina and its agencies.
 - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this 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, and in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial

conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.

- 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES:** 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://www.ips.state.nc.us>. **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:** Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/ips>
- 10) **DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

7.0 DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS**1) DEFINITIONS: Supplementing the Definitions appearing in the body of this solicitation, above:**

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

2) INTELLECTUAL PROPERTY INDEMNITY

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

3) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

- a) For purposes of the exclusive remedies and limitations of liability set forth herein, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors,

and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

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

4) SUPPORT AND MAINTENANCE

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

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

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

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

- a) Intellectual Property. Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) Inherent Services. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities,

furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables

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

6) SOFTWARE RETIREMENT

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

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

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

9) TRAVEL EXPENSES: **All travel expenses should be included in the Vendor’s proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses upon specific written request by the State arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses

exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

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

confidential meet the requirements of the Rules and Statutes set forth above. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. In any event, the State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9.

- a) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
 - b) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder is the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary vendor materials shall be identified to the State by vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.
- 15) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.
- 16) ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement accepting the terms and conditions and duties as previously agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 17) INSURANCE COVERAGE:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
- a) Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in

- any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
- b) Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
 - c) Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
 - d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.
- 18) NOTICES:** Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 19) TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 20) AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
- 21) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 22) GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- 23) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.

- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

- 24) WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 20) (Amendment) herein.
- 25) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 26) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 27) EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 28) TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. Should this contract be terminated for cause or for convenience, the fees paid for the current term of support or maintenance for the remaining portion of the term shall be rebated pro rata.
 - a) The parties may mutually terminate this Contract by written agreement at any time.
 - b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 23) (Default), or pursuant to the Terms and Conditions in the Solicitation Documents, or pursuant to any of the following
 - i. Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 3) (Indemnity). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - ii. Termination For Convenience Without Cause: The State may terminate service contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and Services delivered in conformance with the Contract up to the date of termination.
- 29) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator

for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

- 30) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 31) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 32) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
- 33) ELECTRONIC PROCUREMENT:** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.
- a) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.
 - b) 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.

opentext[™]

The Information Company

OpenText Protect

Software Maintenance Program Handbook
Protect, Protect Anytime, and Protect Anywhere Programs

1. Introduction

Welcome to Open Text Corporation's OpenText Protect Software Maintenance Program. This handbook provides you with information about the policies and processes designed with your support needs in mind. Please use this as a guide to help you get the most out of your investment in OpenText solutions.

The OpenText Protect Software Maintenance Program Handbook (the "Handbook") describes the OpenText Protect Software Maintenance Program services offered for OpenText software licensed from OpenText and for which you have purchased the support services described herein. We also offer fee-based enhanced support programs that allow organizations to extend their support coverage depending on their business needs and are available to any current subscriber of the OpenText Protect Software Maintenance Program. They are described in section 5 of the Handbook.

You can also refer to <https://www.opentext.com/support> to find more information or contact your local OpenText customer support office for documentation on these additional programs.

1.1 Definitions

“**Additional Program**” refers to fee-based enhanced programs, which may be outlined in Section 5 herein.

“**Classification**”, “**Classified**” or “**Classify**” refers to the OpenText designated priority of the Support Request.

“**Covered Software**” shall mean the licensed software for which maintenance services shall be provided under this Handbook including all documentation provided or made available.

“**Customer Service Portal**” refers to the OpenText online access point for links to and information regarding OpenText customer support, available to OpenText Protect customers.

“**Current Maintenance**” – a defined period of time from the release date of the Covered Software which includes:

- Unlimited number of Support Request submissions
- Product Patches and/or Releases
- The ability to request enhancements or new features and report Errors
- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars and events)
- Requires customer active software maintenance and annual renewal

“**Days**” refers to business days, which are 5 days x 8 hours Monday through Friday, except for regional statutory holidays.

“**Documentation**” refers to user guides, operating manuals, and release notes in effect as of the date of delivery of the applicable Covered Software, made generally available to OpenText’s end users by OpenText.

“**Error**” refers to any verifiable and reproducible failure of the Covered Software to perform substantially in accordance with its accompanying Documentation, as applicable, for such Covered Software.

“**Expiration**” shall mean the ending of a Term whether occurring through termination or cancellation.

“**Initial Term**” refers to the twelve months beginning on the Start Date.

“**OpenText**” refers to Open Text Corporation and/or its subsidiaries/affiliates offering the maintenance and support services as described in this OpenText Protect Software Maintenance Program Handbook, as applicable.

“**Product Patch**” refers to an additional software program to correct an Error of the Covered Software.

“**Points of Contact**” or “**POC**” refers to your designated individual employees who are authorized to contact the OpenText support team.

“**Production Mode**” refers to the use of the Covered Software as intended by its accompanying Documentation, by your users as part of business or service operations. Production Mode does not include development, quality assurance, demonstration, testing, staging, or training environments.

“**Release**” refers to the finalized and released software.

“**Resolution**” refers to taking the necessary action to correct an Error such that the Covered Software is operating in accordance with the Documentation. This could include, but is not limited to, creating a new or applying an existing Workaround (provided that OpenText will pursue a permanent fix, if commercially reasonable), or Update.

“**Response Time**” refers to the amount of time that is measured from the time a Support Request is received by OpenText until the time when a technically qualified member of OpenText responds to you for the purpose of commencing the work necessary to achieve Resolution of the Support Request. The response time for an SR is determined by its Classification, the OpenText support program(s) the customer subscribes to, and the time when the SR was submitted to OpenText during a business day.

“**Start Date**” refers to the initial date for the commencement of customer’s OpenText Protect Software Maintenance Program which is on the date the Covered Software is initially shipped or otherwise made available from OpenText to you.

“**Subsequent Term**” refers to the 12-month term commencing on the first anniversary of the Start Date and each subsequent 12-month term commencing on an anniversary of the Start Date.

“**Support Request**” or “**SR**” refers to the initiation of a record or “ticket” documenting the details of the service request or incident.

“**Support Services**” refers to the following activities: an initiation of a Support Request, OpenText’s response to the Support Request, and a Resolution of the Support Request.

“**Sustaining Maintenance**” refers to the stage of the product lifecycle following the expiration of Current Maintenance. During this phase of the product support lifecycle, the following Support Services are available*:

- Access to the Customer Service Portal (Documentation, technical articles, discussion forums, webinars, and events)

* The terms and length of phases of the product support lifecycle may vary depending on the product and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms.

“**Term**” refers to either the Initial Term or a Subsequent Term.

“**Update**” shall mean Product Patch or Release of the Covered Software, which will be provided by OpenText to the customer in accordance with this Handbook.

“**we**” or “**our**” refers to OpenText.

“**Workaround**” is a manner of addressing an Error by bypassing the problem in the system (software technical bypass). A Workaround is typically a temporary fix and OpenText may subsequently correct the Error in the Covered Software and/or the programs through a Product Patch or an Update.

“**you**”, “**your**” or “**customer**” mean the entity registered as the licensee of the Covered Software and is purchasing OpenText Protect Software Maintenance Program services.

2. Support Services

2.1 General

2.1.1 Hours and OpenText Support Services Location Information

Support Services are available 5x8 Monday through Friday for all support requests (as defined in section 2.3.2 of this SMPH), except for regional statutory holidays. Support Services hours are based upon the country where the customer is located and purchased the Covered Software. Hours, support locations and additional contact information for the OpenText Protect Software Maintenance Program are publicly available and maintained at our corporate website at: <https://www.opentext.com/support/contact/opentext>.

Support Services are delivered from a support location in the same region as where the customer is located and purchased the Covered Software, or from an alternate support location as determined by OpenText. Where an alternative support location is used by OpenText, regional statutory holidays for such alternative support location shall not impact the Support Services hours for customer.

Communication relating to an SR will be made in English, unless, at OpenText’s discretion, the support center responsible for processing is able to offer communication in another language as a convenience to the customer. OpenText may not be able to provide any information in a language other than English in the event an SR is transferred to a different support center.

*For customers in the Middle East, Support Services are available 8 hours a day, 5 days a week, Sunday through Thursday, except for regional statutory holidays, for Moderate and Low Support Requests.

2.1.2 Point(s) of Contact

Support Services are provided to your Point of Contact (POC). The POCs must have knowledge of, and the administrator permissions for, the Covered Software sufficient to provide OpenText customer support with the information and undertake actions required to achieve a resolution of the SR as described below.

POCs are generally the administrators and other members of your technical staff.

A unique support renewal contract for the Covered Software will be assigned to each software maintenance and support order you place with OpenText. You may designate up to three POCs for each support renewal contract. The POCs may only contact OpenText customer support in accordance with section 2.1.1.

2.1.3 Software Updates

Releases to Covered Software will be made available to you as part of the OpenText Protect Software Maintenance Program at no additional charge, if and when such Releases are generally released to all OpenText Protect Software Maintenance Program subscribers. To receive such Releases, the OpenText Protect Software Maintenance Program must be subscribed to at time of Release and request. Subscribers are notified about new Releases in regular information bulletins and via the Customer Service Portal.

You are encouraged to run the most recent Release of the Covered Software. In most instances, OpenText will support each Release of the Covered Software for a period of sixty (60) months after the Release is generally made available to OpenText's customers (Current Maintenance). The terms and length of phases of the productsupport lifecycle may vary depending on the Covered Software and Release. Please refer to the Customer Service Portal product page for specific lifecycle terms. After the expiration of the Current Maintenance term, the Covered Software enters the Sustaining Maintenance phase of the product lifecycle. When Covered Software is considered to be in Sustaining Maintenance, no new Product Patches and Releases are released for general use.

Migration to a Current Maintenance Release may be required in order to address an issue. If you are unable to update to a subsequent Release under Current Maintenance, OpenText may offer extended support and maintenance options at an additional cost. Please contact your Renewals Specialist or local OpenText customer support office for more information

2.2 Initiation of a Support Request

Support Services are provided under the OpenText Protect Software Maintenance Program to address incidents reported by subscribers associated with performance or usage issues. Performance and usage issues are situations where the Covered Software is not performing substantially in accordance with the accompanying user Documentation. Generally speaking, performance and usage issues may be caused by: 1) software Error or defect (related to the design, coding or architecture of the Covered Software); 2) usage or configuration Error (related to usage of the Covered Software or the installation, configuration or setup of the Covered Software); or 3) environmental Error (related to the subscriber's network, hardware, and operating systems). SRs for Support Services to address any issues should be initiated by a POC using the Customer Service Portal located at <https://support.opentext.com/>. These customer self-service tools will automatically initiate an SR and send you an associated tracking number.

You are encouraged to:

- Provide OpenText customer support with the information it reasonably needs to Classify and log the SR (see 2.3.2).
- Wherever possible, use the SR number for each communication with OpenText customer support.

2.3 OpenText Response to a Support Request

2.3.1 Support Request Dispatch

Support Requests will be dispatched as follows:

- a. If the SR involves OpenText Covered Software, then a SR will be forwarded to OpenText Customer Support for Classification and Resolution (described below).
- b. If the source of the SR is unclear, the ticket will be forwarded to OpenText customer support for further investigation and, once the source of the SR is determined, it will be dispatched as described above in sections 2.3.1 (a).
- c. If the source of the SR is your hardware, operating system, database, web server, browser software, or other non-OpenText application, OpenText may, where possible, attempt to provide a Workaround (described below) and/or may, where possible, report the problem to the appropriate vendor for Resolution. If the SR involves a product that is developed by a third party, the SR may be referred to that third party.
- d. Any software and/or hardware provided by and installed by OpenText (as agreed by you) to assist with the delivery of the Support Services that is not purchased by you must be removed and returned to OpenText upon termination of the program or related delivery component.

2.3.2 Support Request Classification and Response Times

SR Classification	SR definition	Target Response Time
	Each SR will be Classified by OpenText customer support as listed below. OpenText will consider, in good faith, your request to reclassify an SR.	Response Times are targets and cannot be guaranteed in all circumstances by OpenText.
1-Critical	SR will be Classified as a critical incident if the Production system is down, the Covered Software is inoperable and where there is critical business impact.	1 business hour or less, 5x8 Critical incidents must be logged by phone to OpenText directly.
2- High	SR will be Classified as a high incident if it results in production performance degradation, restricted use of the Covered Software and where there is high business impact.	2 business hours, 5x8
3-Moderate	SR will be Classified as moderate where an issue impacts non-production environment, relates to use of or a configuration inquiry for the Covered Software or a minor software defect or a feature request. Access to the Customer Service Portal remains available 7x24.	4 business hours, 5x8
4-Low	SR will be Classified as Low for administration or general inquiries, or where there is no material business impact	8 business hours 5x8

Escalation: You may request an escalation at any time through the Customer Service Portal or phone. Please see Section 3.0 for limitations to the OpenText Protect Software Maintenance Program

2.4 Resolution of Support Request

OpenText customer support shall attempt to address each SR, regardless of Classification, through the offering of technical advice, by locating an existing Workaround, or by creating a new Workaround using the process described below in this Section 2.4. In the event of an outage and depending on the cause and duration of the outage, OpenText may require the customer to restore from backup in order to return the system to a production state.

Once production service is restored, the SR Classification is downgraded and root cause analysis may continue, as requested, during regular regional support hours of operation.

If a Product Patch is provided to you to resolve an SR, distribution of the Product Patch will be carried out through the next scheduled Release.

2.4.1 Resolution of Critical SRs

For SRs Classified by OpenText as Critical which have been caused by defects in the Covered Software, if the technical advice provided by OpenText customer support has not resolved the SR, and if no Workaround can be found or created to resolve the SR, OpenText customer support will use commercially reasonable efforts to develop a Product Patch to address the SR and provide it to you.

2.4.2 Resolution of High SRs

For SRs Classified by OpenText as High, OpenText may develop a Product Patch or may address this in a future Release.

2.4.3 Resolution of Moderate SRs

Resolution of SRs Classified as Moderate may be included in a future Release from OpenText.

2.4.4 Conditions of a Support Request Resolution

OpenText customer support shall attempt to address each SR, regardless of Classification; OpenText will have no obligation to provide a Resolution for your SR as described above unless:

- You are running a Release of the Covered Software which is under Current Maintenance, and you have installed and implemented all of the most recently available relevant Updates, or you do so at the request of OpenText customer support. OpenText customer support will make that request if it reasonably believes that the installation and implementation is necessary to achieve Resolution of your SR; AND,
- You are using the Covered Software on hardware and with third-party software approved by OpenText or as specified in the Documentation; AND,
- The SR has, as determined by OpenText, not been caused by you, including, but not limited to your use and/or configuration of: (a) development tools, including SDK; (b) a third-party resource; and (c) the operating environment in which the Covered Software is implemented, including, among other things, the operating system, database, other applications, services, or programs, communication networks, or hardware; AND,

- Your POC is available to actively participate with OpenText on diagnosis, testing, and Resolution. OpenText reserves the right to suspend its obligations under this Handbook during any time(s) in which a competent POC is unavailable for such participation; AND,
- You have provided OpenText with all of the information necessary to allow OpenText to reproduce the SR.

3. Limitations

The following limitations apply to the OpenText Protect Software Maintenance Program:

- The OpenText Protect Software Maintenance Program, as described in this Handbook, only applies to the Covered Software as is described in the OpenText Documentation, and does not apply to any modifications, deliverables, or services provided by OpenText’s professional services staff or by third-party resources, which results in the alteration or extension of the Covered Software. Customer may engage OpenText’s professional services for fee-based assistance under separate agreement.
- OpenText reserves the right to modify any portion of this Handbook at its sole discretion and without prior notice; however, you will be notified of any such modifications (if such modifications result in a material reduction of service) in a timely manner by way of email, written notice, or a posting on the Customer Service Portal.
- Nothing in this Handbook purports to exclude, restrict or modify, any condition, warranty, or guarantee implied by applicable law (“Implied Terms”) where to do so would have the effect of rendering all or any part of this Handbook void or otherwise unenforceable. To the maximum extent permitted by applicable law, OpenText’s liability for breach of any Implied Terms is limited to the resupply of the OpenText Protect Software Maintenance services.
- OpenText’s obligation to address SRs and/or performance issues shall be strictly limited to those obligations described in this Handbook.
- The OpenText Protect Software Maintenance Program, OpenText Protect Anytime, and OpenText Protect Anywhere Support Programs do not provide for dedicated assistance with issues encountered as a result of implementing major changes to the technical architecture of the Covered Software (for example, Updates to the application, underlying database, addition of new hardware, etc.). OpenText offers: (1) remote or onsite assistance from an OpenText customer support representative who is assigned to your organization for the duration of a maintenance activity or SR to observe, participate in conference calls or web sessions, or provide assistance

with your maintenance activities (“Dedicated Support”); and (2) an assigned support representative with expertise in your planned maintenance activity that will be on call only in the event you need assistance (“Standby Support”). Dedicated Support or Standby Support are fee-based services that must be pre-arranged for these types of activities. Please contact your local OpenText customer support office for more information.

- OpenText Protect Software Development Kit (SDK) Support will provide assistance with SRs relating only to: (a) the installation (b) the configuration of an OpenText developer application (for example, Integrated Development Environment (“IDE”)) or related software required to establish a suitable development or programming environment that is consistent with those environments or applications which have been supported; and (c) the analysis of error messages related to the OpenText developer application. SDK support for debugging code, assistance with writing coding, code reviews, or any general programming assistance is not included as part of the OpenText Protect Software Maintenance Program, but can be provided through separate agreement at an additional charge.
- The provision of license keys is excluded from the Response Times described in Section 2.3.2 of this OpenText Protect Software Maintenance Program. Additionally, license keys from third-party vendors are requested of the third-party vendor, and provided by the third-party vendor to either OpenText or the Customer as determined by OpenText. License keys may not be available for products and/or releases no longer under Current Maintenance.
- The software lifecycle for third-party products resold by OpenText is established by third-party vendors only. Third-party software is excluded from Section 2.1.3.
- OpenText is not responsible for providing Support Services for third-party products resold by OpenText to the extent that addressing SRs is dependent on unresolved issues with third-party products including, but not limited to, unavailability of third-party support.
- All licenses and related modules must be supported under the same software maintenance program (e.g., Protect, extended support and maintenance programs (to the extent available), etc.).

4. Term and Renewal

4.1 Initial Term and Renewal

The Initial Term for OpenText Protect Software Maintenance Program is twelve months beginning on the Start Date. Unless either party provides 90 calendar days written notice prior to the expiration of the current term, the OpenText Protect Software Maintenance Program will automatically renew for a Subsequent Term on an annual basis, commencing each anniversary of the Start Date. Before the commencement of a Term, you will be obligated to pay the applicable entire annual OpenText Protect Software Maintenance Program fee with respect to the Covered Software which you have licensed from OpenText, failing which OpenText may suspend some or all of the OpenText Protect Software Maintenance Program services until payment has been received. Such suspension shall not relieve you from your obligation to pay the applicable OpenText Protect Software Maintenance Program fee. OpenText may increase the annual fee for Subsequent Terms of software maintenance by no more than 10% of the price of the previous Term. All fees paid for the OpenText Protect Software Maintenance Program are non-refundable.

4.2 Reductions

All requests to renew OpenText Protect Software Maintenance Program on a fewer number of licenses or modules for Covered Software than is currently covered under maintenance and support must be submitted in writing to OpenText no less than 90 calendar days prior to the expiration of the then-current Term. Acceptance of any such requests is at OpenText's sole discretion. If OpenText accepts such a request, OpenText shall only provide Updates and software support for the number and type of licenses included in your then remaining Covered Software being renewed under maintenance and support. The maintenance charges for the remaining Covered Software shall be re-priced under then-current OpenText Software Maintenance Programs. In such an event, the fees applied to each license may differ from any earlier Terms (for example, previously granted fee discounts are not applicable). Any renewal of maintenance and support for Covered Software must result in all of Customer's licenses of such Software product and related modules being covered by a maintenance and support plan. If you cancel maintenance and support for a portion of any Software product or related modules, you will be required to cancel the licenses for the unsupported software.

4.3 Lapse and Reinstatement

If you terminate or cancel, as applicable, a Term of the OpenText Protect Software Maintenance Program for the Covered Software, you may, upon agreement by OpenText, subsequently purchase then-current OpenText Software Maintenance Program services for said Covered Software for a fee to be determined by OpenText at time of request. However, in addition to the fee for the new Term, which shall be a minimum of 12 months, you will need to pay the fees that would have been payable had you continued the OpenText Protect Software Maintenance Program uninterrupted. The fees charged to reinstate Support Services are subject to a surcharge for each lapsed month, including the month of reinstatement.

Future reinstatement of software not cancelled as a part of a reduction as described in Section 4.2 is subject to payment of back-maintenance fees and lapsed month surcharges.

OpenText will confirm fees for reinstatement at the time the request is made for reinstatement.

4.4 Expiration

Upon Expiration of the Term of an OpenText Software Maintenance Program, you acknowledge and agree that any and all agreements between you and OpenText related to the OpenText Software Maintenance Program shall automatically terminate, irrespective of whether these agreements were documented in this Handbook or a EULA or any other document. Upon Expiration of your OpenText Software Maintenance Program, you will no longer be able to receive assistance from the OpenText support team or have access to the Customer Service Portal. Should you at any point in time after Expiration choose to subscribe again to an OpenText Software Maintenance Program, you will do so under the then-current OpenText Software Maintenance Program commercial and support services delivery terms, and OpenText shall not be obligated to comply with, any agreements that were entered into prior to the Expiration date related to such OpenText Software Maintenance Program.

5. Additional Programs

In order to purchase any of the Additional Programs, you must participate in one of the following: OpenText Software Maintenance or OpenText Protect Programs (collectively the “OpenText Software Maintenance Programs”). You must be a subscriber, through the duration of the Additional Program, to one of the OpenText Software Maintenance Programs.

5.1 General Terms

- The Additional Program period shall be for 12 months unless otherwise agreed by OpenText and the customer in writing.
- The terms in this Handbook shall apply to the program deliverables defined herein for each of the Additional Programs. Any additional services requested by the customer will require a separate agreement and be subject to OpenText's current price list.

5.2 OpenText Protect Anytime

The OpenText Protect Anytime Support Program (OpenText Protect Anytime) includes support for critical issues (as defined in section 2.3.2) related to the Covered Software in your production environment 7x24.

When the customer initiates a critical SR with the OpenText customer support office, a support representative will respond within one (1) hour. The OpenText customer support representative will troubleshoot the issue, providing a solution or recommended Workaround to be implemented by the customer team. OpenText customer support resources will be on call and available (24 hours a day, 7 days a week) until production service is restored or a Workaround agreed upon.

Customer may designate up to 3 additional POCs when subscribing to OpenText Protect Anytime (total of 6 POCs). Additional POCs over and above the designated amount may be purchased as specified in section 5.3.

5.3 OpenText Protect Anywhere

The OpenText Protect Anywhere Program (OpenText Protect Anywhere) includes support for all issues of all Classifications (as defined in section 2.3.2), 24x7x365.

Troubleshooting of SRs may continue outside of regional hours of operation, at the customer's request.

Unless the SR is requested for on-going transfer to a different support center, the SR will remain with or be transferred to the support center within the customer POC's home region.

Customer may designate up to 5 additional POCs when subscribing to OpenText Protect Anywhere (total of 8 POCs). Additional POCs over and above the designated amount may be purchased as specified in section 5.3.

5.4 Additional Point(s) of Contact (POC)

Additional POCs is a subscription-based option to extend the number of your designated individual employees who are authorized to contact OpenText customer support and open SRs.

5.5 On-site Assistance

On-site support is available as a fee-based service for OpenText products and solutions, provided under a separate agreement. This service may include, but is not limited to, Workarounds or assistance with configuration changes as part of the Resolution of an open SR.

6. Privacy

For the purpose of this section, Personal Data shall have the same meaning as in the applicable data protection law. To the extent you provide Personal Data to us as part of our provision of the Support Services, we will comply with the requirements of data protection law applicable to it for the processing of personal data. We have implemented technical and organizational measures to protect your Personal Data and ensure a level of security appropriate to the risk. Customers' Personal Data shall not be used by us, our affiliates or our business partners, vendors and agents working on our behalf for any other purpose other than as required under this SMPH, the underlying contract and permitted or required by law.

Support Services are not intended for processing Personal Data. Customers should ensure that they do not include Personal Data when receiving our Support Services other than contact and account information. We process contact and account information in accordance with the OpenText Privacy Policy which is available at <https://www.opentext.com/about/copyright-information/site-privacy>.

www.opentext.com/contact

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