

INSTRUCTIONS TO BIDDERS

1. **READ, REVIEW AND COMPLY:** It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Instructions to Bidders, special terms and conditions specific to this Request for Quotation, the specifications, and the North Carolina State University General Contract Terms and Conditions.
The University objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any language appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**
By execution and delivery of this document, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
 - **BIDDER:** Company, firm, corporation, partnership, individual, etc., submitting a response to an Invitation for Bids.
 - **TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
 - **STATEWIDE TERM CONTRACT:** A Term Contract for all agencies, unless exempted by statute, rule, or special term and condition specific to this bid.
 - **AGENCY SPECIFIC TERM CONTRACT:** A Term Contract for a specific agency.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of a commodity not covered by a term contract.
4. **EXECUTION:** Failure to sign under EXECUTION section will render bid invalid.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) North Carolina State University General Contract Terms and Conditions, and (4) Instructions to Bidders.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, bidder's offer shall be valid for 45 days from the date of bid opening. Preference may be given to bids allowing not less than 45 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Bidders 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.
8. **SPECIFICATIONS:** Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and bidder will be held responsible therefore. Deviations shall be explained in detail. **The bidder shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**
9. **INFORMATION AND DESCRIPTIVE LITERATURE:** Bidder is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each bidder must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection.
10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
11. **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. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
12. **ACCEPTANCE AND REJECTION:** The University reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
13. **REFERENCES:** The University reserves the right to require a list of users of the exact item offered. The quote evaluators may contact these users to determine acceptability of the bid. Such information may be considered in the evaluation of the bid.

14. **TAXES:**
- **FEDERAL:** All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption is claimed under Registry No. 56-70-0047K as provide by Chapter 32 of the Internal Revenue Code.
 - **OTHER:** Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
15. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made of the lowest and best bid most advantageous to the University as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the bid; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the University to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the University or the bidder, the University reserves the right to accept any item or group of items on a multi-item bid. The University 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 the University to be pertinent or peculiar to the purchase in question.
16. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150, the University 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.
17. **CONFIDENTIAL INFORMATION:** Contractors should give specific attention to the identification of those portions of their proposals that they deem to be trade secrets and provide any justification why such materials, upon request, should not be disclosed. However, if the information you deem confidential is NOT a trade secret then the information will be released. The University may only keep information confidential to the extent permitted by NCAC T01:05B.1501 and G.S. 132-1.3.

Contractors shall clearly identify each and every section that is deemed to be confidential, proprietary or a trade secret (it is **NOT** sufficient to preface your proposal with a proprietary statement, or to use a page header or footer that arbitrarily marks all pages as confidential). Any individual section of the proposal that is not labeled as confidential with an accompanying statement concerning the rationale for its claimed confidentiality shall be considered public information.

18. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the bidder's expense. Request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the University's property. Each individual sample must be labeled with the bidder's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
19. **PROTEST PROCEDURES:** A party wanting to protest a contract award pursuant to this solicitation must submit a written request to the Director of Purchasing , North Carolina State University, Purchasing Department, Campus Box 7212, Raleigh, NC 27695-7212. This request must be received in the University Purchasing Department within thirty (30) consecutive 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. Offerors may call the purchaser listed on the first page of this document to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519.
20. **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.
21. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.
22. **ENTERPRISE-LEVEL IT SYSTEMS OR TECHNOLOGIES:** The University is committed to promote and integrate universal IT accessibility in the delivery of its resources and to develop innovative solutions to accessibility challenges for students, faculty and staff. Vendors must:
- a. Assure all features, components and sub-systems of the software or IT System contained on this RFQ **fully comply** with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), (<http://www.section508.gov>);
- OR
- Detail why any feature, component or sub-system contained in this RFQ doe s not **fully comply** with Section 508, and the way in which the proposed product is out of compliance;

- b. If the Voluntary Product Accessibility Templates (VPAT) (<http://www.access-star.org/ITI-VPAT-v1.2.html>) are used, they must include compliance checklists for:
 - 1. Technical Standards,
 - 2. Function and Performance Criteria
 - 3. Documentation and Support
- c. The product offered in response to this RFQ is subject to an accessibility evaluation by the University.

NORTH CAROLINA STATE UNIVERSITY

GENERAL CONTRACT TERMS AND CONDITIONS

1. **GOVERNING LAW:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
2. **SITUS:** The place of this contract, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
3. **DEFAULT AND PERFORMANCE BOND:** In case of default by the contractor, the University may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby. The University reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to the University.

In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State.

Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and de-bar the Contractor from doing future business with the State.

4. **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 by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
5. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. The University reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
6. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
7. **TAXES:** Any applicable taxes shall be invoiced as a separate item.

G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the vendor or its affiliates meet one of the conditions of G. S. 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.

8. **INSPECTION AT CONTRACTOR'S SITE:** The University reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for the University's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
9. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The University is responsible for all payments to the contractor under the contract. Payment may be made by procurement card and it shall be accepted by the contractor for payment if the contractor accepts that card (Visa, Mastercard, etc.) from other customers. If payment is made by procurement card, then payment may be processed immediately by the contractor.
10. **AFFIRMATIVE ACTION:** The contractor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
11. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
12. **SAFETY STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily

requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

13. **PATENT:** The contractor shall hold and save the University, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
14. **ADVERTISING:** Contractor shall not use the existence of this contract or the name of the State of North Carolina or North Carolina State University as part of any advertising.
15. **ACCESS TO PERSONS AND RECORDS:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Further, the University Internal Auditor shall have the same access to persons and records.
16. **ASSIGNMENT:** No assignment of the contractor's obligations nor the contractor's right to receive payment hereunder shall be permitted.
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the contractor, the University may:
 - a. Forward the contractor's payment check directly to any person or entity designated by the contractor, and
 - b. Include any person or entity designated by contractor as a joint payee on the contractor's payment check.In no event shall such approval and action obligate the State to anyone other than the contractor and the contractor shall remain responsible for fulfillment of all contract obligations.
17. **INSURANCE:**

COVERAGE - During the term of the contract, the contractor 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 contractor shall provide and maintain the following coverage and limits:

 - a. **Worker's Compensation** - The contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
 - b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
 - c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit, on a per occurrence basis shall be \$1,000,000.00 bodily injury and property damage; \$1,000,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment.

REQUIREMENTS: Providing and maintaining adequate insurance coverage is a material obligation of the contractor 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 contractor 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 contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.
18. **YEAR 2000 COMPLIANCE/WARRANTY:** Vendor shall ensure the product(s) and service(s) furnished pursuant to this agreement ("product" shall include, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) which perform any date and/or time data recognition function, calculation, or sequencing, will support a four digit year format, and will provide accurate date/time data and leap year calculations on and after December 31, 1999, at the same level of functionality for which originally acquired without additional cost to the user. This warranty shall survive termination or expiration of the agreement.
19. **GENERAL INDEMNITY:** The contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the contractor provided that the contractor is notified in writing within 30 days that the State has knowledge of such claims. The contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of contractor goods to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

20. **ELECTRONIC PROCUREMENT (APPLIES TO ALL CONTRACTS THAT INCLUDE E-PROCUREMENT AND ARE IDENTIFIED AS SUCH IN THE BODY OF THE SOLICITATION DOCUMENT):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, contractor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Contractor. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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 contractor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor 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 contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

21. **ELECTRONIC PROCUREMENT (APPLIES ONLY TO STATEWIDE TERM CONTRACTS):** Within ten (10) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors,

value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

CONTRACTOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ITS AUTHORIZED RESELLERS IN THE EVENT THAT THE AUTHORIZED RESELLER(S) DEFAULTS.

22. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 90 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving 30 days prior notice in writing to the other party.
23. **QUANTITIES (University Specific Agreements ONLY):** The award of a University specific agreement neither implies nor guarantees any minimum or maximum purchases thereunder.
24. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the contractor to other customers.
 - a. **Notification:** Must be given to the University, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
 - b. **Decreases:** The University shall receive full proportionate benefit immediately at any time during the contract period.
 - c. **Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with the University reserving the right to accept or reject the increase, or cancel the contract. Such action by the University shall occur not later than 15 days after the receipt by the University of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.
 - d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.
25. **SAFETY STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the successful bidder shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

All contractors must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. Construction contractors must comply with *North Carolina Occupational Safety and Health Standards for the Construction Industry, 29CFR 1926*. In addition, contractors shall comply with all applicable occupational health and safety and environmental rules and regulations.

Contractors shall effectively manage their safety and health responsibilities including:

1. **Accident Prevention**
Prevent injuries and illnesses to their employees and others on or near their job site. Contractor managers and supervisors shall ensure employer's personnel safety by strict adherence to established safety rules and procedures.
 2. **Environmental Protection**
Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.
 3. **Employee Education and Training**
Provide education and training to all contractors employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.
26. **PERSONAL IDENTIFIERS:** If the University provides the Contractor with personal identifiers as listed in North Carolina General Statute 131-1.10 or any other legally confidential information, Contractor hereby certifies that, pursuant to NCGS 132-1.10, collection of social security number information or other legally confidential information from University is necessary for the performance of Contractor duties and responsibilities on behalf of the University. Contractor further certifies that it shall maintain the confidential and exempt status of any such social security number information, as required by subsection (c)(1) of the statute.

North Carolina State University Supplemental Terms and Conditions for Software and Services

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

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

- a) Vendor grants to the University and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the University and lawful customers. This license shall be perpetual, unless terminated as provided herein. The University agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, the University shall be defined as a department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.
- b) Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
- c) The University shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.
- d) The University may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 2, and applicable terms in the solicitation documents or statements of work.

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

- a) The license granted herein is granted to the University and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Office of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
- b) No right is granted hereunder to use the Software to perform services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State are permitted.
- c) The University may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and University will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.
- d) University shall not remove, obscure or alter Vendor's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

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

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

- a) **Error Correction:** If the error conditions reported by the University pursuant to the General Terms and Conditions are not corrected in a timely manner, the University may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the University's request at no added expense to the University.
 - b) **Other Agreement:** This Paragraph 5 may be superseded by agreement provided that:
 - i) Support and maintenance services shall be fully described in a separate agreement annexed hereto and incorporated herein
 - c) **Temporary Extension of License:** If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the University and continue until the earlier of:
 - i) Return of the inoperative CPU to full operation, or
 - ii) Termination of the license.
 - d) **Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The University will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the University within 24 hours, unless otherwise agreed.
 - e) **Updates.** Vendor shall provide to the University, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.
 - f) **Telephone Assistance.** Vendor shall provide the University with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four (4) hours, for calls made at any time.
- 6) **Termination of Support or Maintenance:** If the University fails to pay Support or Maintenance Services for the Software or choose not to pay for Support or Maintenance Services, the University may continue to use the Software pursuant to the license granted hereunder, but will not be entitled to receive routine Support Services for such Software. If the University does not subscribe or purchase Support or Maintenance Services effective with the date of this Contract, Support or Maintenance Services may be subsequently subscribed or purchased at any time during the term of this Contract by payment of Support Service or Maintenance Fees at Vendor's then current prices. During the term of this Agreement, the University may also purchase implementation services, consulting and training from Vendor at Vendor's then current prices.

- 7) **Program Retirement:** Vendor retains the right to retire a version of the Program and stop providing Maintenance, Updates or Services, upon providing 180 day written notice to the State of its intent to do so. The decision to stop maintaining a version of the Program is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor retires the version of the Program provided to the University and if the University has paid all applicable annual Maintenance Fees subsequent to executing this Agreement, the University shall be entitled to receive, at no additional charge, a newer version of the Program that supports substantially the same functionality as the licensed version of the Program. Newer versions of the Program containing substantially increased functionality will be made available to the State for an additional fee.
- 8) *Applies if marked:* **Services Provided by Vendor:** Vendor shall provide the University with implementation services as specified in a Statement of Work (“SOW”) executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The services intended hereunder are related to the State’s implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties (“License Agreement”).
- 9) **Payment Terms:** The total License Fee and the Support Service or Maintenance Fee (provided the University subscribes or purchases such services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually 60 days prior to the anniversary date beginning each subsequent year. Increases in Vendor’s Contract price for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for software are Net 30 days after receipt of correct invoice or acceptance of software; whichever is later. 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. The University is responsible for all payments under the contract.
- 10) **Acceptance:** Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The University may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the University’s specifications and Vendor’s technical representations. Acceptance of software or services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of software or services is not described in additional contract documents, the University shall have the obligation to notify Vendor, in writing and within a reasonable time following installation of any software deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the University shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.
- 11) **Warranty Terms:** Notwithstanding anything in this Contract or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the University.
- a) Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the University) for a period of 90 days from the date of acceptance (“Warranty Period”), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.
- b) Vendor warrants to the best of its knowledge that:
- i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;

- ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
 - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, “back doors” or other means to facilitate or allow unauthorized access to the State’s information systems.
 - iv) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software’s ability to operate.
- c) UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

12) *Applies if marked:* **Escrow of Code:** Vendor has established an Escrow Agreement (“Escrow Agreement”) with a third party escrow agent acceptable to the University, as required in the solicitation documents. Within thirty days from the Effective Date of the Agreement, Vendor will add the University as a beneficiary to such Escrow Agreement. In the event (i) this Agreement is terminated due to insolvency or the filing of involuntary bankruptcy proceedings pursuant to Chapter 7 of the U.S. Bankruptcy Code and (ii) Vendor no longer offers support or maintenance services for the Software (both (i) and (ii) constituting the release condition (“Release Condition”) under the Escrow Agreement), the Software code deposited in accordance with the Escrow Agreement (the “Deposit Materials”) shall be delivered to the University and the University shall be granted a license to use the Deposit Materials solely to repair, maintain and support the Software licensed to State pursuant to this Agreement. The license to the Deposit Materials under this Section shall terminate upon the termination or cure of the Release Condition.

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

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

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

deemed to grant any license under any other patents or patent applications arising out of any other inventions of either party.

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

17) Limitation of Liability for Software Deliverables:

- a) Where equipment is under the State's exclusive management and control, Vendor shall not be liable for any damages caused by the University's failure to fulfill any University responsibilities including, without limitation, those relating to assuring the proper use, management and supervision of the equipment and programs, audit controls, operating methods, office procedures or for establishing all property checkpoints necessary for the University's intended use of the machines.
- b) The Vendor's liability for damages to the University for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not exceed two times the value of the contract, but in no event shall the liability for damages be less than the total value of the contract.
- c) **WITH THE EXCEPTIONS OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT ACTIONS, THE UNIVERSITY'S CONSTITUTIONAL RIGHTS AS A SOVEREIGN, AND PENALTIES IMPOSED UPON THE UNIVERSITY BY ANY FEDERAL ENTITY OR EXPENDITURES OF PUBLIC FUNDS REQUIRED OR RESULTING FROM AN OPERATIONAL FAILURE OF THE DELIVERABLE(S) OR SERVICES PROVIDED HEREUNDER, BUT NOTWITHSTANDING ANY OTHER TERM TO THE CONTRARY CONTAINED IN THIS CONTRACT, NEITHER PARTY NOR THEIR RESPECTIVE AFFILIATES SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES (I) FOR ANY CLAIM BASED UPON ANY THIRD PARTY CLAIM, (II) FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS OR OTHER ECONOMIC CONSEQUENTIAL DAMAGES, WHETHER RESULTING FROM DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR OTHERWISE, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR (III) FOR ANY PUNITIVE OR EXEMPLARY DAMAGES OF ANY NATURE WHATSOEVER.**

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

- 19) **Qualified Personnel:** Each party shall provide sufficient, qualified, knowledgeable personnel capable of: (i) performing obligations set forth in this Agreement and each SOW; (ii) making timely decisions necessary to move the Services forward; (iii) participating in the project and assisting Vendor in rendering the Services; and (iv) facilitating development, testing and implementation of Vendor software, if applicable. Vendor warrants that qualified personnel will perform the services in a professional manner. As used in this Paragraph, “professional manner” means that the personnel performing the services will be of a skill and competence consistent with prevailing norms of company providers in the information technology industry.
- 20) Vendor shall not be responsible for any alleged breach of the foregoing Paragraph 17) that is attributable to (i) misuse or modification of Vendor’s Software by or on behalf of the University, (ii) the University’s failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor’s Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the University or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor’s Software not in accordance with the operating procedures developed for the Vendor’s Software or otherwise in a manner not contemplated by this Agreement.
- 21) **Transportation:** Transportation of software shall be FOB Destination unless delivered by the Internet or file transfer as agreed by the University, or otherwise specified in the solicitation document or purchase order.
- 22) **Debarment Certification:** Offeror certifies to the best of its knowledge and belief, that it nor any of its principals a) are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contract by any Federal agency; b) have not within a three year period preceding this award been convicted of or had a civil judgment rendered against them for: commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) contract or subcontract; violation of Federal or state antitrust statutes relating to this submission of offers; or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property; and c) are not presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses enumerated herein. The offer certifies that they have not, within a three year period preceding this offer, had one or more contracts terminated for default by any federal agency.

“Principals” for the purpose of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segments, and similar positions.)

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution. Certification of this provision is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the University, the University may terminate this agreement for default.

Offeror hereby certifies these conditions and does so by signing the execution page of this quote document.