

STATE OF NORTH CAROLINA OFFICE OF INFORMATION TECHNOLOGY SERVICES	INVITATION FOR BID NO. ITS-003808	
	Bids will be publicly opened: February 21, 2008 @ 2:00 pm	
STATEWIDE IT PROCUREMENT	Contract Type: Open Market	
Refer <i>ALL</i> Inquiries to: Sherwood Creech Telephone No. 919) 754-6664	Date Issued: February 6, 2008 Commodity: 208 - Collection Software	
E-Mail: sherwood.creech@its.nc.gov	Using Agency Name: North Carolina Department of Environment and Natural Resources	
(See page 2 for mailing instructions.)	Agency Requisition No. PR7572560	

OFFER AND ACCEPTANCE

This solicitation advertises the State’s needs for the software services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the software services and/or goods described in this solicitation. The State’s acceptance of any proposal 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 among terms as follows:

Special terms and conditions specific to this IFB, Specifications of the solicitation documents, except as amended the State’s Terms and Conditions, and the awarded Vendor’s proposal. **Provided, however, that 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 to Bid, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all services or goods upon which prices are bid, at the price(s) offered herein, within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion.

Failure to execute/sign bid prior to submittal shall render bid invalid. Late bids are not acceptable.

VENDOR:	FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for 90 days from date of bid opening unless otherwise stated here: ____ days

ACCEPTANCE OF BID

If any or all parts of this bid are accepted, an authorized representative of Information Technology Services shall affix their signature hereto and this document and the provisions of the special terms and conditions specific to this Invitation for Bids, the specifications, and the ITS Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful vendor(s).

FOR ITS USE ONLY

Offer accepted and contract awarded this ___ day of _____, 2008 as indicated on attached certification,
by _____ (Authorized representative of ITS).

1. **DELIVERY INSTRUCTIONS:** Deliver **two (2) original executed quote documents and one (1) copy** unless otherwise instructed. Address envelope and insert quote number as shown below. It is the responsibility of the Vendor to have the quote in this office by the specified time and date of opening.

DELIVER TO:

IFB NO. **ITS-003808**

Statewide IT Procurement Office

ATTN: Sherwood Creech

333 E. Six Forks Road, 3rd Floor

Raleigh, NC 27609

2. **INTENT:** The purpose of this Invitation for Bid (IFB) is to obtain pricing for a web-based software program/application capable of tracking a collections type business process for the North Carolina Department of Environment and Natural Resources (hereinafter DENR). Products and services will be provided in accordance to the terms and conditions of this IFB.

In addition, products and services must be provided that are consistent with the Statewide Technical Architecture approved by the State of North Carolina. The North Carolina Statewide Architecture is located at the following website: (<http://www.ncsta.gov/>). This website provides a series of domain documents describing objectives, principles, and best practices for the development, implementation, and integration of business systems. Vendors should refer to these Architecture documents when implementing enterprise applications and/or infrastructure.

Attachment B is completed by DENR to supply responding vendors with information regarding the characteristics of the desired solution.

Attachment C is to be completed by the vendors responding to this IFB. This attachment will provide DENR with information regarding the design characteristics of the vendor's proposed solution.

3. The awarded Vendor must provide an internet based collection system application that will be loaded on hardware owned and administered by the North Carolina Department of Environment and Natural Resources. The North Carolina Department of Environment and Natural Resources requires that the collection system application support up to fifty (50) users with a possibility of up to twenty-five (25) of those users being logged on concurrently.

Mandatory Requirements

- A. The collection system application must, at a minimum, automate collection tasks, transfer and receive data between different databases, and generate reports. The collection system application must support several critical areas of collection work. The collection data will be transmitted frequently (daily if necessary) by the vendor via flat files to update DENR databases. It must integrate different databases into a seamless environment that handles and transfers collection data. . It must support the communication needs of collections by generating various documents such as correspondence, notices, reminders, and reports. It must support the fiscal responsibility needs of collections by providing data for such activities as audits, balance reconciliation, accounts receivable review, charge-off tracking, credits to account, and other general accepted accounting practices. It must support the policy decision-making function of DENR by providing data for such activities as year-end compliance reports and on-demand data queries. It must support the efficiency needs by automating such tasks as label generation, tickler systems, and penalty tracking through each stage of collection.
- B. Specifically, the collection application must, at a minimum, provide the following:
 - I. Account Management** - The provided application must provide for:
 - (1) Control of accounts completely and precisely from the moment data is uploaded or entered into the system
 - (2) Account matching to link accounts based on criteria select by the user
 - (3) Easy set up of customized collection strategies, including pre or post charge off, status codes, letter series, fee posting, and any other process that may be needed to manage accounts
 - (4) The ability to find specific accounts quickly and batch process updates to account information
 - (5) For users to set up custom processes to run from any field or form
 - (6) For unique scripting features so that users can tailor the system to perfectly fit its needs
 - (7) For account matching and grouping as related to specific divisional identification
 - (8) Link accounts on import, in a batch or at-will mode
 - (9) User definable account matching criteria
 - (10) Handling of pre and post charge offs
 - (11) Control file information processing
 - (12) Create or modify pick lists on selected fields

II. Contact Management - the provided application must provide for:

- (1) Processing of large numbers of accounts quickly and efficiently with time-saving and versatile contact management
- (2) Set up and implementation of customized collection strategies uniquely tailored to DENR's business model
- (3) Applying DENR's collection strategies manually, or batch process scheduling with contact management automation
- (4) Scheduling of letters and phone calls, post fees, write notes and set status codes
- (5) Tracking of promises, monitoring of forwarded accounts, activating or closing an account, alerting operators of tasks to be performed and editing information on the Debtor form
- (6) Conveniently running batches of prescheduled tasks behind the scenes if they don't require an operator's attention
- (7) Scheduling by priority to manage a client blitz, or sorting by dollar value, status and other criteria
- (8) Reviewing of a complete history of all communications made to a debtor at any time
- (9) Manage Client contacts with the same versatile and high-performance tools
- (10) Scheduling next action on a whole series of actions
- (11) Automatic checks to ensure collector account follow up and status by timelines
- (12) Rule based contact management
- (13) Maintaining complete contact history
- (14) Email sending and history

III. Financials – the provided application must provide for:

- (1) Management of finances promptly and completely through a comprehensive financial management system
- (2) Management of all financial activity for debtor accounts, posting transactions and payments, generating and printing invoice/statements, reporting payables and receivables
- (3) Processing of month end processing reports that are reliable
- (4) When financial information is entered, the application must automatically calculate this into all appropriate areas based on DENR settings
- (5) Financial features that include histories, promises, payment breakdown prioritization, NSF checks, industry standard interest calculations, fees, adjustments, settlements and judgments, and net or gross client remittances
- (6) An application that calculates and tracks collection success rates
- (7) Complex or simple interest and amortization choices
- (8) Two step statement and invoicing process

- (9) An ability to regenerate and reprint client invoice/statement on demand
- (10) Net and gross client remittance
- (11) User definable payment allocation and breakdown

IV. Reports & Printing – the provided application must provide for:

- (1) Printing letters immediately or queue them in batch
- (2) Printing to Printer, Fax, Email, Screen, File, Web Browser, or Spreadsheet
- (3) A wide selection of template reports available for Daily, Monthly, and Year-End Analysis and Summary reports. DENR must be able to use the provided reports as-is or customize them to meet DENR's specific report needs
- (4) Reporting in Extensible Markup Language (XML), Hypertext Markup Language (HTML) and Rich Text Format (RTF), Comma-Separated Values (CSV), fixed length American Standard Code for Information Interchange (ASCII)
- (5) Batching for printing letters, labels, and envelopes
- (6) Mail merge to Microsoft Word

V. Batch Processing – the provided application must:

- (1) Allow check or change of account status, post transactions, send letters, schedule reviews, assign follow-ups, activate or close accounts, write notes, set status, post transactions, and schedule next action in a batch
- (2) Allow users to search database by name, phone, action, status, listed date
- (3) Process changes to account information in a batch
- (4) Allow for flexible queries by selected criteria
- (5) Allow for Find by many specifics, including name, phone, social security number, zip code, and account number

VI. Web Access – the provided application must:

- (1) Be fully integrated and easy to set up web server
- (2) Offer fully integrated Secure Sockets Layer (SSL) security
- (3) Provide for instant access document and image storage and retrieval
- (4) Allow Internet access to data entry, financials, reports, and notes

VII. User Level Security – The proposed system must utilize the North Carolina Identity Management (NCID) for identity management and authentication related functions performed by the application. NCID is the state's enterprise identity management (IDM) service. It is operated by the

North Carolina Office of Information Technology Services. The service utilizes Oracle's Identity Manager product suite (Version 7). Further information regarding this service can be found at <http://www.its.state.nc.us/ServiceCatalog/Index.asp> (See Identity Management - NC Identity Management under the main menu item Application Services) and the NCID Web site at <https://www.ncid.its.state.nc.us/>.

The application must provide:

- (1) Comprehensive multi-level security features including encrypted operator ID and password to enter the system. All fields, forms, and menus must have read/write, read only, and no access attributes that can be set to fully control operator access to information
- (2) For ranges of user level access that can be applied to reports, letters, and contact management
- (3) For the ability to lock down specific accounts so they are accessible only to a group of people
- (4) 128-bit Advanced Encryption Standard (AES) encryption for data transmitted between the server and client machines

VIII. System & Environment – The provided application must:

- (1) Run on a Microsoft supported Windows platforms that includes support for both Windows XP and Vista desktop clients.
- (2) Provide a low maintenance, high-performance database server offering high end functionality without DENR needing a specialized database administrator
- (3) Ensure that data is secured and encrypted at rest and in transit
- (4) Provide multi-level password security with account level access control

IX. Training – At a minimum, the Vendor must provide:

- (1) Training of DENR staff consisting of three (3) Information Technology staff members and four (4) enforcement/collections staff members. Training for the Information Technology staff must be a minimum of four (4) hours. Training for the enforcement/collections staff must be a minimum of twelve (12) hours, preferably in no less than three (3) sessions.
- (2) The training must be provided in Raleigh, North Carolina at a location chosen by DENR.
- (3) The Vendor, at its expense, must provide easy-to-use manuals for each student for use during the training

X. Schedule of Implementation – The responding Vendor must provide with its response:

A schedule of implementation plan for accomplishing the deliverables as described in this IFB. The schedule, at a minimum, must include the approach to implementing a Collections System Application.

XI. References – The responding Vendor must provide with its response:

At least three references that have utilized the Vendor’s collection application system within the immediate past five (5) years to include:

- a. Name of business
- b. Name of contact person
- c. Telephone number of contact person

XII. Maintenance and Support

For the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

- a. 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 Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance services under this Paragraph.
- b. Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
- c. Updates. Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as “Changes”) for any Software Deliverable developed or published by 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.
- d. Telephone Assistance. Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

4. The terms and conditions of Vendor’s standard license and/or maintenance agreement(s) applicable to Software and other Products acquired under this Agreement may apply to the extent such terms or conditions do not materially change the terms of conditions of this Agreement. In the event of any conflict between the terms or conditions of this Agreement and the Vendor’s standard agreement(s), the terms or conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the remedy for intellectual property

infringement and the exclusive remedies and limitation of liability in Section 7 herein shall apply in all cases and supersede any provisions contained in Vendor’s Software licensing agreement or any other agreement.

5. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.: In accordance with Executive Order #60, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers. 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 proposal. The Vendor shall provide the following for any proposal 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?	YES _____	NO _____
Where will services be performed: _____		

6. 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.

7. Evaluation Process

- 1) "Best Value" procurement means the selection of a Vendor by determining which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's proposal; the Vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement.

- 2) Source selection - A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
 - a. The evaluation methodology shall be consistent with 9 NCAC 06B.0302, or the corresponding section of any future NC Administrative Code, and this section.
 - b. The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the proposal.
 - c. Evaluation Process Explanation. State Agency employees will evaluate all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the IFB materials or Proposal shall have specific page numbers and sections stated in the reference.
 - d. To be eligible for consideration, a Vendor must meet the intent of all mandatory requirements. Compliance with the intent of all requirements will be determined by the State. Responses that do not meet the full intent of all requirements listed in this IFB may be subject to point reductions during the evaluation process or may be deemed non-responsive. Further, a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
 - e. Vendors are advised that DENR is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 3) Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of proposals, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional points to the Vendors' respective scores. Points awarded from oral presentations and product demonstrations during negotiations will be added to the previously assigned points to attain final scores.
- 4) Each of the evaluation criteria below shall be evaluated in accordance with the solicitation documents:
 - a. Onsite Demonstration of product. The vendor(s) that fall within the competitive range set forth by DENR will be given an opportunity to demo its product with data provided by DENR. This onsite demonstration shall be part of the evaluation process and shall be scored according to the criteria set forth in this IFB. The demonstration shall take place

in Raleigh, NC. The purpose of this demonstration is to verify compliance with the Proposal Business and Technical Specifications.

The data that the selected vendor will upload will be in flat file format and consist of data fields as illustrated in Attachment A at a minimum.

The State, at its sole discretion, reserves the right to reject any offers that does not meet specifications.

- b. Value Added Services. Additional points may be awarded for technical solutions exceeding the mandatory technical specifications.
 - c. References. At least three (3) references that have utilized the Vendor’s collection application system within the last five (5) years
 - d. Cost
- 5) Vendor may be disqualified from any evaluation or award if Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.

6) Evaluation Criteria

Vendor proposals will be evaluated based on the following weights:	
Evaluation Criteria	Relative Value
Onsite Demonstration of compliance with the Mandatory Proposal Specifications	30 points
Value Added Services (to be used for technical solutions exceeding the mandatory business and technical requirements)	10 points
References (At least three references that have utilized the Vendor’s collection application system within the last five (5) years)	10 points
Cost	50 points
Total	100 points

This is an e-procurement solicitation: See **Paragraph #32** of the attached Terms and Conditions for Goods and Related Services. The 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://www2.eprocurement.ncgov.com>
- b. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service.
- 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.

COST - Of software system/application including all training as previously described in paragraph **3. B. IX. Training**, but excluding any maintenance/support as described in the maintenance/support paragraph previously stated (**3. B. XII. Maintenance/Support**):

\$ _____

Annual Cost of Maintenance/Support as described in paragraph 3. B. XII. Maintenance/Support	
Cost for first year after acceptance	\$
Cost for second year after acceptance	\$
Cost for third year after acceptance	\$

TERMS AND CONDITIONS

1) DEFINITIONS

a) “Agency” means the Agency purchasing the goods or services.

b) “Software” is “Packaged Copyrighted Software Products” (unless otherwise identified) as used in 9 NCAC 06B.1101(a) and means Computer Software that is used regularly for other than governmental purposes and is sold, licensed, or leased in significant quantities to the general public at established market or catalog prices, that is considered “shrink-wrap” or “clickwrap”, that is or may be generally licensed by “shrink-wrap” or “clickwrap” licenses, or Computer Software that does not constitute Custom or Modified Software and is regularly sold, licensed or leased by the Vendor to governmental entities to meet governmental requirements.

c) “Computer” means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the Data.

d) “Computer Data Base” means a collection of data in a form capable of being processed and operated on a Computer.

e) “Computer Program” means a series of instructions or statements in a form acceptable to a Computer, processor or controller that is designed to cause the Computer, processor or controller to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs and maintenance/diagnostics programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer Programs may be either machine dependent or machine-independent, and may be general purpose in nature or be designed to satisfy the requirements of a particular user.

f) “Computer Software” or “Software” means Computer Programs and Data Bases.

g) “Computer Software Documentation” means technical data and information comprising Computer listings and printouts, in human readable form that:

i) Documents the design or details the Computer Software

ii) Explains the capabilities of the Software, or

iii) Provides operating instructions for using the Software to obtain desired results from a Computer.

h) “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.

i) “Data” means recorded information, regardless of form or method of recording.

j) “Hardware” includes Computers, printers, attached equipment or peripherals or other equipment utilized for the State’s intended purposes as expressed in the solicitation documents.

k) “Products” includes Software, Hardware, equipment, options, documentation, accessories, supplies, spare parts.

l) “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.

m) “Support” includes Hardware 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.

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

2) SOFTWARE LICENSE

a) Vendor grants the State a personal non-transferable and non-exclusive right to use, in object code form only, all Software and related documentation furnished to the Agency under this Agreement. This license grant shall be limited to use with the Hardware (if any) or Products (if any) for which the Software was obtained, or on a temporary basis, on back-up equipment when the original Hardware or Product is inoperable. Use of Software on multiple processors is prohibited unless otherwise agreed in writing. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the Vendor's standard agreement.

b) The State agrees to use its best efforts to see that its employees and users of all Software licensed hereunder comply with the terms and conditions set forth in this Agreement, and any Exhibits or Amendments hereto. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Software; or portion thereof.

c) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, and consistent with the security, records retainage or other policy of the Agency for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly allowed by the Agreement or subsequent Statements of Work. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.

d) Use of Software on any Products other than that for which it was obtained, removal of Software from the United States or any other material breach shall automatically terminate this license.

e) The State's license includes the right to upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's licensees without a separate maintenance or support agreement. Vendor's right to a new license for new version releases of the Software shall not be abridged by the foregoing.

f) Software bundled with any other Product may be used only with the Product and with the configuration in which the Product is sold by Vendor or subsequently upgraded by Vendor.

g) The State's license neither transfers, vests nor infers any title or other ownership right in any intellectual property right of Vendor, or any third party. The State's license neither transfers, vests nor infers any title or other ownership right in any source code associated with the Software unless otherwise agreed by the parties, and will not be construed as a sale of any ownership rights in the Software, unless Custom or Modified Software is being developed as a Work For Hire in response to the State's solicitation documents.

h) The State may use the Software with the Computer for which or with which it was acquired, including use at any government installation to which the Computer may be transferred by the State. The State may use the Software with the backup Computer if the Computer for which or with which it was acquired is inoperative.

3) USE OF SOFTWARE AND INFORMATION

a) The State agrees that any Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors and furnished to the State under this Agreement shall be and remain the property of the Vendor, or other party, respectively.

b) All Software and information furnished to the State under this Agreement

i) Shall be used by the State only to install, operate or maintain the Product for which they were originally furnished;

ii) Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and

iii) Shall, together with any copies except copies for the Agency's and State's archival purposes containing the State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

c) All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: NCGS § 132-1, et. seq.

d) Transfer of Software or program license:

i) Software may be transferred within the United States to any location for the State's normal operations upon written notice to the Vendor without additional cost(s). Transfers for temporary uses arising as a result of a disaster or disaster recovery test may be effected without notice to the Vendor; provided, however, that the State will employ its best efforts to advise the Vendor of any disaster related transfer requiring more than 10 business days. All other transfers may be permitted only with Vendor's prior written consent, and such consent shall not be unreasonably withheld. Transfers requiring Vendor's consent may be subject to an additional license fee.

ii) The rights granted herein are restricted for use solely by the State. The State may not authorize or allow the use or marketing of the Software/Products by or to a third party, and may not assign or transfer

the Software or Products to a third party without the prior written consent of Vendor. Any assignee or transferee must execute a separate agreement with Vendor. Any such assignment or transfer shall terminate the obligations of the State under this Agreement

e) Custom or Modified Software, if solicited by the State, is being developed or modified exclusively for the State, and such Custom or Modified Software, all related data, all copyrights in the Custom or Modified Software and derivative works belong exclusively to the State and shall be transferred to the State upon creation.

4) WARRANTY

a) Minimum warranties for Products shall include:

i) On the delivery date the Products and the associated Computer operating system Software will be in good working order (operating in conformance with Vendor's standard specifications and functions). Unless otherwise specified in the solicitation, the warranty for other suppliers' Software is included in the suppliers' Software package and is provided directly from the supplier.

ii) The warranty shall be as provided or specified in the state's solicitation documents and shall begin on the day of successful installation. If no warranty period is specified, the warranty period shall be Vendor's standard warranty period for the Products, commencing the day of successful installation.

iii) The state shall notify Vendor if any Product is not in good working order during the warranty period. Vendor shall, at its option, either repair or replace any Product reported as not in good working order during the warranty period without charge to the State. The repair or replacement Products must be new or equivalent to new in performance and fully warranted the

same as new. All returned Products will become property of Vendor at the time the Product is either placed in shipment to Vendor, or picked up by Vendor.

iv) The service provided during the warranty period is dependent upon the acceptable warranty option selected by the State and indicated in the State's solicitation document. If no warranty option is indicated, Vendor will provide their standard warranty service for the Product, unless otherwise agreed by the parties.

v) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates and terms set forth in such writing.

b) Software warranties shall include the following:

i) Vendor warrants the media (comprising diskettes, tapes or other media) to be free of defects in materials or workmanship under normal use for ninety (90) days from the date of acceptance unless otherwise agreed. Vendor shall replace any media reported as not in good working order during the warranty period without charge to the State. If Vendor is unable to replace the Software, Vendor shall refund the full amount of the Software purchase paid by the State.

ii) In addition to the warranty exclusions stated in Section 5, Vendor does not warrant that the operation of the Software will be uninterrupted or error free, or that the Software functions will meet the State's requirements unless developed as Customized or Modified Software. The State assumes the risk of any damage or loss from its misuse or inability to use the Software.

iii) For any Customized or Modified Software provided pursuant to this Agreement, Vendor warrants that for a

period of one (1) year after the State accepts said Software, it will operate and perform in accordance with the functions and specifications set forth in the solicitation and error free as the solution for the Agency. This express warranty applies only if the State specifically identifies the Hardware environment in which the Customized or Modified Software will be installed or operated, or if it is used in connection with Hardware acquired under this Agreement.

c) Unless otherwise required by the State: Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date support is provided or performance of the service. For a period of ninety (90) days after delivery or ninety (90) days after successful installation, Vendor or its suppliers shall provide telephone assistance to the State during the State's normal business hours.

d) 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 Software does 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 State's

ability to use the Software for the term of this Agreement.

5) WARRANTY EXCLUSIONS

a) Except as stated in Section 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.

b) The warranty provided in Section 4 does not cover repair for damages, malfunctions or service failures caused by:

- i) Actions of non-Vendor personnel;
- ii) Failure to follow Vendor's installation, operation or maintenance instructions and/or services provided to the State;
- iii) Attachment to the Products of non-Vendor products or failure of Products not maintained by Vendor unless such installation or use is approved in writing by the Vendor; or
- iv) Force Majeure conditions set forth hereinbelow.

6) INDEMNITY

a) Vendor shall indemnify and hold harmless the State/Agency from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney's fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Vendor under this Agreement and that cause death or injury or damage to property or that arise out of a failure to comply with any State or federal statute, law, regulation or act.

b) 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 Software or Products supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

a) For purposes of the exclusive remedies and limitations of liability set forth in this Section 7, 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) Vendor's entire liability and the State's exclusive remedies against Vendor for any damages caused by any Product defect or failure or arising from the performance or non-performance of any work, regardless of the form of action, whether in contract, tort, including negligence, strict liability, or otherwise, shall be:

- i) For infringement, the remedies set forth in Section 6(b) above;
- ii) For warranty claims based upon failure of purchased or leased Products or Software, the remedies stated in Section 4 herein. If Vendor is unable, despite reasonable efforts, to repair or replace the Product(s), the State shall have the right during the warranty period to return the

Products for a refund of the purchase price; and

iii) 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:

(1) To recover direct costs including replacement Products, if any, attributable to Vendor's delay; but specifically excluding incidental or consequential damages, and

(2) To cancel the order without incurring cancellation charges: and

iv) For proven damages to real or tangible personal property, excluding the State's other Software, data and data files, or for bodily injury or death to any person negligently caused by Vendor, and

v) For claims other than set forth in Section 7.b(i-iv), Vendor's liability shall be limited to direct damages, and such sums shall not exceed two (2) times the Agreement value.

c) Should any Product or Software supplied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either to procure for the State the right to continue using the Product or 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 Products or Software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make

every reasonable effort to assist the State in procuring substitute Products. If, in the sole opinion of the State, the return of such Products or Software makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid.

d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded product or Product or Software, or from the continued use of the good(s) or Services and Products after receiving notice they infringe on a trade secret of a third party.

e) Except to the extent provided in subsection 7.b(v) above, and with the further exceptions of intellectual property rights infringement actions, the state's constitutional rights as a sovereign, and penalties imposed upon the state by any federal entity or expenditures of public funds required or resulting from an operational failure of the Products or Software provided hereunder, but notwithstanding any other term to the contrary contained in the Agreement, neither party shall, under any circumstances, be liable to the other party or its affiliates for:

i) any claim based upon any third party claim,

ii) any consequential, incidental or indirect damages of any nature whatsoever, including, without limitation, lost profits, lost savings or other 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) any punitive or exemplary damages of any nature whatsoever.

8) SUPPORT

a) Unless otherwise provided by Vendor's standard agreement for support, or except as specifically provided, 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 the Solicitation.

b) To be eligible for support, Products or Software must be in good operating condition and at then current specified revision levels, having all enhancements, modifications, updates, or upgrades supplied by Vendor. Vendor may charge its standard rates in effect on the date support service is provided in addition to any other charges if the Product(s) or Software do not conform to the specified revision levels.

9) PROGRAM RETIREMENT Unless otherwise provided in the Vendor's standard agreement, 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 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 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.

c) Vendor may, at no additional charge, modify Products to improve operation and reliability or to meet legal requirements.

d) Relocation of Products is the State's responsibility and may result in additional support charges and modified service response times. Products moved to another State facility or Agency may continue to be serviced subject to

availability of a Vendor authorized support provider.

e) Vendor is not required to provide support for non-qualified Products, nor Products not supplied under this Agreement. "Non-Qualified Products" are Hardware and Software not supplied or approved by Vendor, and Products for which the State does not allow Vendor to incorporate modifications. The State is responsible for removing non-qualified Products to allow Vendor to perform Support services.

f) Support does not cover any damage or failure cause by:

i) Media and supplies or use of items not designed or designated for use with 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.

10) The State is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs.

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

12) TRAVEL EXPENSES Vendor may be reimbursed for travel expenses arising under the performance of this Agreement 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.

13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

14) AVAILABILITY OF FUNDS Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the 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 Products and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

15) PAYMENT TERMS The total License Fee and the Support Service or Maintenance Fee (provided the State 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 pricing 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.

16) ACCEPTANCE CRITERIA Acceptance testing is required for all Vendor supplied 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 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 State shall have the obligation to notify Vendor, in writing and within ten (10) days 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 State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.

17) CONFIDENTIALITY The State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate information, Products, software or appropriate portions of its response as

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

18) ACCESS TO PERSONS AND RECORDS Pursuant to N.C. General Statute 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.

19) 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 attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

20) NOTICES Any notices required under this Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.

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

22) AMENDMENT This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

23) 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.

24) GOVERNING LAWS, JURISDICTION, AND VENUE

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

b) Except to the extent the provisions of the Agreement are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Agreement. To the extent the Agreement entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

25) DEFAULT In the event any Deliverable furnished by the Vendor fails to conform to any material requirement of the specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the State's acceptance requirements, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7) and the obligation to informally resolve disputes as provided in Paragraph 29) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. 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 Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

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 bid 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.

26) 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.

27) 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.

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.

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 25), or

pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following

i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7). 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 and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

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, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

31) 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.

32) **Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

a) **The successful vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment

period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

33) **Reserved**

ATTACHMENT A

Field	Format
Admin/Region/Name	Text
Permit Number	Text/Numeric
Enforcement Number	Text/Numeric
County	Text
Owner/Organization	Text/Numeric
Facility Name/Violator	Text/Numeric
Address 1	Text/Numeric
Address 2	Text/Numeric
City	Text
State	Text
Zip Code	Text
First Name	Text
Last Name	Text
Title	Text
Penalty Assessed Date	Text/Numeric
Response Due Date	Text/Numeric
Penalty Established Date	Text Numeric Date
Number of Days since Assessed	Numeric
Number of Days since Established	Numeric
Average # of Days to collect since established date	Numeric
Average # of Days to collect since Assessed	Numeric
Penalty Amount	Numeric
Investigative Cost	Numeric
Total Penalty	Numeric
Total Paid	Numeric
Balance Due	Numeric
Phone Number 1	Numeric
Phone Number 2	Numeric
Date of Notice of Violation	Text/Numeric
Date of Payment	Text/Numeric
Date of last Payment	Text/Numeric
Collection Activity Thus Far	Text/Numeric

Agency Technical Requirements

Agency Technical Checklist	Responses - Select all that apply
Project Type	<input checked="" type="checkbox"/> New System <input type="checkbox"/> Upgrade System <input type="checkbox"/> Other (specify):
Development Approach	<input checked="" type="checkbox"/> Commercial Off The Shelf (COTS) <input type="checkbox"/> Government Off The Shelf (GOTS) <input type="checkbox"/> Custom Note: Customizations to COTS/GOTS solutions must be limited to 10% and be fully supported in future releases or versions
Delivery of Functionality	<input type="checkbox"/> Modular (functionality delivered over time) <input checked="" type="checkbox"/> Monolithic (functionality delivered all at once)
System Interactions	<input type="checkbox"/> Government to Citizen (G2C) <input checked="" type="checkbox"/> Government to Employee (G2E) <input type="checkbox"/> Government to Business (G2B) <input checked="" type="checkbox"/> Government to Government (G2G): <input checked="" type="checkbox"/> State <input type="checkbox"/> Local <input type="checkbox"/> Federal
Electronic Commerce	<input checked="" type="checkbox"/> Yes: <input checked="" type="checkbox"/> Credit Card <input type="checkbox"/> ACH <input checked="" type="checkbox"/> EFT <input type="checkbox"/> Other (specify): <input type="checkbox"/> No
Pilot Prior to Implementation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Security - Regulatory or Privacy Requirements	<input checked="" type="checkbox"/> HIPAA <input checked="" type="checkbox"/> FERPA <input type="checkbox"/> Other (specify): <input type="checkbox"/> N/A
<u>W3C Accessibility</u> Compliance	<input type="checkbox"/> WCAG V1.0: <input type="checkbox"/> Priority 1 <input type="checkbox"/> Priority 2 <input type="checkbox"/> Priority 3
<u>Section 508 Accessibility</u> Compliance	<input type="checkbox"/> WCAG V2.0 (Draft): <input type="checkbox"/> Level 1 <input type="checkbox"/> Level 2 <input type="checkbox"/> Level 3 <input type="checkbox"/> Yes <input type="checkbox"/> No
Estimated Total Number of Customers	Total: <u>50</u> By Audience: Citizen: _____ Employee: <u>0</u> Business: _____ Other: _____
Estimated Total Number of Concurrent Customers	Total: <u>20</u> By Audience: Citizen: _____ Employee: <u>20</u> Business: _____ Other: _____
Estimated Annual Customer Growth Rate	Percentage: <u>>1%</u> By Audience: Citizen: _____ Employee: <u>>1%</u> Business: _____ Other: _____
Average Response Time Requirements	90% of transactions occur in _____ seconds or less 95% of transactions occur in _____ seconds or less 99% of transactions occur in _____ seconds or less

Agency Technical Checklist	Responses - Select all that apply
Production Hours of Operation	<input type="checkbox"/> Citizen <input type="checkbox"/> Normal Business Hours (e.g. 8:00 am to 5:00 pm) <input type="checkbox"/> Extended Business Hours (specify): <input type="checkbox"/> 24 X 7 <input checked="" type="checkbox"/> Employee <input checked="" type="checkbox"/> Normal Business Hours (e.g. 8:00 am to 5:00 pm) <input type="checkbox"/> Extended Business Hours (specify): <input type="checkbox"/> 24 X 7 <input type="checkbox"/> Government/Business Partner(s) <input type="checkbox"/> Normal Business Hours (e.g. 8:00 am to 5:00 pm) <input type="checkbox"/> Extended Business Hours (specify): <input type="checkbox"/> 24 X 7
Production Availability Requirements	<u>Unplanned downtime/day during normal processing cycles</u> <input type="checkbox"/> Less than a few minutes <input checked="" type="checkbox"/> Less than an hour <input type="checkbox"/> Less than two hours <input type="checkbox"/> Less than four hours <input type="checkbox"/> More that four hours <u>Unplanned downtime/day during critical processing cycles</u> <input type="checkbox"/> Less than a few minutes <input checked="" type="checkbox"/> Less than an hour <input type="checkbox"/> Less than two hours <input type="checkbox"/> Less than four hours <input type="checkbox"/> More that four hours
Application Backup Requirements	Full Backup: <input type="checkbox"/> Real Time <input checked="" type="checkbox"/> Daily <input type="checkbox"/> Weekly Incremental Backup: <input type="checkbox"/> Hourly <input checked="" type="checkbox"/> Daily <input type="checkbox"/> Weekly
Application Recovery Requirements (Data Center remains available)	Recovery Time Objective: <input type="checkbox"/> Minutes (specify amount): _____ <input checked="" type="checkbox"/> Hours (specify amount): <u>24</u>
Disaster Recovery Requirements (Data Center, e.g. emergency declared)	Recovery Time Objective: <input type="checkbox"/> Hot Site: <input type="checkbox"/> hour(s) or less (specify amount): _____ <input type="checkbox"/> Warm Site: <input type="checkbox"/> days(s) or less (specify amount): _____ <input checked="" type="checkbox"/> Cold Site: <input type="checkbox"/> days(s) or less (specify amount): <u>4hr</u>
Hosting Location	<input type="checkbox"/> NC OITS <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Outsource (specify location/vendor):

Agency Technical Checklist	Responses - Select all that apply
<p>System Usage of NC Shared Services – NC ITS Service Catalog</p>	<p><input checked="" type="checkbox"/> Enterprise Services <input type="checkbox"/> iWise <input type="checkbox"/> NCID <input checked="" type="checkbox"/> NCMail <input checked="" type="checkbox"/> Class A LAN <input type="checkbox"/> Project Mgmt <input type="checkbox"/> Common Payment Services <input type="checkbox"/> E-Rate <input type="checkbox"/> Web Services <input type="checkbox"/> Hosting Services <input type="checkbox"/> Mainframe <input type="checkbox"/> Distributed <input type="checkbox"/> Middleware <input type="checkbox"/> Database <input type="checkbox"/> Directory <input type="checkbox"/> Storage <input type="checkbox"/> Programming Tools <input type="checkbox"/> Network Services <input type="checkbox"/> WAN <input type="checkbox"/> Remote Access <input type="checkbox"/> Network Security <input type="checkbox"/> Structured Cabling for Voice, Data, and Video <input type="checkbox"/> Telephony Services <input type="checkbox"/> Local Access Line <input type="checkbox"/> Centrex <input type="checkbox"/> Contact Call Center <input type="checkbox"/> Enterprise IP Telephony <input type="checkbox"/> Small Telephone System <input type="checkbox"/> Long Distance Calling Card <input type="checkbox"/> Long Distance Telephone <input type="checkbox"/> Toll-Free Long Distance <input type="checkbox"/> Cellular Telephone <input type="checkbox"/> Pay Telephone <input type="checkbox"/> MAC and Maintenance <input type="checkbox"/> Multimedia and Conferencing <input type="checkbox"/> Video Conferencing <input type="checkbox"/> Web Conferencing <input type="checkbox"/> Streaming Media <input type="checkbox"/> Event Production</p>

Vendor System Design

To be completed by the vendors responding to an RFP. This attachment supplies the agency with information regarding the design characteristics of the vendor’s proposed solution.

1. Vendor System Design Checklist

Vendor System Design Checklist	Response - Select all that apply
Architectural Approach	__ SOA __ 3/N Tier __ Other (specify):
Processing Type	__ OLTP __ OLAP __ Other (specify):
Development Platform	__ J2EE __ .NET __ Other (specify):
Architectural Framework(s)	__ STRUTS __ JATO __ JSF Other (specify):
Architectural Pattern(s)	__ MVC __ Factory __ Controller __ Data Access Object Other (specify):
Application Communication Technologies	Service Interface: __ Web Services (i.e. XML, SOAP, WSDL, UDDI, and HTTP) __ Public Facing __ Internal Facing Platform Specific: __ .NET Remoting __ EJB/RMI – IIOP __ Other (specify):
System Integration Technologies	__ XML __ Web Services __ Messaging __ EDI __ CORBA __ IIOP __ Adaptors __ Secure FTP __ Other (specify):
Software Testing	General: __ Functional __ Regression __ System __ Integration Specialized: __ Performance __ Load __ Stress __ Error Handling __ Security __ Platform __ Accessibility: __ WCAG V1.0: __ Priority 1 __ Priority 2 __ Priority 3 __ WCAG V2.0 (Draft): __ Level 1 __ Level 2 __ Level 3 __ Section 508 User-Participation: __ Beta __ User Acceptance __ Other (specify):

Vendor System Design Checklist	Response - Select all that apply
Security Technologies	<input type="checkbox"/> Identity and Access Management <input type="checkbox"/> Integrated <input type="checkbox"/> Externalizable <input type="checkbox"/> Externalized <input type="checkbox"/> SSL/TLS <input type="checkbox"/> Data Encryption Level Supported: <input type="checkbox"/> Column <input type="checkbox"/> Row <input type="checkbox"/> Table <input type="checkbox"/> Database <input type="checkbox"/> Cookie Encryption <input type="checkbox"/> DES <input type="checkbox"/> 3DES <input type="checkbox"/> AES <input type="checkbox"/> Other (specify): <input type="checkbox"/> Other (specify):
Client Operating Systems	<input type="checkbox"/> Apple <input type="checkbox"/> Microsoft <input type="checkbox"/> Linux <input type="checkbox"/> Unix <input type="checkbox"/> Palm <input type="checkbox"/> Microsoft PocketPC <input type="checkbox"/> Other (specify):
Client Platforms	<input type="checkbox"/> Desktop/Laptop <input type="checkbox"/> Tablet <input type="checkbox"/> PDA <input type="checkbox"/> Smart Phone <input type="checkbox"/> Other (specify):
Client Footprint by Platform	Specify size of footprint in KB or MB (if applicable): Desktop/Laptop: ____ Tablet: ____ PDA: ____ Smart Phone: ____ Other (specify): ____
Client Connection Speed	Specify speed in kbps or mbps: Minimum: ____ Recommended: ____
Client Richness	<input type="checkbox"/> Browser Based <input type="checkbox"/> Rich Client <input type="checkbox"/> Rich Internet (AJAX)
Browsers and Versions Supported	<input type="checkbox"/> Internet Explorer (specify versions): <input type="checkbox"/> Mozilla Based (specify brand and versions): <input type="checkbox"/> Other (specify product and versions):
Presentation - Client Side Languages	<input type="checkbox"/> HTML <input type="checkbox"/> DHTML <input type="checkbox"/> XML <input type="checkbox"/> XHTML <input type="checkbox"/> VB.NET <input type="checkbox"/> C# <input type="checkbox"/> ActiveX Controls <input type="checkbox"/> Java Applets <input type="checkbox"/> Java <input type="checkbox"/> JVM (specify details): <input type="checkbox"/> JavaScript <input type="checkbox"/> VBScript <input type="checkbox"/> C++ <input type="checkbox"/> Other (specify):

Vendor System Design Checklist	Response - Select all that apply
Application State	__ Cookies: __ Non-Persistent Cookies __ Persistent Cookies __ Session Ids __ State Stored in Hidden Fields __ Other (specify):
Web Server Location	__ Public Facing __ Internal Facing
Web Server Operating System	__ Windows __ Linux __ Unix __ Other (specify): Specify Version:
Web Server Software	__ Apache __ Microsoft __ Sun __ Oracle __ Other (specify): Specify Edition and Version:
Web Server - High Availability	Load Balancing: __ Yes __ No 64 Bit Processors: __ Yes __ No Dual Core Processors: __ Yes __ No Other (specify):
Presentation – Server Side Languages	__ ASP.NET __ VB.NET __ C# __ JSP __ Servlets __ Java __ JVM (specify details): __ Server Side Includes (SSI) __ C++ __ Other (specify):
Application Server Operating System	__ Windows __ Linux __ Unix __ Other (specify): Specify Version:
Application Server Software	__ Microsoft __ IBM __ Sun __ Oracle __ BEA __ Other (specify): Specify Edition and Version:
Application Server – High Availability	64 Bit Processors: __ Yes __ No Dual Core Processors: __ Yes __ No RAID: __ Yes __ No SAN: __ Yes __ No Mirroring: __ Yes __ No Clustering: __ Yes __ No Grid/On Demand: __ Yes __ No Other (specify):
Business Rule – Application Languages	__ VB.NET __ C# __ Java (J2SE) __ Java/EJB (J2EE) __ JVM (specify details): __ C++ __ Other (specify):
Database Server Operating System	__ Windows __ Linux __ Unix __ Other (specify): Specify Version:
Database Server Software	__ Microsoft __ IBM __ Oracle __ Other (specify): Specify Version:

Vendor System Design Checklist	Response - Select all that apply
Database Server – High Availability	64 Bit Processors: <input type="checkbox"/> Yes <input type="checkbox"/> No Dual Core Processors: <input type="checkbox"/> Yes <input type="checkbox"/> No RAID: <input type="checkbox"/> Yes <input type="checkbox"/> No SAN: <input type="checkbox"/> Yes <input type="checkbox"/> No Mirroring: <input type="checkbox"/> Yes <input type="checkbox"/> No Clustering: <input type="checkbox"/> Yes <input type="checkbox"/> No Grid/On Demand: <input type="checkbox"/> Yes <input type="checkbox"/> No Other (specify):
Data Access – Connectivity Methods	<input type="checkbox"/> ADO.NET <input type="checkbox"/> ODBC <input type="checkbox"/> OLE/DB <input type="checkbox"/> JDBC <input type="checkbox"/> JDO <input type="checkbox"/> DB2 Connect <input type="checkbox"/> Other (specify):
SQL Languages	<input type="checkbox"/> T/SQL <input type="checkbox"/> PL/SQL <input type="checkbox"/> Other (specify):
Stored Procedures Utilization	<input type="checkbox"/> Data Access <input type="checkbox"/> Business Rules

2. NC Statewide Technical Architecture – Description Requirements

Section 2 of Attachment C is to be completed by the vendor as part of its RFP response. The information provided below is stated in the form of questions that must be answered by the vendor in its RFP response. The vendor may provide other information by category to assist in demonstrating its ability to provide the desired level of architectural consistency.

- 1) Scalability:
 - a) Provide detailed diagrams with complimenting narrative describing proposed technical solution.
 - b) Describe the largest production implementation by an existing customer that utilizes the proposed technical solution.
 - c) Describe the testing methodology used in the development of the proposed technical solution (e.g. Performance, Load, Stress, Security, etc).
 - d) Describe the ability of the proposed solution to scale both horizontally and vertically.
 - e) Describe how the proposed solution can be scaled to manage pilot, rollout, and growth rate requirements.
- 2) Adaptability:
 - a) Describe the overall architectural approach utilized to design the proposed solution (e.g. Service Oriented, 3/N Tier, Composite Application).
 - b) Describe how the architectural approach and the technologies used enable solution adaptability.
 - c) Describe the technology roadmap for the proposed solution.
 - d) Describe how the solution will be capable of adapting to meet changing business requirements.
- 3) Secureability:
 - a) Describe how the solution can be deployed to provide layered access controls.
 - b) Describe how the solution can be deployed to accommodate both an integrated or externalized identity access and management solution.
 - c) Describe the ability of the proposed solution to meet federal and state regulatory requirements.
- 4) Availability:
 - a) Describe the technologies and approach used to meet and/or exceed availability requirements.
 - b) Describe an acceptable backup and recovery approach to meet and/or exceed availability requirements
- 5) Manageability:
 - a) Describe the versioning and patch management process for the proposed solution.
 - b) Describe approaches that could be implemented to provide overall performance monitoring for the proposed solution.
 - c) Describe the Quality Assurance (QA) measures that have been taken in the design, implementation, and maintenance with respect to the proposed solution.

- d) Describe the management and monitoring tools that are supported by the proposed technologies.
- 6) Interoperability:
 - a) Describe the programming language(s) and development framework(s) that are utilized in the design and implementation of the proposed solution.
 - b) Describe any open (industry and/or de facto) standards utilized to ensure interoperability of this solution within a heterogeneous environment.
 - c) Describe the available options, along with the preferred approach, for integrating the proposed solution with other intra/inter agency systems and [NC Shared Services](#).
 - d) Describe the flexibility of this solution to meet future integration needs.
 - e) Describe how the solution meets accessibility (i.e. W3C and/or 508) requirements.
- 7) Enterprise:
 - a) Describe how the proposed solution can leverage [NC Shared Services](#).
 - b) Describe how consolidation of services and infrastructure will be accomplished.