

**ISSUE DATE:** April 30, 2008  
**RFP NUMBER:** 65-RFPB621558

**ISSUING AGENCY:** UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL  
MATERIAL & DISBURSEMENT SERVICES  
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## ***REQUEST FOR PROPOSAL***

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**TITLE:** OPERATING SYSTEM VULNERABILITY ASSESSMENT AND  
REMEDATION TOOLS

**ISSUING AGENCY:** UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL  
CHAPEL HILL, NORTH CAROLINA 27599

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**IMPORTANT:** This is a **BEST VALUE Request for Proposal (RFP)** process. Proposals shall be placed in sealed envelopes with the following information printed on the outside of the envelope: complete name of the Vendors and the RFP number. Ensure that you have the RFP number printed on your address label so that it can be properly identified upon arrival at the Issuing Agency address.

Responses will be received until **4:00 p.m. on May 12, 2008** for furnishing information on the tools described herein at the address indicated above as Issuing Agency. Responses not received by **4:00 p.m. on May 12, 2008** may not be considered. No details of responses will be divulged at the time of opening.

All Vendor inquiries shall be submitted via email as a Microsoft Word document to [laura\\_teachout@unc.edu](mailto:laura_teachout@unc.edu), no later than **4:00 pm on May 7, 2008**. Please ensure that the subject line of your email says something like "Questions for RFP 65-RFPB621558" so that your questions will be properly identified and not discarded as possible spam. A summary of all questions and answers will be posted on the Internet or emailed as an addendum, located under the RFP number being modified.

Electronic versions of this RFP and its appendix are available. Send requests by email to Laura Teachout at ([laura\\_teachout@unc.edu](mailto:laura_teachout@unc.edu)). Include the RFP number in the email subject line. The .pdf version posted on the State IPS (Internet) is the official version of this RFP.

Pursuant to G.S. 143-48 and Executive Order No. 150, the state invites and encourages participation in this process by businesses owned by minorities, women and the disabled.

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## **1. Introduction**

### **1.1. Overview**

The University of North Carolina at Chapel Hill seeks vendor bids regarding operating system vulnerability assessment and remediation tools which satisfy the listed requirement criteria. Bidders will also compete based on a set of “desired” criteria and on price. We seek bids for appliance-based products. We will not consider software products which would be installed on hardware not supplied by and supported by the vendor.

### **1.2. Institutional Background**

UNC-Chapel Hill, an international center for both undergraduate and graduate study and research, is a public institution of higher education in Chapel Hill, North Carolina. UNC-Chapel Hill is the nation's first state university and has served North Carolina for over two centuries. Through its excellent undergraduate programs, it has provided higher education to ten generations of students, many of whom have become leaders of the state and the nation. Since the nineteenth century, it has offered distinguished graduate and professional programs.

As a research university, UNC-Chapel Hill has recruited a faculty actively involved in research, scholarship, and creative work, whose teaching is transformed by discovery, and whose service is informed by current knowledge.

The mission of UNC-Chapel Hill is to serve all the people of the State, and indeed the nation, as a center for scholarship and creative endeavor. UNC-Chapel Hill exists to teach students at all levels in an environment of research, free inquiry, and personal responsibility; to expand the body of knowledge; to improve the condition of human life through service and publication; and to enrich our culture. This mission imposes special responsibilities upon the faculty, students, staff, administration, trustees, visitors, and other governance structures and constituencies of UNC-Chapel Hill in their service and decision making on behalf of UNC-Chapel Hill.

UNC-Chapel Hill belongs to the select group of American and Canadian campuses forming the Association of American Universities. Its academic offerings span more than 100 fields, including bachelors, masters and doctoral degrees, as well as professional degrees in dentistry, medicine, pharmacy and law. Five health schools—which, with UNC Hospitals, comprise one of the nation’s most complete academic medical centers—are integrated with liberal arts, basic sciences, and high-tech academic programs.

UNC-Chapel Hill currently employs over 11,000 faculty and staff. UNC-Chapel Hill enrolled more than 24,000 undergraduate and graduate students during the spring of 2006. In all of its academic divisions, UNC-Chapel Hill is operating at enrollment levels that it deems appropriate.

### **1.3. Definitions**

As used in this RFP, terms defined in Section 1.1 shall have the meanings therein indicated, and the following terms shall have the following meanings:

**"Vendor"** means any business entity or joint partnership that submits a response to this RFP.

**"Project"** means the procurement and implementation of an operating system vulnerability assessment and remediation tool at UNC-Chapel Hill and the furnishing of certain related products and services as contemplated by this RFP.

**"Selected Vendor"** means the Vendor that UNC-Chapel Hill selects to furnish the products and services required for the Project.

**"Software"** means any computer software that Vendor proposes to install or implement for the Project.

**"Hardware"** means any equipment necessary to accomplish and implement the solution which is the subject of this RFP.

## **2. Minimum Proposal Submittal Requirements**

Vendors that can demonstrate their ability to successfully provide the required Software, Hardware and services outlined in this RFP are invited to submit information provided the following requirements are met:

- 2.1 Vendor should have at least 3 years' experience in providing operating system vulnerability assessment services to clients similar in size and scope to UNC-Chapel Hill.
- 2.2 Vendor should have completed at least two (2) successful implementation services of the proposed product (current or one major version prior) within the last 3 years similar to UNC-Chapel Hill's size and scope. Please provide the name of company, contact name, phone number, email address, and a brief description of the service provided and contract dollar amount.
- 2.3 Vendor must have a dedicated technical support team that includes 24 hour/7 days-per-week support with a response time within 4 clock hours of support request to which UNC-Chapel Hill has unlimited access.

### 3. Structure of Response

#### 3.1. Software and Hardware Description

##### 3.1.1. Overall product architecture (diagram and overview discussion)

Vendors should present a product architecture overview diagram showing product components and interactions, and describe the overall architecture of your current Software and Hardware release.

##### 3.1.2. Description of each Software and Hardware component in the diagram

Vendor’s response should include:

- a text description of all infrastructural product components
- explanation of the product functionality they support
- hardware platforms and operating systems on which the components run

The description should designate which of those components are included as part of the base Vendor product, which must be purchased as optional or add-on components, and clearly indicate any third-party products that must be in place or purchased separately for installation and operation of the product or any single product component.

##### 3.1.3. Software and Hardware Functionality and Requirements

A fully responsive proposal MUST include the following components. Vendors must enter a “Y” or “N” in the third column below, entitled “Vendor’s Product Complies?” If an “N” response is provided for any of these components, the Vendor’s submission will be considered non-responsive and will not be given further consideration in the bid process.

CATEGORY	#	REQUIREMENT DESCRIPTION	VENDOR’S PRODUCT COMPLIES?
<b><u>Stability</u></b>	1.	Built on a stable, reliable, supported platform	
	2.	Will not introduce security vulnerabilities in the implementation of the product	
<b><u>Authentication</u></b>	1.	Support enterprise-level authentication for credentialed scans using the following types of authentication	
	2.	SMB (server message block)/Active Directory – For MS Windows Based Hosts	
	3.	SSH – For Unix/Linux Based Hosts	
<b><u>Functionality</u></b>	1.	Support administrator customizable, scheduled, automated scans	
	2.	Consistently provide accurate vulnerability scan results	

	3.	Obtain vulnerability results for heavily filtered or hardened hosts	
	4.	Support secure archiving of vulnerability reports and all tool configuration settings	
	5.	Allow the user to mark and disable a specific vulnerability test for a specific host or set of hosts as a false positive	
	6.	Support scanning and detection of vulnerabilities for major operating systems including at minimum: <ul style="list-style-type: none"> <li>i. Microsoft Windows 2000 and later</li> <li>ii. Solaris 9 &amp; 10</li> <li>iii. Red Hat Enterprise Linux Version 4 and later</li> </ul>	
	7.	Support delegation of responsibility and scanning authority to defined groups and system administrators	
	8.	Not rely on Active Directory Authentication for any area of required functionality	
<b><u>Support</u></b>	1.	Specify any supporting software needed to securely meet required and promised functionality. For example, if a solution only meets required or desirable specifications when a Microsoft operating system and/or database software (such as MS-SQL) is supplied, the Vendor must specify such dependencies. Describe and list all software requirements in your bid documentation.	
	2.	Be backed by a support contract which includes 24 x 7 by 365 support with four (4) hour or less ticket acknowledgement or problem resolution within four (4) hours	
	3.	Be supported by a capable support team which escalates problems to the next appropriate level rapidly and is able to communicate effectively to solve customer problems	
	4.	Include all product upgrades, vulnerability detection signatures, updates, and patches for the term of the support contract	
<b><u>Design</u></b>	1.	Have a scalable design allowing for expansion of number of scanning devices covered by centralized management and reporting	

	2.	Have the ability to work within heavily filtered environments (e.g., encrypted tunnels to remote sensors)	
	3.	Have the ability to group hosts and perform scans on host groups	
<b><u>Reporting</u></b>	1.	Provide “roll-up” reporting, i.e., comprehensive reporting on delegated combined with non-delegated systems	
	2.	Support trending, differential reports, remediation statistics and similar analysis and reporting	
	3.	Provide executive management summary reports	
	4.	Provide reports directed at system administrators for remediation.	
	5.	Provide functionality that allows administrators to run reports on specific host groups and limit reporting to only those groups	
	6.	Support exporting reports in html and csv formats at a minimum	
	7.	Categorize and report vulnerabilities by severity (eg. high, medium, low, informational)	
	8.	Facilitate remediation with easy-to-understand reports, support for links to remediation information	
	9.	Support automated delivery of remediation reports in a secure manner to administrators responsible for each sets of scanned hosts	
	10.	Remediation reports must provide information regarding how to address vulnerabilities detected or allow for customization to facilitate the elimination of detected vulnerabilities	

### 3.1.4. Additional Desired Product Functionality (75%)

**Note: Only proposals that have clearly satisfied all Requirements (Section 3.1.3) will be evaluated for Additional Product Functionality.** Vendors’ proposals should describe whether their proposed products include any of the following desired functionality. Vendors should concisely describe how and to what extent they meet the following categories. Weights are assigned to criteria listed below. Points will be deducted by the evaluation team for responses that fail to clearly or completely indicate how desired functionality will be met by the proposed solution. The evaluation team will evaluate proposals based on the vendor responses, as well as proposed pricing.



Desired functionality is worth up to 75% of the total possible points that may be assigned during the evaluation. An additional 25% of the total possible points will be allotted based on the vendor's pricing proposal. The proposal assigned the most points by the evaluation team will be considered the best value and will be recommended by the evaluation team for purchase.

Vendors are reminded, however, that this is a request for offers, not a request to contract. The University of North Carolina at Chapel Hill reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the University.

**Describe** how the proposed product addresses the desired functionality listed below:

**A) Authentication -5%**

Support Active Directory, LDAP, and Kerberos authentication for authenticated vulnerability scans.

List any other features relevant to authentication.

**B) Integration/functionality – 30%**

- 1) Describe how the product facilitates and/or supports integration with other products such as help desk software.
- 2) Includes open APIs which supports integration with other tools.
- 3) Supports multiple vulnerability scans simultaneously performed by multiple users.
- 4) Includes CVSS or some other widely-recognized vulnerability scoring system.
- 5) Supports direct queries to the vulnerability results database allowing for customized data querying of vulnerability scan results by authorized users.
- 6) Includes system name tracking and name resolution for host identification and reporting as opposed to only tracking scanned hosts according to their assigned IP address.
- 7) Provides follow-up vulnerability checks of specific vulnerabilities for specific hosts without requiring an administrator to rerun a full scan for a set of hosts.
- 8) Supports lists (imported or manually entered) of IP addresses and hostnames of systems as input for scans. Does the product support scanning via hostnames for hosts using DHCP?
- 9) List all operating systems for which vulnerability scans are supported and to what extent each is supported.
- 10) Provide a list the applications for which product includes vulnerability checks.
- 11) List any differentiators and features that you believe are unique to your product.
- 12) List the total number of vulnerabilities that the product suite can currently detect. If possible, breaking down the vulnerabilities by category, such as application or operating system.
- 13) How quickly could the product be shipped, configured and put into production?

**C. Reporting – 25%**

- 1) Provide a complete list of all file formats that can be used to export vulnerability reports/result (e.g., MS Word, .pdf and .xml).

- 2) Describe any product functionality regarding remediation time tracking by remediation user/group.
- 3) List specific templates that are included to measure against compliance standards (eg. ISO 27001, PCI, HIPAA, GLBA and FERPA templates).

D. Audit/logging – 5%

- 1) Facilitate audit of actions by authenticated parties.
- 2) Would the product facilitate export of logs to an external syslog server maintained by UNC-Chapel Hill and if so, how?

E. Support Services – 10%

- Specify the oldest Software release currently supported and its original release date.
- Specify your standard commercial policy for supporting Software releases. How long after a new general release is the Software supported? How much lead-time do you provide before a release is no longer supported?
- Describe the documentation provided with the product and the frequency and method of documentation updates.
- Describe your customer training program including on-site and off-site classes, class schedules, curriculum, materials, and any on-line or computer based training courses.
- Describe the tools you provide to test the Software and Hardware for configuration consistency, accuracy of function, and system performance.

**3.1.5. Pricing Information Section (25%)**

For consideration, vendors must include pricing information as specified below. Provided pricing information will be reviewed by the evaluation team.

Pricing quoted in this section must be inclusive of **all** required and proposed functionality. Any separate modules that are required to meet the specified requirements and proposed functionality must be included in the required, quoted pricing indicated below:

**Vendors: ENTER PRICING DATA BELOW:**

**Perpetual License/Product Pricing for 5,000 IP addresses in the scan pool: \$\_\_\_\_\_**

**Annual Product Maintenance/Support (24/7/365 Premium Support with a maximum of four (4) hour response time) for 5,000 IP addresses:**

1<sup>st</sup> Year \$\_\_\_\_\_

2<sup>nd</sup> Year \$\_\_\_\_\_

3<sup>rd</sup> Year \$\_\_\_\_\_

Price per day of professional on-site training/implementation services (inclusive of all travel and lodging costs): \$\_\_\_\_\_ per day

Estimated number of days needed for

Product Training: \_\_\_\_\_ days

Product Implementation: \_\_\_\_\_ days

### **3.1.6. Software Product Development Commitment**

Each Vendor shall provide information about its product development efforts, including the following:

- Description of its hardware platform, operating system, and database used for development of the Software.
- Indication of any planned Software releases over the next three years. Please indicate whether each release is a major or incremental release. If any planned releases are currently in development, describe what they are and when they will be released. Also indicate whether these releases require any major new technologies.
- Description of implementation services.

Vendors should propose an implementation strategy and describe roles and skill sets needed to fully implement the software.

### **3.2. General Vendor Information**

Each Vendor shall give a brief background and history of its company, including the following:

- Product services and support vision
- Customer base

### **3.3. Financial Data**

Each Vendor shall provide the following financial data:

- A copy of a credit rating report from any of the major credit rating agencies, Dun & Bradstreet, Moody's, Standard & Poor's, etc.

### **3.4. References**

Provide two (2) references for customers similar to UNC-CH. Include the following information:

- Institution name
- Product component(s) and versions implemented
- Date contract was signed
- Date implementation was completed
- Reference contact name

- Reference contact title and role in implementation
- Contact information, including address, telephone, and email

## 4. Instructions

### 4.1. Submission of Responses

- 4.1.1** On or before 4:00 pm, EST, May 12, 2008, each Vendor shall submit to UNC-Chapel Hill its responses to the information requested to UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, MATERIAL & DISBURSEMENT SERVICES, 104 AIRPORT DRIVE, SUITE 2700, CB-1100, CHAPEL HILL, NORTH CAROLINA 27599-1100 ATTENTION: Ms. Laura Teachout, Phone: (919) 962-3769, Fax: (919) 962-0636.
- 4.1.2** This is a **BEST VALUE RFP** process. Proposals shall be placed in a sealed envelope with the following information printed on the outside of each envelope: complete name of the Vendors, the Request for Proposal (RFP) number. Ensure that the RFP number is printed on the address label so that it can be properly identified upon arrival at the Issuing Agency address.
- 4.1.3** The Vendor's submission shall be comprised of the following materials: (i) five hard copies of its technical proposal and (ii) five CDs containing searchable, non-password protected files (e.g., accessible Microsoft Word) of its technical proposal.

### 4.2. Confidential Information

UNC-Chapel Hill is a public state institution and, as such, is subject to the North Carolina Public Records Law, N.C. Gen. Stat. Sec. 132-1, et seq. (the "NC Public Records Law"). Vendor responses are not public documents until a contract is awarded. After a contract is awarded, if UNC-Chapel Hill receives a public records request pursuant to this statute for the Vendors' proposals or other information relating to this RFP, it is required by law to disclose such information unless such information meets the definition of a "trade secret". A "trade secret" is defined in the N.C. Public Records Law as "business or technical information, including, but not limited to, a formula, pattern, program, device, compilation of information, method, technique, or process that: (a) derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." The Vendor disclosing such trade secret must clearly mark such information "Confidential" in order for UNC-Chapel Hill to assert that it is a protected trade secret and not a public record if it receives a public records request.

### 4.3. Right to Submitted Materials

All responses, inquiries, or correspondence relating to or in reference to this RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the Vendors shall become the property of UNC-Chapel Hill when received.

### 4.4. Cost of Response Preparation

Any costs incurred by the Vendors in preparing or submitting responses are the Vendors' responsibility. UNC-Chapel Hill shall not reimburse any Vendor for any costs incurred in connection with this RFP, including, without limitation, costs associated with presentations requested by UNC-Chapel Hill.

## 5. Evaluation Approach

### 5.1. Evaluation Process and Timeline

UNC-Chapel Hill will make its best effort to complete the following activities and timeline in its selection of operating system vulnerability scanning Software, Hardware and implementation services:

April 30, 2008	RFP Published
May 7, 2008	Deadline for submission of Vendor inquiries (4:00 pm)
May 12, 2008	Vendor responses due by 4:00 p.m. Eastern Standard Time
May 16, 2008	UNC completes initial evaluation of vendor responses
May 16, 2008	Scheduling of onsite demonstrations if needed
	<b>AND/OR</b> start of preliminary contract negotiations
May 28, 2008	Selection of Vendor

UNC-Chapel Hill reserves the right to modify this schedule.

### 5.2. Additional Notes on Evaluation Process

Proposals will be evaluated according to completeness, content, experience with similar projects, ability of the Vendor and its staff, and cost. Award of a contract to a Vendor does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous to the University of North Carolina at Chapel Hill.

Vendors are again cautioned that this is a request for offers, not a request to contract, and the University of North Carolina at Chapel Hill reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the University.

### 5.3. Vendor Demonstrations

The initial evaluation of Vendors' technical proposals *may*, at the evaluation team's discretion, result in a subset of Vendors being chosen for on-site demonstrations and/or product testing.

Vendors are asked to take note of the dates above and hold resources in reserve for the demonstration period, as advance notification of scheduling will be relatively short. UNC-Chapel Hill will allocate one day per Vendor. Please note that UNC-Chapel Hill will conduct a random drawing to determine the Vendor demonstration order.

Any demonstration of Software and/or Hardware should include, but is not limited to, the following elements:

- Vendor introduction and background
- Expected Return on Investment
- Explanation and demonstration of how users navigate through the system
- Explanation of system design concepts related to:
  - Interaction between software and database
  - Reporting functionality, diversification and security
  - Authentication
  - Delegation for scanning
  - Grouping of assets
- Demonstration of support tools and processes
- Demonstration of user capability to modify screens, reports, forms, etc.
- Demonstration of any unique design concepts or user features which the Vendor would like to illustrate.

During Vendor's presentations and demonstrations of its Software and products to UNC-Chapel Hill, Vendor should only present and demonstrate Software and products that are currently offered and supported. Demonstrations of beta product functionality are not acceptable. Vendors are cautioned that the evaluators are not required to request product demonstrations; therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

#### **5.4. Contract Negotiations**

UNC-Chapel Hill intends to begin contract negotiations with Vendors whose technical proposals are determined to be responsive. Vendors' responses to the proposed terms and conditions in Appendix A will be a significant factor in the evaluation process. In the event of continued interest by UNC-Chapel Hill in two or more Vendors following Vendor demonstrations, its ability to enter into a contract with a Vendor containing satisfactory terms and conditions will likely become a critical factor in the final phase of the evaluation.

Following UNC-Chapel Hill's evaluation of the Vendors' responses and references, in order to gather additional information, UNC-Chapel Hill may decide to narrow the list of Vendors to one or more leading contenders and invite those selected Vendors to meet with representatives of UNC-Chapel Hill to negotiate responses to the terms and conditions in Appendix A.

If UNC-Chapel Hill decides to conduct such meetings, the following negotiation procedures will apply:

1. UNC-Chapel Hill will designate a negotiation team, which will include University administrators and one or more attorneys, as the sole point of contact for Vendors for negotiations and all business matters relating to this Project. Vendors shall not contact any University trustees or employees other than members of the negotiation team concerning matters relating to this Project between the date this RFP is issued and the date a contract is awarded.
2. Vendor's negotiation team should be empowered to make decisions on all parts of the contract, including business terms.
3. As a beginning point for contract negotiations, UNC-Chapel Hill will provide the Vendor with a proposed form contract based on the general terms and conditions set forth in Appendix A. UNC-Chapel Hill shall retain control over the distribution of revised drafts of the contract.
4. Negotiations will be conducted on the UNC-Chapel Hill campus. Negotiation meetings will generally require the in-person presence of the entire Vendor negotiation team.
5. Vendor will be responsible for its own costs and expenses in negotiating a potential contract.

UNC-Chapel Hill reserves the right to modify these procedures.

## 6. Appendices

Appendix A – The University of North Carolina at Chapel Hill’s Terms and Conditions for Procedures of Information Technology Goods and Services

**65-RFPB621588: Operating System Vulnerability Assessment and Remediation Tools**

**APPENDIX A**

**THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL  
GENERAL TERMS AND CONDITIONS FOR PROCUREMENTS OF  
INFORMATION TECHNOLOGY GOODS AND SERVICES**

**1. DEFINITIONS:** As used herein,

- (i) “Deliverables” shall mean all project materials, including goods, Software, data, and documentation created during the performance or provision of services hereunder as more fully described in the University’s Solicitation Document and purchase order(s);
- (ii) “Software” shall mean any software licensed or provided by Vendor to University under this contract;
- (iii) “Solicitation Document” shall mean the University’s request for proposal, request for information, invitation for bid, and/or other solicitation document issued by the University to solicit offers for services and/or Deliverables;
- (iv) “State” shall mean the State of North Carolina;
- (v) “University” shall mean The University of North Carolina at Chapel Hill; and
- (vi) “Vendor” shall mean the party providing the services and/or Deliverables to the University.

**2. STANDARDS:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. All Deliverables constituting electronic office equipment, including but not limited to, computers, monitors, printers, scanners, photocopy machines, and facsimile machines, shall be Energy Star compliant. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the University only those Deliverables that have been inspected and found to conform to the requirements of this contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required by State or federal regulation.

a) Site Preparation: Vendors shall provide the University complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the University of any site requirements for any Deliverables required by the University’s specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the University, shall be made at the expense of the Vendor.

b) Goods Return: Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the University’s technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the University’s option, and at the Vendor’s expense. The University is responsible for the return costs related to the termination of a contract, including de-installation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the University for non-conforming goods shall be reimbursed by the Vendor to the University.

c) Specifications: The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Unless otherwise specified in the University’s Solicitation Document, the Deliverables shall be new (not refurbished, field-upgraded, previously opened or otherwise used). Upon any notice of noncompliance provided by the University, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the University; and any such alternates or substitutes must be accompanied by Vendor’s certification and evidence satisfactory to the University that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

**3. WARRANTIES:**

- a) Vendor shall assign all applicable third party warranties for Deliverables to the University.



b) Vendor warrants that the Deliverables 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 Document. If the Deliverables do not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Deliverables so that it will perform in accordance with or substantially in accordance with such specifications.

c) If the Vendor is not the manufacturer of the Deliverables, Vendor warrants that it has been designated by the manufacturer as an authorized reseller of the Deliverables and any manufacturer warranties and manufacturer indemnities will pass from the manufacturer through the Vendor and inure to the benefit of the University. In the event such manufacturer warranties or manufacturer indemnities fail, for whatever reason, to pass through the Vendor and inure to the benefit of the University, the Vendor shall pay, indemnify and hold the University harmless from all losses, damages and expenses resulting from such failure.

4. **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the University’s designated contract administrator. Any desired substitution shall be noticed to the University’s contract administrator accompanied by the names and references of Vendor’s recommended substitute personnel. The University will approve or disapprove the requested substitution in a timely manner. The University may, in its sole discretion, terminate the services of any person providing services under this contract. Upon such termination, the University may request acceptable substitute personnel to be provided by Vendor.

5. **SUBCONTRACTING:** The Vendor may subcontract the performance of required services with other vendors or third parties, or change subcontractors, only with the prior written consent of the University. Vendor shall provide the University with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the University is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the University; and that the University shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor, subject to the University’s approval.

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

7. **SOFTWARE LICENSE (for internal embedded software and firmware, unless otherwise provided in the University’s Solicitation Document or in an attachment hereto):** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the University a license to use the code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the Solicitation Document. The University shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The University may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The University shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The University may make one copy of the software for archival, back-up or disaster recovery purposes. The license

set forth in this section shall terminate immediately upon the University's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the University shall (i) destroy all software copies made by the University, (ii) deliver the original or any replacement copies of the software to the transferee, and (iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The University shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the Solicitation Document.

**8. MAINTENANCE/SUPPORT SERVICES:** Unless otherwise provided in the University's Solicitation Document, or in an attachment hereto, for the first year and all subsequent years during the term of this contract, 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 University 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 University shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the software program. Vendor and the University 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 effect maintenance services under this section.

b) Vendor shall notify the University of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the term of this contract 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 University, at no additional charge, all new releases and bug fixes 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 software program and Documentation and, as such, shall be governed by the provisions of this contract.

d) **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 software program maintenance service, within four hours, for calls made at any time.

**9. TRAVEL EXPENSES:** Vendor may be reimbursed for travel expenses arising under the performance of this contract 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 University within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the University. The University will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this contract.

**10. GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables or services offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the University's contract administrator. The University reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract. The University may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the University. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the University, the University may terminate this contract and compensate Vendor for sums due under the contract.

**11. 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 trustee, employee or official of the University for the purpose of obtaining any contract or award issued by the University. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the University.

12. **AVAILABILITY OF FUNDS:** Any and all payments to Vendor are contingent upon and subject to the availability of funds to the University for the purposes set forth in this contract. If the term of this contract extends into fiscal years subsequent to that in which it is approved, such continuation of the contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the contract. If funds to effect payment are not available, the University will provide written notification to Vendor. If the contract is terminated under this section, Vendor agrees to take back any affected Deliverables and software not yet delivered under this contract, terminate any services supplied to the University under this contract, and relieve the University of any further obligation thereof. The University shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

13. **PAYMENT TERMS:**

a) All invoices shall be submitted to the University's Disbursement Services Department unless otherwise instructed on the face of the purchase order. Payment terms for Deliverables are Net 30 days after the University's acceptance of the Deliverables and the University's receipt of a correct invoice. 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. For Software purchases, the total license fee and the support and maintenance fee (provided the University subscribes or purchases such services) for the first year shall be invoiced upon delivery of the Software. The Software support and maintenance fee for subsequent contract years, if any, will be invoiced annually 60 days prior to the anniversary date beginning each subsequent year.

b) Upon written request approved by the University and solely as a convenience to the Vendor, the University may: (i) forward the Vendor's payment check directly to any person or entity designated by the Vendor, and (ii) include any person or entity designated by Vendor as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the University to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all contract obligations.

14. **ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables or services is not described in another contract document agreed to by the University, the University shall notify Vendor in writing within fifteen (15) calendar days following University's discovery that the Deliverables or services do not conform to the specifications of the Solicitation Document, or other contract document, and 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 Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables or services fail to meet any specifications or acceptance criteria, the University may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables or services discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects associated with the Deliverables or services or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables or re-perform the services, the University reserves the right to cancel the contract, enter into a contract with a different Vendor, and invoice the original Vendor for any differential in price over the original contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the University at its own expense within thirty (30) calendar days of notification, unless otherwise agreed by the University. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

15) **NONDISCRIMINATION:** The Vendor will comply with all federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees, without regard to discrimination by reason of race, color, religion, sex, national origin, disability, age, or veteran status.

16) **ADVERTISING:** Vendor agrees not to use the existence of this contract or the name of the University of North Carolina at Chapel Hill as a part of any commercial advertising without prior written approval of the University.

17) **CONFIDENTIALITY:** To promote competition in the competitive bidding process, the University may maintain the confidentiality of certain types of information to the extent permitted by N.C. Gen. Stat. §132-1 et. seq. Such information solely includes "trade secrets", defined by N.C. Gen. Stat. §66-152, and other information specifically exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the statutes and

rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL**”. By so marking any page, the Vendor warrants that it has formed 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 University may serve as custodian of Vendor’s confidential information and not as an arbiter of claims against Vendor’s assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the University to disclose information marked confidential, the Vendor agrees that, if requested by the University, it will intervene in the action through its counsel and participate in defending the University, and any of the University’s named trustees, officials or employees. The Vendor agrees that it shall hold the University and any of its trustees, officials and employees harmless from any and all damages, costs, and attorneys’ fees awarded against the University in the action. The University agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. The University shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The University 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.

a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the University during performance of any contractual obligation from loss, destruction or erasure.

b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the University, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The University may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the University for Vendor’s execution. The University may exercise its rights under this subsection as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), FERPA, 20 USC 1232g (Family Education Rights and Privacy Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the University or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the University.

d) Proprietary Vendor materials licensed to the University shall be identified to the University by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. The Solicitation Document may supplement or substitute this definition and the requirements set forth in this section. Deliverables include "Work Product" and means any expression of Licensor’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the University, at no additional license fee, pursuant to the terms of the software license contained herein and the Solicitation Document.

18. **LATE DELIVERY, BACK ORDER:** Vendor shall advise the University contract administrator immediately upon determining that any Deliverables or services will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery or performance time and date. In the event the delay projected by Vendor is unsatisfactory, the University shall so advise Vendor and may proceed to procure substitute Deliverables or services.

19. **PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the University, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models,

templates and general purpose consulting and software tools, utilities and routines (collectively, the “Vendor Technology”). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the 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 purposes.

b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the University to Vendor. The University hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor’s internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the University.

c) The Vendor, at its own expense, shall defend any action brought against the University to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the University in any such action. Such defense and payment shall be conditioned on the following:

d) That the Vendor shall be notified within a reasonable time in writing by the University of any such claim; and,

e) 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 University shall have the option to participate in such action at its own expense.

f) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor’s opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the University shall permit the Vendor, at its option and expense, either to procure for the University the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the University shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the University has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the University in procuring substitute Deliverables. If, in the sole opinion of the University, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this contract impractical, the University shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the University has paid Vendor less any reasonable amount for use or damage.

g) Vendor will not be required to defend or indemnify the University if any claim by a third party against the University for infringement or misappropriation (i) results from the University’s alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

h) Nothing stated herein, however, shall affect Vendor’s ownership in or rights to its preexisting intellectual property and proprietary rights.

**20. 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 the University in accordance with N.C. General Statute 147-64.7.

**21. ASSIGNMENT:** Vendor may not assign this contract or its obligations hereunder except in cases where Vendor is involved in a corporate consolidation, acquisition, or merger. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this contract 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 contract. An assignment may be made, if at all, in writing by the Vendor, assignee and the University setting forth the foregoing obligation of Vendor and assignee.

**22. INSURANCE COVERAGE:** During the term of the contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) Worker's Compensation - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract ; and
- b) Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) Automobile - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the contract.

23. **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the University's contract administrator for decision. A claim by the University 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). Each party's performance obligations shall continue unabated during the duration of the dispute resolution. 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 at law or in equity. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

24. **DEFAULT:** In the event any service or Deliverable furnished by the Vendor during performance of any contract term fails to conform to any material requirement of the contract specifications, notice of the failure is provided by the University and the failure is not cured within thirty (30) calendar days, or Vendor fails to meet the requirements of section 14 herein, the University may find the Vendor in default and may cancel the contract 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 section 26. Default may be cause for debarment as provided in 01 NCAC 05B.1520. The rights and remedies of the University provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

25. **WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this contract, unless so stated in a writing and signed by authorized representatives of the University and the Vendor, and made as an amendment to this contract pursuant to section 28 below.

26. **TERMINATION:** Any notice of termination made under this contract shall be transmitted in accordance with the notice requirements in Section 36. 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 University may terminate this contract, in whole or in part, pursuant to section 25, or pursuant to the terms and conditions in the Solicitation Document, if any, or for any of the following:
  - (i) Termination for Cause: In the event any Deliverables or services furnished by the Vendor during performance of any contract term fails to conform to any material requirement of the contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the University may cancel and procure the Deliverables or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in section 26 herein. The rights and remedies of the University 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 University for damages sustained by the University arising from Vendor's breach of this contract; and the University 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 University may terminate service contracts 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 University, the University will pay for all work performed and products delivered in conformance with the contract up to the date of termination.

**27. LIMITATION OF VENDOR'S LIABILITY:**

a) 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 be limited to two times the value of the contract. Provided, however, that the University's Solicitation Document may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the contract.

b) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the section entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this contract.

**28. INDEMNIFICATION AGREEMENT:** Vendor shall indemnify University against any and all liability, claims, and costs of whatsoever kind and nature, for injury to or death of any persons, for loss or damage to any property in connection with or in any way incident to or arising out of the occupancy, use, service, operations, or performance of work in connection with this agreement resulting in whole, or in part from the acts or omissions of Vendor, or any employee, agent, or representative of Vendor. Vendor shall pay all royalties and license fees and shall defend all suits or claims for infringement of any patent rights or copyright rights and shall save the University from loss on account thereof.

**29. AMENDMENTS/CONTRACT AUTHORIZATION:**

a) This contract may not be amended orally or by performance. Any amendment, in order to be effective, must be made in written form and signed by duly authorized representatives of the University and Vendor in accordance with this section.

b) This contract and subsequent purchase order(s) are awarded subject to shipment of quantities, qualities, and prices indicated by the order or contract, and all conditions and instructions of the contract or proposal on which it is based. Any changes made to this contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the University's Purchasing Services Division. The University shall not be responsible for services or Deliverables delivered without a purchase order or authorization from the University's Purchasing Services Division. In order to be effective, contracts for University purchases of goods or services exceeding \$5,000 must be signed by a duly authorized officer of the University's Purchasing Services Division, or the University's Vice Chancellor for Finance and Administration or his/her delegate.

**30. PRICE ADJUSTMENTS FOR TERM CONTRACTS:** Changes in prices or costs quoted by Vendor may be permitted during the term of the contract, but shall be subject to the requirements of this section, and any additional terms of the Solicitation Document. Permitted changes during the contract period must be general, either by reason of market change, change in manufacturer's list price or price adjustments authorized in accordance with Section 28.

a) Notification: Vendor must provide written notification of any proposed pricing change to the University's contract administrator not less than sixty (60) days prior to the desired effective date of any proposed price adjustment. If Vendor is a reseller, value added reseller, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.

b) Decreases: The University shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the contract period.

c) **Increases:** All prices and costs 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. The University shall exercise this right not later than 30 days after the receipt by of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.

31. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this contract.

32. **DATE AND TIME WARRANTY:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the contract.

33. **INDEPENDENT CONTRACTORS:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the University. This contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

34. **TRANSPORTATION:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the Solicitation Document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the University. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

35. **NOTICES:** Any notices required under this contract should be delivered to the contract administrator for each party. Unless otherwise specified in the Solicitation Document, any notices shall be delivered in writing by U.S. Mail, commercial courier or by hand.

36. **TITLES AND HEADINGS:** Titles and headings in this contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and headings.

37. **TAXES:** Any applicable taxes shall be invoiced as a separate item. Invoices shall not include North Carolina Sales & Use Tax. The University is exempt from North Carolina Sales & Use Tax for all qualifying purchases. The University's North Carolina Sales & Use Tax exemption number is 400028.

38. **GOVERNING LAWS, JURISDICTION, AND VENUE:**

a) This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this contract, its situs and forum, shall be Orange 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 contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Orange County shall be the proper venue for all matters.

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

39. **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, riot, strikes, civil insurrection, acts of public officials, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.



40. **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.

41. **SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract 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 contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

42. **CONFLICTS:** In the event any provision in these General Terms and Conditions for Procurements of Information Technology Goods and Services (“General Terms and Conditions”) conflicts with the terms of any Vendor proposal or any other document generated by the Vendor, these General Terms and Conditions shall control. In the event any provision in these General Terms and Conditions conflict with the terms of any University Solicitation Document, such Solicitation Document shall control.

43. **FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the University 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.

**THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL  
SUPPLEMENTAL TERMS AND CONDITIONS FOR SOFTWARE**

1. **Supplement:** The additional terms and conditions set forth herein shall supplement the General Terms and Conditions for Procurements of Information Technology Goods and Related Services ("General Terms and Conditions"). 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. **Definitions:** Terms defined in the General Terms and Conditions have the meanings therein indicated, and the following terms shall have the following meanings:

a) "Custom Developments" means computer code relating to any Software customizations, modifications, extensions and interfaces, and all technical information, specifications, drawings, records, documentation, data, derivative works and other work products relating to the Software first originated and prepared by the Vendor or by the University for delivery to the University.

b) "Products" includes Software, hardware, equipment, options, documentation, accessories, supplies, spare parts.

3. **Software License Grant:** This section recites the scope of license granted, if not superseded by a separate licensing agreement as follows:

a) Vendor grants to the University a non-exclusive, worldwide license to use the Software. This license shall be perpetual, unless terminated as provided herein. Such license permits University to: (i) use the Software in object code format; (ii) use the documentation; (iii) transfer and operate the Software on a different operating system and/or on different hardware; (iv) install and make copies of the Software for production, testing, disaster recovery, disaster recovery testing, backup, training and education, development and archival purposes; (v) reproduce and/or incorporate all or any portion of the documentation into University-developed training and education materials; and (vi) modify and adapt the Software, and interface and/or integrate the Software with third-party software products.

b) University without having to pay any special fees has the right to permit third-party services provider to access and use the Software for purposes of assisting with the implementation.

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, and consistent with the security, records retention or other policy of the University for archival or emergency purposes, or to replace a worn copy; but not for use in preparing derivative works unless expressly in writing by the parties. Any copy of the Software or documentation must contain the same copyright notice and proprietary markings that are on the original Software.

d) The University'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.

4. **Restrictions.** University's use of the Software is restricted as follows:

a) No title or ownership of intellectual property rights to the Software are transferred to University under this contract.

b) University shall not disassemble, reverse compile, reverse engineer or otherwise translate the Software; provided, however, that University shall have the right to use the Software for purposes of creating Custom Developments.

c) University shall include Vendor's and its licensors' copyright, trademark, service mark and other proprietary notices on any complete or partial copies of the Software.

If University operates the Software from a data center outside the United States, University shall: (i) notify Vendor in writing of the location of such data center; and (ii) comply with all export control laws, provided that Vendor provides University with all applicable export control law classification numbers.

5. **Support and Maintenance Fees.** Increases in Vendor's annual support and maintenance fees shall not exceed five percent (5%) over the support and maintenance fees for the previous year. In no event shall the support and maintenance fee rate paid by University exceed Vendor's then-current support and maintenance rate charged to any of its similarly-situated customers. If the University fails to pay or chooses not to pay for support and maintenance services for the Software, the University may continue to use the Software pursuant to the license granted hereunder, but will not be entitled to receive routine support and maintenance services for such Software.

6. **Acceptance:** Acceptance testing is required for the 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 the Software 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 the Software.

7. **Warranty Terms:** Notwithstanding anything in this Contract or Exhibit hereto to the contrary, Vendor shall assign warranties for any Software or other Deliverables supplied by a third party.

a) Vendor represents and warrants to University that for a period of ninety (90) days from the date of acceptance ("Warranty Period") the Software shall perform in good working order in accordance with industry practices and standards and shall fulfill the University's business requirements as set forth in the Solicitation Document. Following receipt of written notice thereof, Vendor promptly shall respond to any failure to comply with the representations and warranties in this subsection, and Vendor promptly shall repair, replace or correct the Software at Vendor's sole cost and expense. The remedies set forth in this Section shall be in addition to any other rights and remedies that may be available to University.

b) Vendor represents and warrants to University that, to the best of its knowledge:

- (1) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
- (2) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- (3) 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 University's information systems.
- (4) 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) Vendor represents and warrants to University that the Software demonstrated to University during Vendor's on-campus demonstrations : (a) represents a generally available version of the Software; and (b) was configured but not otherwise modified by Vendor or otherwise manipulated in any way to display features or functions that do not exist in a generally available version of the Software as of the date of the Vendor's demonstrations.

d) Except for the warranties set forth in this agreement, each party expressly disclaims all warranties, expressed or implied, including the implied warranties of merchantability and fitness for a particular purpose.

8. **Confidentiality:** Vendor shall employ security measures and standards, including encryption technologies, as may be necessary or proper, and as mutually agreed by the University 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.

9. **Software Migration.** If Vendor promotes and/or markets to any similarly situated customer a different application, hardware configuration, operating system, database platform, data storage device, emulation software and/or other infrastructure as a preferred solution when compared to any of the same categories of such items as were supplied by Vendor to University as part of the Software, then Vendor will (1) provide University with an option to acquire a successor product with credits equal to one hundred percent (100%) of all fees paid by University to Vendor for the Software; (2) assist University with implementing the successor product; and (3) provide a discount of fifty percent (50%) off the then applicable service rates for services needed for such migration.

10. **Reductions in Functionality.** If Vendor eliminates in any future enhancement of the Software any business functionality as implemented by University, then at University's request and at no cost or expense to University, Vendor will either: (i) provide substantially equivalent replacement business functionality to University that is reasonably acceptable to University through another Vendor product; or (ii) modify, adjust or customize the Software for University's use so that the applicable business functionality remains available to University.

11. *Applies if marked:*

**Escrow of Code:** Vendor has established an Escrow Agreement (“Escrow Agreement”) for the Software with a third party escrow agent acceptable to the University. 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 University pursuant to this agreement. The license to the Deposit Materials under this Section shall terminate upon the termination or cure of the Release Condition.