

NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS

1. **PERFORMANCE AND DEFAULT:** If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under this contract, the University shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Vendor shall, at the option of the University, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed on such materials. Notwithstanding, Vendor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of this contract, and the University may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the University from such breach can be determined. The University reserves the right to require at any time a performance bond or other acceptable alternative guarantees from a successful Vendor without expense to the University.

In case of default by the Vendor, the University may procure the services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Contractor under this contract, or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the University may immediately cease doing business with the Contractor, immediately terminate this contract for cause, and may act to debar the Contractor from doing future business with the State

2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Vendor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. The University reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this contract.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
 - a. G.S. §143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G. S. §105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G. S. §105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
5. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.

7. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.
8. **AFFIRMATIVE ACTION:** The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
9. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
10. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

The complete product(s) offered herein, and NOT merely its component parts or subsystems, shall comply with the above requirement for safety listing. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. All costs for product and industry certifications and listings, and any other actions required to supply conforming products to the University as described in this IFB, are the sole responsibility of the Vendor. The certification or safety label shall be affixed and be visible on the OUTSIDE of the all products that require a certification or safety label in order to pass the State Quality Acceptance Inspection. The requirements of this paragraph 10 shall not be waived by contract award or otherwise by the University.

11. **INTELLECTUAL PROPERTY INDEMNITY:** Vendor shall hold and save the University, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.
12. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of the University of North Carolina as part of any commercial advertising or marketing of products or services. A Vendor may inquire whether the University is willing to act as a reference by providing factual information directly to other prospective customers.
13. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. §143-49(9).
14. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor,

the University may:

- a. Forward the Vendor's payment check directly to any person or entity designated by the Vendor, and
- b. 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. Upon advance written request, the University may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

15. 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 \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract.
- b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

REQUIREMENTS - Providing and maintaining adequate insurance coverage 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.

- 16. GENERAL INDEMNITY:** The Vendor shall hold and save the University, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that the University has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the University's agents who are involved in the delivery or processing of Vendor goods to the University. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

- 17. INDEPENDENT CONTRACTOR:** Vendor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor represents that it has,

or will secure at its own expense, all personnel required in performing the services under this contract. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.

18. **KEY PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of this contract without prior written approval by the University's assigned Contract Lead. The individuals designated as key personnel for purposes of this contract are those specified in the RFP or Vendor's proposal.
19. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior written approval of the University's assigned Contract Administrator. Acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) specified therein in accordance with paragraph 21 of Attachment A: Instructions to Vendor.
20. **TERMINATION FOR CONVENIENCE:** The University may terminate this contract at any time by ___ days' notice in writing from the University to the Vendor. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of the University, become its property. If the contract is terminated by the University as provided in this section, the University shall pay for services satisfactorily completed by the Vendor, less payment or compensation previously made.
21. **CONFIDENTIALITY:** Any University information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under this contract shall be kept as confidential, used only for the purpose(s) required to perform this contract and not divulged or made available to any individual or organization without the prior written approval of the University.
22. **CARE OF PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any property furnished it by the University for use in connection with the performance of this contract or purchased by or for the University for this contract, and Vendor will reimburse the University for loss or damage of such property while in Vendor's custody.
23. **PROPERTY RIGHTS:** All deliverable items produced for or as a result of this contract shall be an become the property of the University, and Vendor hereby assigns all ownership rights in such deliverables, including all intellectual property rights, to the University; provided, however, that as to any preexisting works imbedded in such deliverables, Vendor hereby grants the University a fully-paid, perpetual license to copy, distribute and adapt the preexisting works.
24. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the University shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of the work to a location outside the United States, or to contract with a subcontractor for the performance of any work, which subcontractor and nature of the work has not previously been disclosed to the University in writing, prior written approval must be obtained from the University agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a University contract to a location outside of the United States.

25. **COMPLIANCE WITH LAWS:** 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.
26. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda thereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

27. **AMENDMENTS**: This contract may be amended only by written amendments duly executed by the University and the Vendor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
28. **WAIVER**: The failure to enforce or the waiver by the University of any right or of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.
29. **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.
30. **SOVEREIGN IMMUNITY**: Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the University under applicable law.