**Major - Technology Contract**

**(January 2019)**

This contract is a required attachment identified throughout an Information Technology Request for Proposal (RFP) that includes contractual terms and conditions identified in the Contract Information Section of an RFP.

***For additional information, see the*** [***Attorney General Contract Drafting and Review Manual***](http://www.ag.nd.gov/manuals/ContractManual/ContractDraftManual.pdf)***. This Contract is a required attachment to the RFP. Contracts should be reviewed by the agency’s assigned legal counsel to ensure that the agency complies with all applicable laws and is not committing itself to spending money beyond the amount appropriated by the Legislature.***

For assistance or suggestions related to this template, contact the State Procurement Office at 701-328-2740.

**Note: Delete all instructions before printing**

**ATTACHMENT** INSERT #

**TECHNOLOGY CONTRACT: *Optional: Add a Title to match the name of the project.***

**Instructions to Offerors:**  Offeror should review SECTION SIX – CONTRACT INFORMATION for information related to STATE’s contracting requirements.

The copy of the Contract to be included in the proposal must be completed as follows:

1. State “**Agree**” or “**Propose Alternate Language**” for each section.
2. If proposing alternate language, include the proposed language through edits in the body of the section. Offerors may provide comments related to any proposed alternate language.
3. Exhibit A Scope of Work and Exhibit B Compensation Details do not need to be completed as part of your proposal response. These exhibits will be completed during contract negotiations.
4. If applicable state “**Agree**” or “**Propose Alternate Language**” for each section in Exhibit C,
5. Parties

The parties to this contract (Contract) are the state of North Dakota, acting through its Department/Office (STATE), and Name of Business, a type of business (e.g. legal name, a Delaware corporation) having its principal place of business at principal business address (CONTRACTOR).

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Definitions

***Note: Update as required.***

1. **Software as a Service (SaaS).** The capability provided to the consumer is to use the provider’s applications running on a provider’s infrastructure. The applications are accessible from various client devices through interfaces such as a web browser (e.g., web-based email), or a program interface. The consumer does not manage or control the underlying infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings. This definition is based on and consistent with National Institute of Standards and Technology (NIST) Special Publication 800-145.
2. **Control Environment** - is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization.
3. **Data** - means any information provided to, or collected, generated, stored, or processed by the system. Data includes user identification information and metadata which may contain Data or from which the STATE’s Data may be ascertainable.
4. **Data Breach** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
5. **Data Classification** - means the process of defining data into relevant categories so the information has the appropriate controls in place to protect confidentiality, integrity, and availability based on the type of information.
6. **Personally Identifiable Information (PII)** - information about an individual maintained by an agency, including that 1) can be used to distinguish or trace an individual‘s identity, such as name, social security number, date and place of birth, mother‘s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
7. **Recovery Point Objective (RPO)** - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
8. **Recovery Time Objective (RTO)** - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.
9. **Users** –means contractors, subcontractors, outsourcing vendors, consultants and others who have a need to use the software for the benefit of STATE.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Scope of Work

Note: If the Scope of Work (SOW) is brief, insert your language into the sentence provided directly below. If the SOW is a lengthy document, you may consider referencing the SOW as a separate section at the end of the Contract. A sample SOW section is provided in Exhibit A.

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide SOW description.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Compensation

Note: A sample Compensation Details section is provided in Exhibit B.

1. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed [Amount] (Contractual Amount). The Contractual Amount shall be paid according to the Compensation Details document attached as Exhibit B.

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs or expenses incurred by CONTRACTOR except as provided by an amendment to this Contract.

1. Retainage

Note: Retainage should be reasonable in relation to the specific project and should be set in consultation with Office of Management and Budget (OMB), Information Technology Department (ITD) and assigned legal counsel.

All deliverable payments shall be subject to [Number] % retainage. Retained amounts due to CONTRACTOR shall be paid upon Final Acceptance.

1. Invoicing

The final cost set forth on each invoice shall be equivalent to the cost for each deliverable or service as specified in the Scope of Work. CONTRACTOR shall not submit an invoice for any deliverable or service specified in the Scope of Work that STATE has not fully accepted.

1. Payment

Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.

STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of an approved invoice.

Payment of an invoice by STATE will not prejudice STATE’s right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. At STATE’s sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

1. Travel

Note: In the event Contract will allow for separately billed travel expenses (i.e.: outside of fixed price contract). Modify or delete the following clauses as applicable:

CONTRACTOR acknowledges travel expenses are covered by the Contractual Amount and shall not invoice STATE for travel expenses.

OR

STATE shall reimburse CONTRACTOR for expenses related to travel at amounts not to exceed those outlined below:

* + 1. **Lodging:** Reimbursement shall not exceed the then-current, published GSA rate for the travel location. Copies of receipts are required for lodging reimbursement. STATE shall not reimburse for incidental and miscellaneous expenses charged to the room, including: alcohol, telephone charges, or entertainment (e.g., movies).
		2. **Transportation:** Air travel shall be reimbursed by STATE at the actual cost of airfare for coach class travel only. CONTRACTOR shall make air travel arrangements at least fourteen (14) days in advance whenever possible. Reimbursement for rented, chartered, or contracted vehicle transportation shall be limited to reasonable rates as determined by STATE.
		3. **Meals:** Meals shall be paid on a per diem basis for each day of travel at then-current, published GSA per diem rate for the travel location. Per diem for the first and last day of travel shall be paid at seventy-five percent (75%) of the GSA per diem rate. Requests for per diem payments must include the start and end dates of travel, the location where the services are performed, and the allowable per diem amount for each trip on the billing/invoice.

Payment for any travel expenses that exceed the travel budget as agreed upon by the parties must be approved by STATE’s project manager.

1. Prepayment

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

1. Payment of Taxes by State

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by CONTRACTOR.

1. Taxpayer ID

CONTRACTOR’s federal employer ID number is: [Insert FEIN].

1. Purchasing Card

STATE may make a payment using a government credit card. CONTRACTOR will accept a government credit card without passing the processing fees for the government credit card back to STATE.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Equipment, Materials, and Workspace – Resources provided by Parties

Note: Modify this section to reflect the expectation for having contract staff on site, which party is providing office space, equipment, etc.

For periods during which the parties mutually agree that CONTRACTOR’s assigned staff is on site:

1. On site means list agency physical location address.
2. STATE agrees to provide an adequate working space, when required.
3. Equipment and software for on-site CONTRACTOR personnel is to be provided by CONTRACTOR or Agency name.

When STATE and CONTRACTOR agree that remote access to systems is required, STATE shall provide the necessary supervised remote access security to enable CONTRACTOR access to the appropriate STATE systems.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Term of Contract

***Note: If you have a known date for term of contract you may include a date. The end date should be based on the length of the contract based upon anticipated Final Acceptance. The contract schedule should be discussed in the RFP. Extension and Renewal Options, should not be include in the end date.***

This Contract term (TERM) begins on ***[Month, Day], 20[Year] or its Effective Date***, and ends on ***[Month, Day], 20[Year] or a specific time after Final Acceptance (for example: 3, 6, 9 , or 12 months)***.

1. No Automatic Renewal

This Contract will not automatically renew.

Note: Any exercise of an Extension, Renewal, or Renegotiation requires a written contract amendment identifying the amended terms and conditions. Contract amendments should be drafted in consultation with assigned legal counsel.

1. Extension Option

Note: An Extension is a brief period of time used to wrap up ongoing work that could not be completed by the end of the contract. It may also be used when all renewal options have been exercised and additional time is needed to close out the contract.

STATE reserves the right to extend this Contract for an additional period of time, not to exceed ***[Number]*** months, beyond the current termination date of this Contract.

1. Renewal Option

Note: A Renewal provision is included when a multi-year contract is anticipated. The Renewal provision gives the STATE the unilateral right to allow the contract to continue for the specified periods of time after the completion of the initial contract period. Renewals shall not be used to change the scope of the contract. Renewals shall only be used to establish a new term of contract. When identifying the number and length of renewals, keep in mind that the term of the contract plus the renewal years are often calculated to cover implementation of the product plus a set number of years during which STATE may seek maintenance and support.

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to ***[Number]*** options to renew this Contract under the same terms and conditions for a period of ***[Number]*** months each.

1. Renegotiation Option

Note: A Renegotiation option would normally be used for a strategic solution/product, for example a critical line-of-business application that is expected to be used for an extended period of time and where it is in STATE’s best interest to have the ability to renegotiate the contract. Renegotiation occurs after completion of the initial term and any extensions and renewals.

In view of the fact that it is unknown how long the products and services will be used by STATE and that STATE will require ongoing maintenance and support of the products for as long as the system is operational, therefore after completion of the initial Term of this Contract including any extensions and renewals, STATE and CONTRACTOR may renegotiate this Contract upon mutual agreement of the parties.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Time is of the Essence

Note: Time is of the Essence is when a CONTRACTOR’s services must be performed within a specified time and that performance is essential requires the STATE to do its part.

The CONTRACTOR is generally not afforded any opportunity to cure a delay in performance and any delay may be a material breach of the contractual terms and conditions. If this clause is used the STATE must be prepared to terminate a contract. By waiving “Time is of the Essence” for a CONTRACTOR’s delay in performance at any time during the contract term could result in a waiver of all Time is of the Essence milestones unless otherwise agreed upon in writing by STATE and CONTRACTOR.

Generally, if this clause is not used, reasonable delay in performance would not constitute a material breach; unreasonable delay constitutes a material breach. Delete section if not required.

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Termination
2. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both parties executed in writing.

1. Early Termination in the Public Interest

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies, and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

1. Termination for Lack of Funding or Authority

STATE, by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

* + 1. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
		2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
		3. If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

1. Termination for Cause.

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

* + 1. If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; or
		2. If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Suspension for Convenience

STATE shall have the right at any time to order the services of CONTRACTOR fully or partially stopped for STATE’s own convenience. STATE shall provide CONTRACTOR written notice of the reason for and duration of the suspension. The schedule shall be delayed on a day-for-day basis to the extent STATE has issued a stop work order to CONTRACTOR and such stop work order is causing delays in completing services in accordance with the schedule. CONTRACTOR shall have the right to submit claims in accordance with the terms of this Contract as a result of stop work orders issued under this section.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Force Majeure

Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party’s reasonable control and the affected party gives notice to the other party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Liquidated Damages

Note: STATE may suffer damages if CONTRACTOR fails to perform on schedule. Liquidated damages clauses assist STATE in being made whole if this occurs. While it is impracticable to compute—at the time of contracting—the exact damages caused by a future delay, the parties can agree on an amount that is a fair and reasonable estimate of damages due to STATE in the event of a delay by CONTRACTOR. An agency shall discuss liquidated damages clauses with assigned legal counsel.

The parties agree that STATE may suffer damages due to a failure by CONTRACTOR to provide deliverables or services under this Contract. Because it is difficult to fix the actual damages sustained in the event of such delays, STATE and CONTRACTOR agree that the amount of damages will be determined as per this section. In the event of any non-performance CONTRACTOR shall pay that amount as liquidated damages and not as a penalty. Amounts due to STATE as liquidated damages may be deducted by STATE from any amounts payable to CONTRACTOR, and any amount outstanding over and above the amounts deducted from the invoice will be promptly tendered by check from CONTRACTOR to STATE.

Delays due to causes of Force Majeure or due to the responsibility of STATE shall extend the time for performance on a day-for-day basis. STATE will not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond the control and without the fault or negligence of CONTRACTOR.

Note: The following are examples of liquidated damages provisions. One or both may be applicable. Assigned legal counsel should assist in selecting or drafting appropriate language for liquidated damages.

1. Failure to Complete Deliverable on Schedule:

If CONTRACTOR fails to complete a Deliverable identified in SOW or project schedule reference by the specified deadline (or revised deadline as agreed upon between the parties through the Integrated Change Control Process), CONTRACTOR shall pay liquidated damages to STATE in the amount of $ [Amount] per calendar day for each day the Deliverable is delayed.

1. Failure to Complete Project on Schedule:

If CONTRACTOR fails to complete the project per the approved project schedule by the specified deadline (or revised deadline as agreed upon between the parties through the Integrated Change Control Process), STATE will deduct liquidated damages from amounts payable to CONTRACTOR in the amount of $ [Amount] per calendar day for each day the project is delayed.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Injunctive Relief

CONTRACTOR shall immediately report to STATE any and all unauthorized disclosures or uses of STATE’s Confidential Information or Proprietary Information of which CONTRACTOR or its staff is aware or has knowledge. CONTRACTOR acknowledges that any unauthorized publication or disclosure of STATE’s Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to STATE. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information without authorization, STATE shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless STATE from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys’ fees) caused by or arising from CONTRACTOR’s unauthorized use or disclosure of STATE’s Confidential Information or Proprietary Information. As a condition to these indemnity obligations, STATE will provide CONTRACTOR with prompt notice of any claim of which STATE is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Right of Setoff Damages

Amounts due STATE by CONTRACTOR, including liquidated or other damages, or claims for damages, may be deducted or set-off by STATE from any money payable to CONTRACTOR pursuant to this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Right to Withhold Amounts Otherwise Due if the Contractor is in Breach

If CONTRACTOR fails to deliver Deliverables or to provide Services which satisfy CONTRACTOR’s obligations under this Contract, STATE shall have the right to withhold any and all payments due under this Contract. STATE may withhold any and all such payments due under this Contract to CONTRACTOR without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Right to Remedies AND CUMULATION OF RIGHTS

No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Non-Waiver

Either party’s failure to exercise any of its rights under this Contract, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Indemnification

Note: The following indemnification language is for contracts that include IT professional services requiring special intellectual ability to perform the contracted services, some of which will be performed on-site. If the Contract does not include this type of professional services, consult with the OMB Risk Management Division for appropriate indemnification language.

[Please see the “Guidelines to Managing Contractual Risk Manual” of OMB’s Risk Management Division found at: <https://www.nd.gov/omb/agency/risk-management-services/contractual-risk>.]

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State’s contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Intellectual Property Infringement Indemnification
2. CONTRACTOR, at its own expense, shall defend and indemnify STATE against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.
3. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b) replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Representations and Warranties

CONTRACTOR represents and warrants to STATE that neither CONTRACTOR, in connection with performing the services in performance of this Contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to STATE that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless CONTRACTOR has the authority to license, use or provide those trade secrets or confidential or proprietary information to STATE. CONTRACTOR further represents and warrants to STATE that neither CONTRACTOR nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Insurance

Note: The following insurance language corresponds with the indemnification language above. If the Contract will use different indemnification language, consult with the OMB Risk Management Division for appropriate insurance language.

[Please see the “Guidelines to Managing Contractual Risk Manual” of OMB’s Risk Management Division found at: : <https://www.nd.gov/omb/agency/risk-management-services/contractual-risk>.]

CONTRACTOR shall secure and keep in force during the term of this Contract and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this CONTRACT, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of $1,000,000 per occurrence
2. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of $250,000 per person and $1,000,000 per occurrence
3. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Contract

Note: Optional clause (d) employer’s liability. This coverage is recommended for CONTRACTOR’s domiciled outside the state of North Dakota. Delete (d) if contracting with a resident (North Dakota) CONTRACTOR.

OPTION: DELETE IF NOT REQUIRED

1. Employer’s liability or “stop gap” insurance of not less than $1,000,000 as an endorsement on the workers compensation or commercial general liability insurance
2. Professional errors and omissions with minimum limits of $1,000,000 per claim and in the aggregate, CONTRACTOR shall continuously maintain such coverage during the Contract period and for three years thereafter. In the event of a change or cancellation of coverage, CONTRACTOR shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

Note: Optional sentence in a) “the amount of any deductible or self-retention is subject to approval by the State.” This sentence is needed when there is a question about the financial wherewithal of CONTRACTOR to self retain the exposure. This requirement does not pertain to large, financially viable potential CONTRACTORS.

1. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR. OPTIONAL PROVISION: The amount of any deductible or self-retention is subject to approval by the State.
2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated “A-” or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an “A-” rating must be approved by the State. The policies shall be in form and terms approved by the State.
3. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
4. The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the CONTRACTOR.
5. A Waiver of Subrogation” waiving any right to recovery the insurance company may have against the State.
6. CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
7. Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.
8. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements. CONTRACTOR shall provide on an ongoing basis, current certificates of insurance during the term of the Contract. A renewal certificate will be provided 10 days prior to coverage expiration. OPTIONAL PROVISION: An updated, current certificate of insurance shall be provided in the event of any change to a policy.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Cyber liability and security insurance

***Note: The following language should be considered when purchasing software that is hosted by the CONTRACTOR. It is of critical importance when information such as PHI or PII is involved. Consult with the OMB Risk Management Division and procuring agency’s assigned legal counsel before using this language.***

In the event CONTRACTOR will host data, or provide for the hosting of data through a third-party entity, CONTRACTOR shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than $5,000,000 and first party limits of not less than $1,000,000, that will provide, without cost to the CONTRACTOR or STATE, an immediate response in the event of a data breach, including meeting all notification obligations of CONTRACTOR and STATE and in the event the data breach involves personal information as defined by N.D.C.C. § 51-30-1(4), available free credit monitoring for any affected individual for a minimum period of one year. CONTRACTOR shall defend, indemnify, save and hold harmless, the STATE, its officers, agents and employees from liability of any nature or kind, including costs and expenses, for or on account of any and all suits, claims, or damages of any character whatsoever, resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or omission of the Contractor, or any subcontractor, or their employees or agents.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Works for Hire

***Note: If federal funds are used for this project, the CONTRACTOR may be prohibited from charging for an IT solution previously paid for by another state using federal funds. If so, you may need to add language from the applicable Federal guidelines.***

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE’s intellectual property rights under this section.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Work Product

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE'S request upon termination of this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Technology Standards

Note: Include any additional technology standards or certifications that are specific to agency and business needs.

CONTRACTOR shall comply with applicable STATE enterprise architecture technology standards. These standards can be found on STATE’s website at <http://www.nd.gov/itd/standards>.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Personnel
2. STATE will designate a Project Manager to serve as the primary project manager for this Contract. If, during the course of this Contract, it becomes necessary for STATE to change the person assigned as STATE’s Project Manager, STATE will notify CONTRACTOR in writing, pursuant to Notice section of this Contract.
3. Unless STATE otherwise notifies CONTRACTOR, STATE’s Project Manager shall carry out STATE’s administrative and management functions under this Contract, shall be responsible for acceptance of the Contract deliverables, and shall provide support and overall direction to CONTRACTOR.
4. CONTRACTOR will designate a Project Manager and provide individuals to meet the requirements and accomplish the work as stated in this Contract including any mutually agreed upon Scope of Work.
5. CONTRACTOR agrees and understands that STATE’s execution of this Contract is predicated, in part and among other considerations, on the utilization of the specific individuals and personnel qualifications as identified; primary being name of appropriate personnel, if applicable,. Therefore, CONTRACTOR agrees that:
	* 1. Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project
		2. The personnel assigned must have the knowledge necessary to complete requirements as defined in this Contract.
		3. CONTRACTOR shall warrant that all personnel assigned to perform tasks in response to this Contract will remain assigned for the agreed-upon length of time.
		4. No replacement, reassignment or substitution of any assigned individuals and personnel qualifications shall be made without the prior written approval of STATE and that such replacement, reassignment or substitution shall be made at no additional cost to STATE.
		5. Any substitution made pursuant to this paragraph must be of equal or higher skills, knowledge, and abilities than those personnel originally proposed, and that STATE’s approval of a substitution is not construed as an acceptance of the substitution’s performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld.
6. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel that STATE determines, in its sole discretion, to be unable to perform the responsibilities of this Contract acceptably, e.g., inappropriate or unprofessional personal conduct, professional inabilities, etc.
7. STATE's working hours are Monday through Friday from 8:00 AM until 5:00 PM (CST or CDT) with one hour for lunch. STATE Project Manager may approve alternate work schedules.
8. According to STATE policy, STATE personnel are only obligated to work a forty-hour workweek, Monday through Friday, and are allowed reasonable vacation, sick and educational absences.
9. CONTRACTOR’s personnel are not expected to work on State holidays or other mandatory leave days.

Note: Background Investigation Language: There are two paragraphs for background investigation requirements provided in the template below. Use the first paragraph if your agency is requiring the contractor to perform a background check and furnish the results to you for evaluation. Edit the list of background checks to match the requirements for this Contract. Use the second paragraph if you intend to have STATE perform the criminal history checks per [N.D.C.C. § 54-59-20](http://www.legis.nd.gov/cencode/t54c59.pdf) which gives ITD the authority to request criminal history checks via the ND Bureau of Criminal Investigation (BCI) conducted pursuant to [N.D.C.C. § 12-60-24](http://www.legis.nd.gov/cencode/t12c60.pdf).

Guidance: Be aware that while CONTRACTORS may be able to procure background checks through private contractors, the results may be inconsistent from contractor to contractor and criminal history checks will not be as extensive as those obtained via BCI. Contracts for consultants that will augment internal IT staff and that will largely function as an internal employee should include the second paragraph.

Option 1 - DELETE IF NOT USED

1. CONTRACTOR shall conduct background investigations on all contracted staff and subcontractors assigned by CONTRACTOR to perform work under this Contract, and shall furnish the results of such background investigations to STATE, unless prohibited by law. STATE shall have the right to reject any individual assigned to perform work under this Contract if, in its sole discretion, it determines that the results of the background investigation make the individual unacceptable. The background investigations to be performed are:
	* 1. Criminal History, applicable/not applicable
		2. References, applicable/not applicable
		3. Employment, applicable/not applicable
		4. Motor vehicle, applicable/not applicable
		5. Credit, applicable/not applicable
		6. Education, applicable/not applicable

Option 2 - DELETE IF NOT USED

1. CONTRACTOR agrees that STATE may require contracted staff and subcontractors assigned by CONTRACTOR to perform work under this Contract to submit to a criminal history record check in accordance with [N.D.C.C. § 54-59-20](http://www.legis.nd.gov/cencode/t54c59.pdf) and [§12-60-24](http://www.legis.nd.gov/cencode/t12c60.pdf). STATE shall have the right to reject any individual assigned to perform work under this Contract if, in its sole discretion, it determines that the results of the criminal history record check make the individual unacceptable.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Project Management
2. Reporting

Note: Change report timing below to reflect the agency’s desired reporting periods.

Item 1 - DELETE IF NOT USED, Item 1 would be included in contracts that are time and materials based.

* + 1. CONTRACTOR personnel will be responsible for providing written, weekly/every other week/monthly time utilization, for each individual, to STATE’s Project Manager, or STATE’s project staff, as STATE’s Project Manager may assign.
		2. CONTRACTOR’s Project Manager shall deliver to STATE’s Project Manager, weekly/every other week/monthly reports of CONTRACTOR’s progress on the project and meeting the objective/deliverables as stated in the Scope of Work. Each report must contain a description of the current status of the project, the tasks on which time was spent, the estimated progress to be made in the next reporting period, and the problems encountered the proposed solutions to them and their effect, if any, on the project budget/schedule.
		3. Project Variance Reporting – CONTRACTOR must provide data to allow STATE’s project manager to calculate cost and schedule variance in accordance with [N.D.C.C. § 54-59-23](http://www.legis.nd.gov/cencode/t54c59.pdf) as determined by STATE. If STATE’s analysis shows a negative cost or schedule variance exceeding 20%, a subsequent report must also provide proposed corrective measures to address the issues.
1. Integrated Change Control Process

CONTRACTOR and STATE will utilize an integrated change control process to manage changes during the life of a project.

* + 1. A change request must be in writing to document the potential change. The write-up for the proposed change must be submitted to CONTRACTOR and STATE’s project managers who will in turn provide it to relevant parties for assessment.
		2. All change requests will be logged and tracked. STATE’s project manager will record the request in the project repository and will update the repository throughout the process.
		3. The change will be reviewed and, if acceptable to STATE, CONTRACTOR will submit to STATE an estimate of the impact to cost, schedule, scope, and quality.
		4. CONTRACTOR will continue performing the services in accordance with the original Contract unless otherwise agreed upon by STATE’s project manager. Work shall not commence on any new activities related to the change request until all parties agree in writing.
		5. CONTRACTOR’s project manager and STATE’s project manager will adapt the Project Management Plan to incorporate approved changes.
		6. Each change request duly authorized in writing by the parties shall be incorporated into and considered part of this Contract.
		7. During the course of this Contract, if CONTRACTOR determines or could reasonably determine any STATE actions or directions constitute a requirement to perform additional work, CONTRACTOR shall notify STATE within thirty (30) calendar days that STATE has requested CONTRACTOR to perform additional work in the form of a change request utilizing the process above. CONTRACTOR understands that it waives the right to request additional time and reimbursable costs if CONTRACTOR fails to notify STATE within thirty (30) calendar days of determining or reasonably being able to determine that any STATE actions or directions constitute a requirement to perform additional work under this Contract.
1. Deliverable Acceptance
	* 1. Upon completion of a deliverable, CONTRACTOR will furnish STATE with the deliverable and associated documentation, the expected performance, and agreed upon Acceptance Criteria.
		2. After receipt of items in Paragraph 26(c)(1), STATE will have five (5) working days or a different period of time as is agreed to by the parties, in which to accept or reject each item in writing. STATE will accept by signature. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise any issues for the deliverables to be acceptable to STATE within the following five (5) working days. If STATE rejects it a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above, escalating the issue to the Executive Steering Committee, or terminating this Contract upon written notice to CONTRACTOR.
2. Final Acceptance

*Note: If this Contract includes a retainage clause, that clause likely refers to “Final Acceptance” as the trigger for when the STATE is to release retained amounts to CONTRACTOR. Take care not to modify “Final Acceptance” in a way that causes ambiguity as to when retainage is released*.

* + 1. The successful completion of all deliverables as stated in the Scope of Work in accordance with the deliverable acceptance process AND
		2. The final delivered product fully implemented in STATE’s live production environment AND
		3. STATE has sixty (60) calendar days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE shall specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to make the product conform to the requirements of this Contract as soon as possible and at no additional cost to STATE. CONTRACTOR shall continue to use its best efforts to make the product conform to the requirements of this Contract until STATE accepts the product or terminates this Contract upon written notice to CONTRACTOR.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Product Conformity

STATE has twelve (12) months following Final Acceptance of the product(s) delivered by CONTRACTOR pursuant to this Contract to verify that the product(s) conform to the requirements of this Contract and perform according to CONTRACTOR system design specifications. Upon recognition of an error, deficiency, or defect, by STATE, CONTRACTOR shall be notified by STATE citing any specific deficiency (deficiency being defined as CONTRACTOR having performed incorrectly with the information provided by STATE, not CONTRACTOR having to modify a previous action due to additional and/or corrected information from STATE). CONTRACTOR, at no additional charge to STATE, shall provide a correction or provide a mutually acceptable plan for correction within thirty (30) calendar days following the receipt of STATE’s notice to CONTRACTOR. If CONTRACTOR’s correction is inadequate to correct the deficiency, or defect, or the error recurs, STATE may, at its option, act to correct the problem. CONTRACTOR shall be required to reimburse STATE for any such costs incurred or STATE may consider this to be cause for breach of contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Warranty

Note: Insert the warranty language negotiated between the STATE and CONTRACTOR. The following is a starting point, at a minimum a 30 day warranty is desired as some projects may require a different length of warranty based on requirements.

CONTRACTOR shall provide a ***#*** day warranty upon Final Acceptance.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Software License

Note: OPTIONAL SOFTWARE LICENSE, SUPPORT, HOSTING CLAUSES - Often the Contractor will provide separate software license and software support/maintenance agreements. Insert the following clauses as necessary in the license agreement. Delete these sections if not applicable.

All ownership rights to CONTRACTOR’s software provided to STATE under this Contract (intellectual property owned by CONTRACTOR prior to performance of this Contract) shall remain with CONTRACTOR. If CONTRACTOR incorporates any of CONTRACTOR’s Software in any work product provided to STATE, CONTRACTOR agrees to provide written notice to STATE of its incorporation in the work product and to convey to STATE a non-exclusive, perpetual, cost-free license, and patent and copyright indemnity, for STATE to use that software for its intended purpose.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. License Grant and Scope of Use

Note: The Contract should include the broadest usage for the agency that is entering the Contract. If this is a statewide contract used by multiple agencies, be sure that is clearly conveyed in the scope of the license use language. If this is a critical application that will be using STATE’s disaster recovery location, ensure that the Contract allows the application to be installed in a disaster recovery high availability environment.

If this is a SaaS purchase, revise if applicable or delete entirety.

1. Licensing
	* 1. CONTRACTOR grants to STATE a perpetual, nonexclusive license to use the software and associated documentation, plus any additional software which shall be added by mutual agreement of the parties during the term of this Contract.
		2. The license usage model is based on clearly describe license model, i.e. concurrent users, named users, total employees, etc..
		3. The license grant shall be extended to any contractors, subcontractors, outsourcing vendors, consultants and others who have a need to use the software for the benefit of STATE.
		4. There shall be no limit on the number of machines, number of locations, or size of processors on which STATE can operate the software.
2. Software Functionality and Replacement

This software licensed by CONTRACTOR to STATE provides the following functionality:

Describe functionality of software product licensed

Regarding the aforementioned software functionality licensed by CONTRACTOR to STATE, CONTRACTOR agrees that:

* + 1. If CONTRACTOR reduces or replaces the functionality contained in the licensed product, and provides this functionality as a separate or renamed product, then STATE shall be entitled to license such software product at no additional license or maintenance fee.
		2. If CONTRACTOR releases an option, future product or other release that has substantially the same functionality as the software product licensed to STATE, and it ceases to provide maintenance for the older software product, then STATE shall have the option to exchange licenses for such replacement product or function at no additional charge.
1. Purchase of Additional Licenses

STATE may purchase additional software licenses during the term of this Contract at the same price offered by CONTRACTOR under the terms of this Contract.

1. Delivery of Authorized Software Only

CONTRACTOR shall not ship any software to STATE that STATE is not authorized to use.

1. Authorized Software Platform

STATE may transfer the software, at no additional cost, to any hardware platform, software operating system or database that CONTRACTOR supports for the software.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Software Maintenance

Note: If the purchase is for a SaaS this section may be deleted if not applicable and section 33 is utilized based on a subscription model purchase.

CONTRACTOR shall provide, and STATE may subscribe to, Maintenance Services, including software/hardware updates and technical support services as defined in Exhibit X, for the product(s) delivered pursuant to this Contract commencing at the end of the warranty period. CONTRACTOR and STATE shall negotiate the terms and price of such Maintenance Services. CONTRACTOR warrants that it will continue to offer Maintenance Services for the product(s) for a minimum of five (5) years from the date of final acceptance or installation date of any software/product update.

***SELECT ONE OR REVISE AS NEEDED***

Option 1 - DELETE IF NOT USED

The maintenance period begins on [Month, Day], 20[Year], and continues on an annual basis for X years.

Option 2 - DELETE IF NOT USED

The maintenance period begins with a prorated period on [Month, Day], 20[Year], and continues on an annual basis for X years.

1. Maintenance Fee Cap

CONTRACTOR agrees that any change to the annual Maintenance Services fee may increase by not more than the lower of 3% or Consumer Price Index (CPI). The rates shall be adjusted in accordance with the index titled “All Urban Consumers (CPI-U). for the U.S. City Average. All Items 1982-84=100”, prepared by the U.S. Bureau of Labor Statistics .

1. Right to Change Support Plan Level

STATE may choose to change its subscription to CONTRACTOR’s Maintenance Services plan to a higher or lower level plan that is offered by CONTRACTOR at this Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.

1. Right to Modify or Cancel Support
	* 1. STATE may choose to cancel Maintenance Services at this Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.
		2. STATE may delete a subset of licenses that are no longer in use from Maintenance Services at this Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.
		3. STATE may resume Maintenance Services for lapsed periods by paying CONTRACTOR an amount no greater than the amount that would have been due if maintenance services had been continued over the lapsed period. Upon payment of such amounts for lapsed periods, CONTRACTOR agrees to provide STATE with the right to any upgrades released during that period.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Software Support – Service Level Requirement

Note: Modify the following according to meet agency business need. If this is a SaaS purchase remove this section to avoid duplication.

CONTRACTOR will respond to STATE requests for software support services regarding the licensed software in accordance with the procedures identified below. In each case, STATE may describe and submit the problem by telephone, email, or online helpdesk/service desk tool.

|  |  |  |  |
| --- | --- | --- | --- |
| **Incident Severity** | **Response Time** | **Resolution Time** | **Escalation Procedure** |
| **High Impact –**software unusable | 1 hour | Final Resolution within:**4 hours** | Describe escalation procedure |
| **Medium Impact –** software useable with severely restricted functionality or performance | 4 hours | Final Resolution within:**8 hours**(1 business day) | Describe escalation procedure |
| **Low Impact –** software useable with minor impact on functionality or performance | 8 hours | Final Resolution within:**40 hours**(1 business week) | Describe escalation procedure |

CONTRACTOR’S failure to meet the above defined Response Times or Resolution Times in any given month during the term and any renewal term shall be deemed a service level default (“Service Level Default”) and STATE may obtain the non-exclusive remedies set forth below.

|  |  |
| --- | --- |
| **Response and Resolution Service Levels(calculated monthly on a per incident basis)** | **Service Level Credit(Prorated Fees – Monthly)** |
| Meets Response or Resolution Time | 0% |
| 1st Failure to meet Response or Resolution Time | Warning, 0% |
| 2nd Failure to meet Response or Resolution Time | 10% |
| 3rd Failure to meet Response or Resolution Time | 20% |

In the event STATE is eligible for a 20% Service Level Credit under this section for any two (2) consecutive months of the term, STATE may terminate this Contract without penalty upon written notice to CONTRACTOR.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after a party has given notice of termination, or STATE has made final payment to CONTRACTOR for the software support services and no further invoices shall issue as a result, CONTRACTOR shall refund to STATE the amount of the appropriate Service Level Credit due for the period of default.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Software as a Service (SAAS) and Service Level Agreement (SLA)

Note: This section is for SaaS Services (Hosting Services).

If SaaS services are provided by CONTRACTOR, the agency must first obtain a hosting waiver approved by ITD and OBM. [N.D.C.C. § 54-59-22](http://www.legis.nd.gov/cencode/t54c59.pdf) requires ITD host all information technology systems unless a hosting exemption is granted. Insert the following clauses.

The terms and service level obligations are set forth in Exhibit C Software as a Service (SaaS) Service Level Agreement (SLA) are made a part of this Contract through its reference here. CONTRACTOR shall provide Subscription Services, including software/hardware updates and technical support services for the Subscription Services pursuant to this Contract commencing at the end of the warranty period. CONTRACTOR and STATE shall negotiate the terms and price of such services. CONTRACTOR warrants that it will continue to offer Subscription Services for the product(s) for a minimum of five (5) years from the date of final acceptance of any software/product update.

1. Subscription Services:

Define what CONTRACTOR is providing to STATE – access to and use of what software, maintenance, upgrade protection, support, etc.

* + 1. The service is based on ***(include how service is based upon such as users, total employees, etc.).***
		2. Service shall be extended to any Users who have a need to use the SaaS for the benefit of STATE.
		3. There shall be no limit on the number of machines, number of locations, or size of processors on which STATE can operate the service.
		4. If CONTRACTOR reduces or replaces the functionality contained in the software and provides this functionality as a separate or renamed product, then STATE shall be entitled to usage of such software product at no additional fees.
1. Subscription Period

***SELECT ONE OR REVISE AS NEEDED***

***Option 1- DELETE IF NOT USED***

The subscription period begins on [Month, Day], 20[Year], and continues on an annual basis for X years.

***Option 2 - DELETE IF NOT USED***

The subscription period begins with a prorated period on [Month, Day], 20[Year], and continues on an annual basis for **X** years.

1. Purchase of Additional Users

STATE may purchase additional Users during the term of this Contract at the same price offered by CONTRACTOR under the terms of this Contract.

1. Subscription Fee Cap

CONTRACTOR agrees that any change to the annual Services may increase by not more than the lower of 3% or Consumer Price Index (CPI). The rates shall be adjusted in accordance with the CPI titled “All Urban Consumers for the U.S. All Items,1982-84=100”.

1. Right to Change Support Plan Level

STATE may choose to change its subscription to CONTRACTOR’s Subscription Services plan to a higher or lower level plan that is offered by CONTRACTOR at the Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.

1. Right to Modify or Cancel Services

STATE may choose to cancel Subscription Services at this Contract’s next renewal date upon thirty (30) calendar days’ notice to CONTRACTOR.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Software Escrow

Note: This section is not commonly used. Consult with ITD.

Optional Section – If the Contract is for a critical line of business application and there is concern over continued use of the software such as CONTRACTOR no longer sells or supports the software, include an escrow clause. The escrow clause defines the source code and related documentation CONTRACTOR is required to place in escrow, what triggers a release of the source code and documentation, and STATE’s rights regarding usage of the software once it has been released. If this is a SaaS purchase, software escrow is not likely applicable.

CONTRACTOR agrees that the software is to be held in escrow. CONTRACTOR shall, within sixty (60) calendar days after the parties sign this Contract, include STATE as a named beneficiary to an Escrow Services Agreement which shall be established with an escrow agent approved by STATE on terms approved by STATE at the cost of CONTRACTOR. CONTRACTOR will provide written notice to STATE within ten (10) business days after the Escrow Agreement is executed.

Within thirty (30) calendar days after the delivery of any enhancements, upgrades, versions or custom software, CONTRACTOR shall transfer a copy into escrow including source code and documentation and within fifteen (15) days CONTRACTOR will provide STATE confirmation notice between CONTRACTOR and Escrow Agent that the delivery was received. STATE is entitled to a release of the source code and documentation for the software in the following instances:

1. CONTRACTOR, or its successor in interest, enters voluntary or involuntary petition for bankruptcy during the term of this Contract, and such proceedings are not dismissed with sixty (60) calendar days after such proceedings commence
2. CONTRACTOR is otherwise unable to provide support and maintenance services for the software sufficient to meet its support obligations to STATE
3. CONTRACTOR, or its successor in interest, discontinues developing and manufacturing the software
4. CONTRACTOR, or its successor in interest, no longer provides support for the most recent and immediate prior release of the software

In the event that the Software Escrow Account is utilized, CONTRACTOR shall provide STATE with sufficient documentation to enable STATE to utilize the software.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Software Audit

Note: Optional Section for Software Audit - If CONTRACTOR licensing requires a provision for software audits ensure STATE is given adequate notice and documentation of the audit scope.

CONTRACTOR may, upon sixty (60) calendar days’ notice to STATE, but not more frequently than once per year, either request a signed certification by an officer of STATE verifying that the software is being used in accordance with the terms of this Contract or audit STATE’s use of the software to ensure compliance with the terms and conditions of this Contract. Any such audit shall be conducted at CONTRACTOR’s expense during regular business hours at STATE’s offices and shall not unreasonably interfere with STATE’s business activities. CONTRACTOR shall provide documentation to STATE defining the scope of the audit not less than thirty (30) calendar days prior to the audit. STATE shall have sixty (60) calendar days to review CONTRACTOR’s audit findings. If an audit reveals that STATE’s use of the Software exceeds the use permitted hereunder, then CONTRACTOR may invoice STATE for the applicable additional amounts based on the price agreement between the parties as of the date of completion of the audit.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Notice

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

|  |  |
| --- | --- |
| **STATE** | **CONTRACTOR** |
| Name | Name |
| Title | Title |
| Address | Address |
| City, State, Zip | City, State, Zip |

Notice provided under this provision does not meet the notice requirements for monetary claims against STATE found at [N.D.C.C § 32-12.2-04](http://www.legis.nd.gov/cencode/t32c12-2.pdf).

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Confidentiality

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, [N.D.C.C. ch. 44-04](http://www.legis.nd.gov/cencode/t44c04.pdf). The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Compliance with Public Records laws

CONTRACTOR understands that, in accordance with this Contract’s Confidentiality section of this Contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE promptly upon receiving a request for information under the public records law and to comply with STATE’s instructions on how to respond to the request.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Independent Entity

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR’s activities and responsibilities under this Contract, except to the extent specified in this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Assignment and Subcontracts

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE’s express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate without cause.

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Spoliation – Notice of Potential Claims

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Merger and Modification, Conflict in Documents

Note: For brevity, only four documents have been included. Please make sure you list all documents to be considered including amendments to the RFP or proposal, Best and Final Offers, Questions and Answers to the RFP, etc. In addition, make sure the order of these documents always has STATE’s documents first, and CONTRACTOR’s documents last, in order to ensure that STATE’s documents always take precedence. Consult with your assigned legal counsel if you have questions on the order of precedence.

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

1. The terms of this Contract as may be amended;
2. STATE’s Solicitation Amendment #1 to Request for Proposal (“RFP”) number \_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_;
3. STATE’s Request for Proposal (“RFP”) number \_\_\_\_\_\_\_\_\_\_, dated \_\_\_\_\_\_\_\_\_\_;
4. CONTRACTOR’s proposal dated \_\_\_\_\_\_\_\_\_\_\_\_ in response to RFP number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
5. All automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms and conditions contained in those agreements.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Unanticipated Amendments

If additional work is required within the scope of this Contract due to a legitimate unforeseen circumstance, STATE shall provide CONTRACTOR a written description of the additional work and request CONTRACTOR to submit a proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work until STATE until all parties agree in writing.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Severability

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if this Contract did not contain that term.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Applicable Law and Venue

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Alternative Dispute Resolution – Jury Trial

By entering into this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Attorney Fees and Costs

In the event a lawsuit is instituted by STATE to obtain performance under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by [N.D.C.C. § 28-26-04](http://www.legis.nd.gov/cencode/t28c26.pdf), pay STATE’s reasonable attorney fees and costs in connection with the lawsuit.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Nondiscrimination - Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (*See* [N.D.C.C. Title 34 – Labor and Employment](http://www.legis.nd.gov/cencode/t34c01.pdf), specifically [N.D.C.C. ch. 34-06.1](http://www.legis.nd.gov/cencode/t34c06-1.pdf) Equal Pay for Men and Women.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the Term of this Contract all licenses and permits required by law.

CONTRACTOR’s failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. State Audit

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor’s designee, or Federal auditors, if required. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor’s designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Right to Inspect Place of Business

Note: Delete if not applicable.

At reasonable times, STATE may inspect those areas of CONTRACTOR’S place of business that relate to the performance of this Contract. If STATE makes an inspection, CONTRACTOR must provide reasonable assistance.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. F.O.B. Point and Freight

Note: Delete if the purchase does not include the purchase of commodities. This is the most common freight option.

All commodities purchased through this Contract shall be Free on Board (“F.O.B.”) final destination, freight prepaid. Unless specifically stated otherwise, all prices offered must include the delivery costs to any location within the state of North Dakota. Title shall pass to STATE at destination, and the vendor shall be responsible for any freight claims.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. Effectiveness of Contract

This Contract is not effective until fully executed by all parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the parties shall be deemed the Effective Date.

Note: If Contract is for a Major IT Project, a signature line for ITD CIO is required.

|  |  |
| --- | --- |
| **CONTRACTOR** | **STATE OF NORTH DAKOTA** |
| [insert business] | Acting through its *[In*sert Agency] |
| BY: [Signature] | BY: [Signature] |
| [Printed Name] | [Printed Name] |
| [Title] | [Title] |
| Date: | Date: |

|  |
| --- |
| **STATE OF NORTH DAKOTA**  |
| Acting through its Information Technology Department |
| BY: [Signature] |
| [Printed Name] |
| Title: Chief Information Officer |
| Date: |

**EXHIBIT A – Scope of Work**

Note: If Exhibit A is not used, delete all text below and replace with “Reserved”.

This attachment is for the detailed Scope of Work (SOW) outlining deliverables to be produced as outcomes of the project, including description and acceptance criteria.

Modify these deliverables, including deliverable numbering and Exhibit B payment schedule to align with project approach.

When definining deliverables – see [Technology Contract SOW Examples](https://www.nd.gov/omb/sites/omb/files/documents/agency/purchasing/technology-contract-template-guidelines.docx).

Typically, the deliverable completion dates are determined during the planning process and may still be undetermined at Contract signature time. Therefore, exact completion dates are not included in this template. However, if you choose to include them, copy section “d” from the Project Kickoff Meeting deliverable and modify to note exact due dates.

1. Deliverable 1: Project Kickoff Meeting
2. Description:

CONTRACTOR shall coordinate with STATE to schedule a Kickoff Meeting in City Name, ND, with the core project and planning team. CONTRACTOR’s Project Manager shall lead the meeting. The Kickoff Meeting must facilitate the introduction of CONTRACTOR and STATE individuals, and level-set understanding and awareness of project objectives, scope, governance, schedule, and project risks and issues.

1. Expectations of CONTRACTOR:
	* 1. CONTRACTOR shall provide content to STATE for a detailed agenda in advance of the meeting.
		2. CONTRACTOR and STATE shall facilitate the meeting, and discuss and further define, at a minimum, the following:
			1. Effective project communication
			2. Project vision, background, purpose, and objectives
			3. Project governance structure, and project roles and responsibilities
			4. Approach to creating the Project Management Plan
			5. Initial risk assessment
2. Expectations of STATE:
	* 1. STATE shall finalize agenda and send agenda to invitees.
		2. STATE shall coordinate the logistics and co-facilitate the Kickoff Meeting.
		3. STATE’s Project Sponsor and project team members shall participate in the Kickoff Meeting.
3. Completion Date:

CONTRACTOR shall start work with STATE within five (5) working days after the signing of this Contract to schedule the Kickoff Meeting.

1. Acceptance Criteria:

For the acceptance of this deliverable to occur, the Kickoff Meeting results in:

* + 1. Facilitation of Kickoff Meeting using a clearly defined agenda
		2. An introduction of critical CONTRACTOR and STATE resources assigned to the project
		3. Review of STATE’s Project Charter to include project governance structure, roles and responsibilities, project purpose, objectives, and scope
		4. Discussion of communications approach and structure
		5. Discussion of known project risks and issues
1. Deliverable 2: Project Management Plan
2. Description:

CONTRACTOR shall participate, contribute, and collaborate with STATE, led by STATE’s Project Manager, to develop a baseline plan. The Project Management Plan will include the project schedule.

1. Expectations of CONTRACTOR:
	* 1. CONTRACTOR shall participate, contribute, and collaborate with STATE to provide content that includes, at a minimum, the following:
			1. Management plans to control cost, schedule, scope, and quality
			2. Governance structure for the project
			3. Roles and responsibilities of the project team
			4. Integrated change control process
			5. Communication management plan
			6. Risk management plan
			7. Issue management plan
			8. Human resources management plan
			9. Procurement management plan
			10. Implementation and transition plan Remove if this is a separate deliverable
		2. CONTRACTOR shall provide CONTRACTOR tasks and participate and collaborate with STATE on a detailed project schedule created in Microsoft Project. The Microsoft Project format and settings will be mutually agreed-upon, and the project schedule will follow STATE best practices, including:
			1. Project has appropriate start date
			2. Project has appropriate Work Breakdown Structure
			3. All project tasks have appropriate predecessors and successors, with the exception of summary tasks
			4. All project tasks are auto-scheduled using predecessors to drive the task dates (dates are not manually entered)
			5. Minimal use of constraints
			6. Both STATE and CONTRACTOR tasks are included
			7. Project tasks are broken down into timeframes that can be reasonably managed – STATE encourages a maximum task length of approximately 80 hours/two (2) weeks
			8. Project tasks have appropriate resources assigned with appropriate and reasonable allocation
			9. Schedule has appropriate working times and incorporates STATE and CONTRACTOR holidays and nonworking times
		3. CONTRACTOR shall provide written confirmation from an authorized individual confirming contents of the Project Management Plan.
2. Expectations of STATE:
	* 1. STATE shall lead the Project Management Planning effort.
		2. STATE’S Project Manager shall be responsible for the Project Management Plan.
		3. The Project Management Plan shall follow STATE template.
		4. STATE’s Project Manager shall incorporate STATE tasks into the project schedule.
		5. STATE shall obtain written confirmation from an authorized individual at CONTRACTOR for the contents of the Project Management Plan.
3. Completion Date:

CONTRACTOR shall start work with STATE within five (5) working days after the signing of this Contract to create the Project Management Plan.

1. Acceptance Criteria:
	* 1. For the acceptance of this deliverable to occur, CONTRACTOR shall provide content to STATE for the Project Management Plan regarding all services, tasks, and products delivered by CONTRACTOR:
			1. Mutually agreed-upon detailed baseline scope and schedule for the project
			2. Management plans to control scope, schedule, cost and quality, including the variance
			3. Governance structure for the project
			4. Roles and responsibilities of the project team
			5. Quality assurance and quality control plans
			6. Integrated change control process
			7. Communication management plan
			8. Risk management plan
			9. Issue management plan
			10. Human resources management plan
			11. Procurement management plan
			12. Implementation and transition plan Remove if this is a separate deliverable
		2. The Project Management Plan shall adhere to the Project Management Body of Knowledge
		3. For the acceptance of this deliverable to occur, approval must be obtained from STATE’s Executive Steering Committee (ESC). ***Remove if not a major project***

Note: For additional deliverables use the following deliverable as a guideline.

1. Deliverable 3: Template
2. Description:
3. Expectations of CONTRACTOR:
4. Expectations of STATE:
5. Completion Date:
6. Acceptance Criteria:

For the acceptance of this deliverable to occur, the following criteria shall be met:

1. Deliverable 4: Final Acceptance

Note: This deliverable signifies the STATE’s acceptance of the product or service, and could be due either after user acceptance testing (signifying an approval to move into production) or after implementation (signifying an approval to move into maintenance mode), depending upon the project circumstances. Timing for this deliverable should take into consideration any warranty periods, rollouts, implementation risks, and phased implementations and/or testing. If the STATE is not including retainage as part of this contract or does not have a final payment due upon project closeout or the end of a warranty period, this deliverable may not be needed. Ensure the Contract language in Paragraph 26 d is reviewed.

1. Description:

Upon completion of all deliverables, and upon mutual agreement of STATE and CONTRACTOR, the project work will be considered complete and retainage paid to contractor.

1. Expectations of CONTRACTOR:
	* 1. CONTRACTOR shall address any outstanding issues or completion of deliverables.
2. Expectations of STATE:
	* 1. STATE shall alert CONTRACTOR to any outstanding issues.
3. Acceptance Criteria:

For the acceptance of this deliverable to occur, the following criteria must be met:

* + 1. No outstanding or unfinished deliverables
		2. No outstanding project or system issues
1. Deliverable 5: Post-Implementation Report

Some projects have objective measurements (typically identified in the Project Charter) that extend three to six months beyond the implementation of the product, and therefore, completion of the Post-Implementation Report may be delayed. In these cases, consider what is reasonable for the CONTRACTOR to provide for this deliverable and adjust the following language accordingly.

1. Description:

CONTRACTOR shall participate, contribute, and collaborate with STATE, led by STATE’s Project Manager, to provide content for the Post-Implementation Report.

1. Expectations of CONTRACTOR:
	* 1. CONTRACTOR shall have project team members participate in the Post-Implementation Survey.
		2. CONTRACTOR shall participate, contribute, and collaborate with STATE, led by STATE’s Project Manager, to develop a Post-Implementation Report that provides, at a minimum, the following:
			1. Key project metrics related to schedule, cost, scope, and quality
			2. Business metrics related to project objectives and measurements as defined in the Project Charter
			3. Comprehensive lessons learned valuable to future projects
			4. Success stories from the project
			5. Results of the Post-Implementation Survey
2. Expectations of STATE:
	* 1. STATE’s Project Manager shall be responsible for the final product.
		2. STATE’s Project Manager shall design and conduct the Post-Implementation Survey.
		3. The Post-Implementation Report shall follow STATE template.
3. Acceptance Criteria:
	* 1. For the acceptance of this deliverable to occur, CONTRACTOR shall participate in the Post-Implementation Survey and provide content to STATE for the Post-Implementation Report regarding all services, tasks, and products delivered by CONTRACTOR:
			1. Key project metrics related to schedule, cost, scope, and quality
			2. Business metrics related to project objectives and measurements as defined in the Project Charter
			3. Lessons learned from the project
			4. Success stories from the project
		2. For the acceptance of this deliverable to occur, approval must be obtained from STATE’s Executive Steering Committee (ESC). ***Remove if not a major project***
4. Deliverable 6: Project Closeout Meeting

Some projects have objective measurements (typically identified in the Project Charter) that extend three to six months beyond the implementation of the product, and therefore, completion of the Project Closeout Meeting may be delayed. In these cases: 1) consider what is reasonable for the CONTRACTOR to provide for this deliverable and adjust the following language accordingly; 2) consider changing the name of this deliverable to “Post-Implementation Meeting,” with the goal of providing and discussing survey results, lessons learned, and success stories soon after implementation; and 3) schedule a separate Closeout Meeting with the agency at a later date to review the completed Post-Implementation Report (depending on project circumstances, the CONTRACTOR may or may not be included in that later Closeout Meeting, and that meeting may or may not be included in this Scope of Work).

1. Description:

CONTRACTOR shall coordinate with STATE to schedule a Closeout Meeting in City Name, ND with the core project team and interested stakeholders. STATE’s Project Manager shall lead the meeting, though CONTRACTOR may be asked to present on certain agenda items. The Closeout Meeting must present a completed Post-Implementation Report and facilitate discussion of the project closeout.

1. Expectations of CONTRACTOR:
	* 1. CONTRACTOR shall provide content to STATE for detailed agenda in advance of the meeting.
		2. CONTRACTOR shall provide STATE any required information for STATE’s Project Manager to present the Post-Implementation Report.
		3. CONTRACTOR shall expand upon the success stories and lessons learned captured from the Post-Implementation Survey, and discuss details related to the lessons learned to provide comprehensive information to future projects.
2. Expectations of STATE:
	* 1. STATE shall finalize and send agenda to invitees.
		2. STATE shall coordinate logistics and facilitate the Closeout Meeting.
		3. STATE shall expand upon the success stories and lessons learned captured from the Post-Implementation Survey, and discuss and further document details related to the lessons learned to provide comprehensive information to future projects.
3. Acceptance Criteria:

For the acceptance of this deliverable to occur, the Closeout Meeting results in:

* + 1. Completion and confirmation of the Post-Implementation Report deliverable
		2. Comprehensive lessons learned and success stories valuable to future projects

**EXHIBIT B – Compensation Details**

1. Project Deliverable Payment Schedule:

Note. Deliverable Payment Table to be modified and or amended.

The following table defines all payment points.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **#** | **Deliverable** | **Deliverable Value** | **To be Retained (**XX**%)** | **Invoice** |
| 1 | Project Kickoff Meeting | $amount | $amount | $amount |
| 2 | Project Management Plan | $amount | $amount | $amount |
| 3 |  | $amount | $amount | $amount |
| 4 |  | $amount | $amount | $amount |
| X | Final Acceptance | $Total Retained | $amount | $Total Retained |
|  |  | **Project Deliverable Total** | **$**amount |

1. Travel Budget

Note: If travel expenses will be paid outside of fixed price or deliverable payment points, include this section. Depending upon the complexity of the project this section could range from a simple statement that the budgeted travel amount is $amount to a complex table below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **#** | **Key Task/Deliverable** | **# of Trips** | **# of People Traveling** | **Budgeted Amount per Person** | **Total Budgeted Amount** |
| 1 | Project Kickoff Meeting | # | # | $amount | $amount |
| 2 | Project Management Plan | # | # | $amount | $amount |
| 3 |  |  | # | $amount | $amount |
| 4 |  |  | # | $amount | $amount |
| X | Final Acceptance |  | # | $amount | $amount |
|  |  |  | **Travel Budget Total** | **$**amount |

1. Professional Services

Note: If professional services are paid as a service and not a deliverable, include this table. If professional services are included in the project deliverables delete this section prior to attaching to RFP.

|  |  |
| --- | --- |
| **Category** | **Value** |
| Project Management (example) | $amount |
| Business Analyst (example) | $amount |
| **Professional Services Total** | **$**amount |

1. Project Total

Note: This is a summary total of the above tables.

The total budget for the project portion of this Contract is $amount

1. Ongoing Software License, Maintenance Services or SUBScRIPTION SERVICES

Note: If software license, maintenance services or subscription services are included in the original Contract term, include in this table. This table should be updated to match your cost proposal.

|  |  |
| --- | --- |
| **Time Period** | **Dollar Amount** |
| Year One, Month Day, Year through Month Day, Year | $amount |
| Year Two, Month Day, Year through Month Day, Year | $amount |
| Year Three, Month Day, Year through Month Day, Year | $amount |
| Year Four, Month Day, Year through Month Day, Year | $amount |
| Year Five, Month Day, Year through Month Day, Year | $amount |

Note: For additional payment information related to the Contractual Amount add details to this attachment.

**EXHIBIT C – Software as a Service (SaaS) Service Level Agreement (SLA)**

Note: If Exhibit C is not used delete all text below and replace with “Reserved”.

These special provisions are to be used for Software as a Service (SaaS) purchases. This Exhibit includes the expected Service Levels to be provided by the CONTRACTOR and specific SaaS Terms and Conditions. This is to assure agency is having their service level needs met and agreed to. Please adjust accordingly on SLA items in paragraphs 1-7.

CONTRACTOR represents and warrants that the services will be performed in a professional manner consistent with industry standards reasonably applicable to such services.

1. SaaS AVAILABILITY:

The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon scheduled maintenance downtime).

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. SUPPORT AND ERROR RESOLUTION:

CONTRACTOR will respond to STATE requests for support services regarding the licensed software in accordance with the procedures identified below. In each case, STATE may describe and submit the problem by telephone, email or online helpdesk/service desk tool.

|  |  |  |  |
| --- | --- | --- | --- |
| **Incident Severity** | **Response Time** | **Resolution Time** | **Escalation Procedure** |
| **High Impact –**System unusable | 1 hour | Final Resolution within:**4 hours** | Describe escalation procedure |
| **Medium Impact –** System useable with severely restricted functionality or performance | 4 hours | Final Resolution within:**8 hours**(1 business day) | Describe escalation procedure |
| **Low Impact –** system useable with minor impact on functionality or performance | 8 hours | Final Resolution within:**40 hours**(1 business week) | Describe escalation procedure |

CONTRACTOR’S failure to meet the above defined Response Times or Resolution Times in any given month during the term and any renewal term shall be deemed a service level default (“Service Level Default”) and STATE may obtain the non-exclusive remedies set forth below.

|  |  |
| --- | --- |
| **Response and Resolution Service Levels(calculated monthly on a per incident basis)** | **Service Level Credit(Prorated Fees – Monthly)** |
| Meets Response or Resolution Time | 0% |
| 1st Failure to meet Response or Resolution Time | Warning, 0% |
| 2nd Failure to meet Response or Resolution Time | 10% |
| 3rd Failure to meet Response or Resolution Time | 20% |

In the event STATE is eligible for a 20% Service Level Credit under this section for any two (2) consecutive months of the term, STATE may terminate this Contract without penalty upon written notice to CONTRACTOR.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after a party has given notice of termination, or STATE has made final payment to CONTRACTOR for the software support services and no further invoices shall issue as a result, CONTRACTOR shall refund to STATE the amount of the appropriate Service Level Credit due for the period of default.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. AVAILABILITY SERVICE LEVEL:

CONTRACTOR’s failure to make the services available at least 99.9% of the time in any given month during the term and any renewal term, excluding scheduled maintenance, shall be deemed a service level default (“Service Level Default”) and STATE may obtain the non-exclusive remedies set forth below. For purposes of this Contract, “Available” means that STATE users are able to access all features and functions of the licensed product and services including, but not limited to the licensed software and licensed content.

The following table is for illustrative purposes. Your percentages may be different.

|  |  |
| --- | --- |
| **Service Level (Monthly)** | **Service Level Credit (Prorated Fees – Monthly)** |
| 99.9 – 100% | 0% |
| 99 - 99.89% | 10% |
| 98.99 – 97% | 20% |
| 96.99 – 95% | 25% |
| 94.99 – 93% | 50% |
| Below 93% | 100% |

In the event STATE is eligible for a 100% Service Level Credit under this section during any given month of the term, or is eligible for a Service Level Credit greater than 10% in any two (2) months, during any rolling twelve (12) month period, STATE may terminate this Contract without penalty upon written notice to CONTRACTOR.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after a party has given notice of termination, or STATE has made final payment to CONTRACTOR for the software support services and no further invoices shall issue as a result, CONTRACTOR shall refund to STATE the amount of the appropriate Service Level Credit due for the period of default.

Once each calendar month during the term of this Contract, CONTRACTOR shall provide STATE with a written report comparing the actual performance of licensed product and services with the Service Level Requirement. Such report shall also contain such other information with respect to the performance of the licensed product and services as mutually agreed upon by the parties from time to time, and in conformity with reporting CONTRACTOR provides to its other customers utilizing the licensed product and services.

STATE retains the right to use a Third-Party service to validate the CONTRACTOR’s performance meeting agreed upon service levels.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. RESPONSE TIME SERVICE LEVEL:

Note: Review response time level for business needs.

CONTRACTOR represents and warrants that ninety-five percent (95%) of all transactions shall process at a mutually agreed upon time threshold. STATE retains right to use a Third-Party service to validate the performance of CONTRACTOR’s response times.

If the CONTRACTOR’s System response times fall below the warranted level for two (2) or more consecutive weeks, STATE shall receive service credits in the amount of <#> percent of the fees for that month. If CONTRACTOR’s system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, CONTRACTOR shall be considered in default, and STATE may terminate the Contract without penalty.

CONTRACTOR represents and warrants that the above performance Service Levels shall be valid with up to <#> users using the system at any given time.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. SCHEDULED MAINTENANCE AND NOTIFICATIONS
	* 1. Standard Maintenance Windows

Define maintenance window schedule

* + 1. Notification of Scheduled Maintenance Downtime

CONTRACTOR shall provide 48 hours advance notice to the STATE of any scheduled maintenance downtime which will cause the total scheduled maintenance downtime for the month to exceed <#> hours or will occur outside of the Standard Maintenance Windows outlined above. Except in cases of emergency, notification will be provided at least <#> hours prior to such downtime. In cases of emergency, CONTRACTOR shall use its best efforts to notify STATE of a planned downtime as soon as practicable.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DATA RETENTION SCHEDULE

Note: Define the process and retention schedule of Data to meet agency retention rules if not defined in the SOW.

1. RPO AND RTO

Note: The following language will need to match SOW if defined. The RPO and RTO must take into the criticality of the system to the business. For example, the RPO may need to be less than four hours.

CONTRACTOR commits to a RPO of four (4) hours and RTO of twelve (12) hours. In other words, when unscheduled downtime occurs, CONTRACTOR will resume service with data matching what the system contained at some point within the four hours preceding the unscheduled downtime. Additionally, the system cannot be down for longer than twelve (12) hours during unscheduled downtime.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. SAAS AND DATA SECURITY:

***Note: The following language may need to be modified to meet the security requirements for the appropriate Data Classification.***

1. CONTRACTOR shall:
2. Certify the sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
3. Compliance with the following:
	* 1. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit or equivalent such as ISO 27001 for the CONTRACTOR’s Control Environment. Audit results and CONTRACTOR’s plan to correct any negative findings shall be provided to the STATE within seven (7) calendar days upon CONTRACTOR’s receipt of such;
		2. Provide STATE with a detailed description of the audited Control Environment. If STATE determines the Control Environment is not satisfactory, the STATE may request CONTRACTOR to correct any deficiencies;
4. Compliance with applicable industry standards, law, regulations and guidelines.
5. CONTRACTOR shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the STATE’s access to its Data.
6. CONTRACTOR shall allow the STATE reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the STATE’s Data, at no cost to the STATE.
7. CONTRACTOR assumes responsibility for the security and confidentiality of the Data under its control.
8. No Data shall be copied, modified, destroyed or deleted by CONTRACTOR other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the STATE.
9. Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by Chief Information Officer of the State.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. SAAS AND ARCHITECURE:

CONTRACTOR shall provide STATE with detailed architectural diagrams on an annual basis. The architectural diagrams are to include but not limited to servers, hardware, software solution (operating system, application servers, databases, identity repository), network architecture (dataflow diagram, firewalls, proxies, IDS/IPS). CONTRACTOR shall allow the STATE reasonable access to review the architecture.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. ENCRYPTION:

Information designated as sensitive, including PII, shall be encrypted end-to-end while it is in transit, processing and at rest. Data must be encrypted using the most current Federal Information Processing Standard (FIPS) 140-2 validated cryptographic modules and the current Advanced Encryption Standard algorithm.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DATA PROCESSING AND LOCATION:

***Note: The following language must be reviewed to meet applicable laws and regulations based on Data Classification.***

1. CONTRACTOR shall transmit, process, and store STATE Data within the continental United States.
2. CONTRACTOR shall notify STATE at least 90 days prior to any relocation of STATE’s Data to a different hosting facility. STATE reserves the right to terminate the Contract without penalty if STATE does not approve of the new hosting facility.
3. RIGHTS TO DATA:

The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the STATE, and CONTRACTOR has a limited, non-exclusive license to access and use the Data as provided to CONTRACTOR solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by CONTRACTOR or third parties is prohibited. For the purposes of this requirement, the phrase “unauthorized use” means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

STATE shall have the ability to export data in partial or in entirety at its discretion without interference from the CONTRACTOR. This includes the ability for the STATE to export data to other service providers.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DATA BACKUP:

Note: Review and modify the backup requirements of agency for business continuity.

1. CONTRACTOR shall provide geographical disparate storage on a daily basis of all backup disks, data, or materials of any type whatsoever produced in whole or in part in connection with or related to the performance by CONTRACTOR of its obligations under this Contract (including without limitations discs, tapes, other storage media, work papers and partial drafts of documentation code).
2. CONTRACTOR shall use appropriate and reliable storage media. CONTRACTOR shall regularly backup STATE Data and retain such backup copies for a minimum of twelve (12) months or timeframe required by applicable laws and regulations.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DATA RETENTION AND DISPOSAL:

Note: Review data retention and disposal schedule of agency.

1. CONTRACTOR shall retain STATE’s Data until the STATE deletes the STATE’s Data or for the time period mutually agreed to by the parties in this Contract as defined in SOW or in this section..
2. At the STATE’s election, CONTRACTOR will either securely destroy or transmit to STATE repository any backup copies of STATE Data.
3. CONTRACTOR shall supply STATE a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.
4. CONTRACTOR shall retain logs associated with STATE activity for a minimum of twelve (12) months or timeframe required by applicable laws and regulations.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. TRANSITION ASSISTANCE:

Note: Transition assistance should be considered a future option for business continuity. Include costs of transition and support services. The transition plan may be included as a deliverable in the SOW, when plan is a deliverable of the project. If the plan is defined during contract negotiations, it may be placed directly in a transition plan attachment. If this is not applicable, they are to be considered included in the Contract at no additional cost and documented as such.

1. For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, CONTRACTOR shall assist the STATE in extracting and/or transitioning all Data securely in the format determined by the STATE (“Transition Period”). CONTRACTOR agrees that there shall be no additional fees to execute the transition of Data during Transition Period.
2. CONTRACTOR and STATE shall develop a Transition Plan (“Transition Plan”) detailing each party’s respective tasks in connection with the orderly transition and migration of the licensed software, Data, any generated contextual data such as reference tables, metadata, structured and unstructured data not necessarily provided by STATE, and hosting services.
3. Upon termination or non-renewal of this Contract or in the event STATE makes a determination to host the licensed software at STATE’s hosting location or a third-party location as defined in SOW or Exhibit X (Transition Plan),the Transition Plan shall be implemented.
4. During the Transition Period, SaaS and Data access shall continue to be made available to the STATE without alteration.
5. CONTRACTOR agrees to compensate the STATE for damages or losses the STATE incurs as a result of CONTRACTOR’s failure to comply with this section in accordance with the Limitation of Liability provision set forth in the Contract
6. Unless otherwise stated in SOW or Exhibit X (Transition Plan), as determined by the STATE the CONTRACTOR shall permanently destroy or render inaccessible any portion of the Data in CONTRACTOR’s and/or subcontractor’s possession or control following the expiration of all obligations in this section. Within thirty (30) days, CONTRACTOR shall issue a written statement to the STATE confirming the destruction or inaccessibility of the STATE’s Data.
7. In the event the Transition Plan is implemented, costs shall not be higher than the current amounts assessed to STATE by CONTRACTOR under this Contract. CONTRACTOR shall provide reasonable assistance as requested by STATE to successfully complete transition. The STATE at its option, may purchase additional transition services as agreed upon in the SOW or Exhibit X (Transition Plan).
8. In the event the SaaS is decommissioned or no longer offered the Transition Plan shall be implemented.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DATA BREACH:
2. Upon discovery or reasonable belief of any Data Breach, CONTRACTOR shall provide notice, by phone and through electronic mail, to the individuals identified in SAAS NOTICE section of this Exhibit. CONTRACTOR shall provide such notification within the lesser of twelve (12) hours or the timeframe required by applicable laws and regulations after CONTRACTOR reasonably believes there has been such a Data Breach. To the extent known at the time of notification, CONTRACTOR’s notice shall include:
3. The nature of the Data Breach;
4. The Data accessed, used or disclosed;
5. The person(s) who accessed, used, disclosed and/or received Data (if known);
6. What CONTRACTOR has done or will do to quarantine and mitigate the Data Breach; and
7. What corrective action CONTRACTOR has taken or will take to prevent future Data Breaches.
8. CONTRACTOR will provide daily updates, or more frequently if required by the STATE, regarding findings and actions performed by CONTRACTOR until the Data Breach has been effectively resolved to the STATE’s satisfaction.
9. CONTRACTOR shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with SLA set above in this attachment. Failure to do so may result in the STATE exercising its options for assessing damages or other remedies under this Contract.
10. CONTRACTOR shall conduct an investigation of the Data Breach and shall share the report of the investigation with the STATE. The STATE and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. CONTRACTOR shall cooperate fully with the STATE, its agents and law enforcement.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DISASTER RECOVERY/BUSINESS CONTINUITY:
2. In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, CONTRACTOR shall provide notice, by phone and through electronic mail, to the individuals identified in in SAAS NOTICE section of this exhibit. CONTRACTOR shall provide such notification within twenty-four (24) hours after CONTRACTOR reasonably believes there has been such a disaster or catastrophic failure. In the notification, CONTRACTOR shall inform the STATE of:
	1. The scale and quantity of the Data loss;
	2. What CONTRACTOR has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
	3. What corrective action CONTRACTOR has taken or will take to prevent future Data loss.
	4. If CONTRACTOR fails to respond immediately and remedy the failure, the STATE may exercise its options for assessing damages or other remedies under this Contract.
3. CONTRACTOR shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the STATE exercising its options for assessing damages or other remedies under this Contract.
4. CONTRACTOR shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the STATE. The STATE and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. CONTRACTOR shall cooperate fully with the STATE, its agents and law enforcement.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. AUDIT AND EXAMINATION:
2. Upon advance written request, CONTRACTOR agrees that the STATE or its designated representative shall have access to CONTRACTOR’s SaaS operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the STATE.
3. The online inspection shall allow the STATE, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
	1. Operating system/network vulnerability scans,
	2. Web application vulnerability scans,
	3. Database application vulnerability scans, and
	4. Any other scans to be performed by the STATE or representatives on behalf of the STATE.
4. After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, CONTRACTOR will at its expense have an independent, industry-recognized, STATE-approved third party perform an information security audit. The audit results shall be shared with the STATE within seven (7) days of CONTRACTOR’s receipt of such results. Upon CONTRACTOR receiving the results of the audit, CONTRACTOR will provide the STATE with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. DISCOVERY:

If CONTRACTOR receives a request which may reasonably be interpreted as requiring access to the Data of the STATE or the STATE’s use of the SaaS, CONTRACTOR shall provide notice, by phone and through electronic mail, to the individuals identified in in SAAS NOTICE sectionof this Exhibit, unless prohibited by law from providing such notification. CONTRACTOR shall provide such notification within forty-eight (48) hours after CONTRACTOR receives the request. CONTRACTOR shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at CONTRACTOR regarding this Contract without first notifying the STATE unless prohibited by law from providing such notification. CONTRACTOR agrees to provide its intended responses to the STATE with adequate time for the STATE to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. CONTRACTOR shall not respond to legal requests directed at the STATE unless authorized in writing to do so by the STATE.

**Offeror Response:**

**Agree or Propose Alternate Language/Comments**

1. SAAS NOTICE:

Note: Modify based on notification requirements in this exhibit as referenced in the sections named DATA BREACH, DISASTER RECOVERY/BUSINESS CONTINUITY, and DISCOVERY.

All notices or other communications required under this exhibit must be provided to the following:

|  |  |
| --- | --- |
| STATE - Agency | CONTRACTOR |
| Name | Name |
| Title | Title |
| Address | Address |
| City, State, Zip | City, State, Zip |
| Phone | Phone |
| Email | Email |
| STATE – ITD |
| Name |
| Title |
| Address |
| City, State, Zip |
| Phone |
| Email |