

STATE OF NORTH CAROLINA Department of Environment & Natural Resources	REQUEST FOR QUOTES NO. 16-3808	
	Quotes will be publicly opened: April 13, 2011	
	Contract Type: Agency Specific	
<i>Refer ALL Inquiries to:</i> Ed Daughtry E-Mail: ed.daughtry@ncdenr.gov	Issue Date: March 29, 2011 Commodity: Upgrades to the Cape Fear/Neuse River Basin Hydrologic Digital Models	
Telephone Number: (919) 715-3882	Using Agency Name: Division of Water Resources	
(See page 2 for mailing instructions)	Agency Requisition: PR10689541	

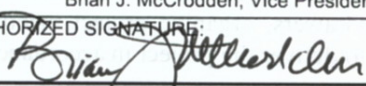
NOTICE TO VENDOR

Quotes, subject to the conditions made a part hereof, will be received at this office at 512 North Salisbury Street, Raleigh, NC 27604 until 2:00 pm Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Refer to page 2 for proper mailing instructions. Quotes are subject to rejection unless submitted on this form.

EXECUTION

In compliance with this Request for Quotes, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are offered, at the prices set opposite each item within the time specified herein. By executing this bid, the undersigned certifies that this bid is submitted competitively and without collusion (G.S. 147-33-100).

Failure to execute/sign quote prior to submittal shall render quote invalid. Late quotes are not acceptable.

BIDDER: HydroLogics, Inc.		
STREET ADDRESS: 811 Mordecai Drive	P.O. BOX:	ZIP:
CITY & STATE & ZIP: Raleigh, NC 27604	TELEPHONE NUMBER: 919-856-1288	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING: Brian J. McCrodden, Vice President	FAX NUMBER: 919-831-1295	
AUTHORIZED SIGNATURE: 	DATE: 4/5/11	E-MAIL: bmcrodden@hydrologics.net

Offer valid for 45 days from date of opening unless otherwise stated here: ____ days (See Instructions to Vendors, Item 5). Prompt Payment Discount: ____ % ____ days (See Instructions to Vendors, Item 6).

ACCEPTANCE OF QUOTE

If any or all parts of this quote are accepted, an authorized representative of the Department of Environment and Natural Resources (DENR) shall affix their signature hereto and this document and the provisions of the Instructions to Vendors, special terms and conditions specific to this Request for Quotes, the specifications, and the ITS General Terms and Conditions and the Terms and Conditions for Provision of Services shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

<p><u>FOR DENR USE ONLY</u></p> <p>Offer accepted and contract awarded this ____ day of _____, 2011, as indicated on attached certification,</p> <p>by _____ (Authorized representative of DENR).</p>
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DELIVERY INSTRUCTIONS: Deliver only one fully executed quote document, unless otherwise instructed and only one quote per envelope. Address envelope and insert quote number as shown below. It is the responsibility of the Vendor to have the quote in this office by the specified time and date of opening.

DELIVER TO:

QUOTE NUMBER: 16-3808
DENR Division of Purchase and Services
512 North Salisbury Street - Room 640
Raleigh, NC 27604
Attention: Ed Daughtry

INTENT: The purpose of this Request for Quote (RFQ) is to obtain pricing for and procure services to upgrade the NCDENR hydrologic models of the Cape Fear River Basin and Neuse River Basin including updating inflow data files, inflow data verification, updating model components, updating model documentation, updating NCDENR server files, and conducting four (4) technical review committee meetings. Services will be provided in accordance to the terms and conditions of this RFQ and the Scope of Work below. Vendor will be required to offer a complete line of services to support the requirements listed in this RFQ as related to upgrading the hydrologic models of the Cape Fear River Basin and Neuse River Basin.

Vendor may utilize a subcontractor to gather water use data for the time period established. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

SCOPE OF WORK:

Cape Fear and Neuse River Basin Hydrologic Model Upgrades

HydroLogics, Inc. (hereafter Contractor) will be responsible for updating and consolidating the Cape Fear and Neuse River Basin models into one, a joined model. Contractor will also coordinate with the project stakeholders who include but not limited to Jordan Lake water supply applicants and large surface withdrawers, organize project meetings as described in TASK 4, assist in data collection, and maintain overall responsibility to deliver the project in accordance with schedule and cost.

Task 1: Update Model Inflow Data

1. Update Cape Fear River Basin Model inflow data to include October 1, 2004 to December 31, 2010.
 - a. Inflow Data Collection: This effort includes collection of data for precipitation, river gage flows, and reservoir operations that have an impact on the Cape Fear River Basin.
 - b. Inflow Data Verification: Inflows checked and adjusted by comparing computed and historic elevations/flows from reservoirs.
2. Update Neuse River Basin Model inflow data to include April 1, 2008 to December 31, 2010.
 - a. Inflow Data Collection: This effort includes collection of data for precipitation, river gage flows, and reservoir operations that have an impact on the Neuse River Basin.
 - b. Inflow Data Verification: Inflows checked and adjusted by comparing computed and historic elevations/flows from reservoirs.

Schedule: A draft of the updated inflow data set for the Cape Fear River Basin and the Neuse River Basin will be completed no later than four (4) months following an issued Notice to Proceed (NtP). In coordination with the project's Technical Review Committee, calibration efforts will be undertaken between months three (3) and six (6) resulting in a final inflow data set for both river basins no later than six (6) months following the NtP.

Task 2: Update Cape Fear River Basin Model Components

1. Update and simplify drought protocol for Jordan Lake. For purposes of this agreement, simplify is defined as developing code with minimum lines and improved runtime efficiency; and include comments for better documentation to make the code more understandable (Original drought coding in the system is complex and poorly documented).
2. Update operating rules for all systems, including interconnections (e.g., OWASA)
3. Update reservoir storage/area/elevation and rule curve data
4. Review and update demand and discharge patterns
5. Adjust weighting on storage, instream flows, and demands to ensure objectives are prioritized in an order set by Technical Review Committee
6. Add Siler City reservoir node and operating rules.
7. Add Buckhorn dam and the three USACE Cape Fear River locks and dams as reservoirs to enhance a more accurate representation of the locks and dams and better risk analysis for the dams that have intakes in their backwater.
8. Add instream flow nodes (up to twenty) and inflows to all nodes.

Schedule: The model updates will be completed within seven (7) months of the NtP.

Task 3: Update / Develop Combined Model Components

1. Simplify run configurations by standardizing input for demand year scenarios and forecast runs by having user adjust entries in the constants table instead of different OCL files for each scenario.
2. Update and add output files for the Cape Fear and Neuse River Basins
3. Incorporate all municipal drought plans and add model switch to allow user to turn all plans on or off.
4. Sensitivity analysis (inflows and net evaporation) - Evaluate system sensitivity to climate change through (a) uniform adjustment of inflows and net evaporation (e.g., 10% adjustment) contained in the data input file and (b) use of alternative data input files provided by NCDENR that contain statistically-adjusted time series of inflow and net evaporation data.
5. Link withdrawals with discharges and allow user to uniformly adjust the withdrawals by a constant multiplier.
6. Develop interface to run Cape Fear and Neuse models as a combined model to facilitate evaluation of regional operations.
7. Add common directory feature to models to reduce storage on the server by eliminating duplicate runs in each user directory, and to simplify run version control.

Schedule: The model upgrades will be completed within seven (7) months of the NtP.

Task 4: Organize and Conduct Meetings

1. Organize and conduct One (1) kickoff meeting with Technical Review Committee to present project methodology for review and comment
2. Organize and conduct Three (3) additional meetings of the Technical Review Committee to review project progress and close-out.

Schedule: The project kickoff meeting will be scheduled within thirty (30) days of the NtP, or as soon thereafter as the participants' schedules permit. The additional Technical Review Committee meetings will occur between months two (2) and nine (9) after the issuance of the NtP.

Task 5: Update Model Documentation and Update NCDENR Sever Files

1. Written documentation to include summary of inflow verification efforts, with emphasis on Jordan Lake, use of model weighting and update of previous model documentation.
2. Vendor will update all applicable NCDENR sever files

Schedule: Drafts of all deliverables will be submitted no later than seven (7) months following the NtP. Final deliverables (documentation and sever file updates) will be provided no later than nine (9) months from the NtP.

Payment Schedule – Hydrologics, Inc. will submit an invoice upon successful completion of each sub-task.

1. Develop Inflow Data. Maximum allocated 42% total bid cost.
 - a. Collection of the historical water use and discharge data is completed.
 - b. Delivery of electronic copies of the revised draft inflows for review by DWR and the Technical Review Committee, including the calibration and validation results for additional review and validation.
 - c. Delivery of an electronic copy of the final calibrated inflow record to DWR after approval from DWR and the Technical Review Committee.
 - d. Delivery of the DSS scripts to simplify inflow updates.
 - e. Delivery of the electronic copy of the inflow development documentation.
2. Develop upgrades to Cape Fear River Basin Model – Maximum allocated 44% total bid cost
 - a. Develop upgrades as listed in Task 3 of this RFQ document for DWR’s and the Technical Review Committee’s review.
 - b. Installation of draft upgrades to the Cape Fear River Basin OASIS application on the DWR server for review by DWR and the Technical Review Committee, including the calibration and validation results for additional review and validation.
 - c. Installation of upgrades to the Cape Fear River Basin OASIS application on the DWR server after approval by DWR and the Technical Review Committee.
 - d. Delivery of the electronic copy of methodology used to develop the upgrade features.
3. Develop upgrades to Neuse River Basin Model and model interface – Maximum allocated 14% total bid cost.
 - a. Develop upgrades as listed in Task 6 of this RFQ document for DWR’s and the Technical Review Committee’s review.
 - b. Installation of draft upgrades to the Cape Fear River Basin OASIS application on the DWR server for review by DWR and the Technical Review Committee, including the calibration and validation results for additional review and validation.
 - c. Installation of upgrades to the Cape Fear River Basin OASIS application on the DWR server after approval by DWR and the Technical Review Committee.
 - d. Delivery of the electronic copy of methodology used to develop the upgrade and interface features.

VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.: In accordance with NC General Statute 147-33.97, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor’s proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:

- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States
- b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
- c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a state contract outside of the United States
- d) Any Vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided

The vendor must notify the Agency if any jobs related to the services offered in the proposal are to be outsourced to others countries. Include this information in your bid response.

Will any work under this contract be performed outside the United States?	YES _____	NO _____
Where will services be performed: _____		

E-PROCUREMENT: This is not an e-procurement solicitation. See paragraph #47 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services as modified. The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina’s statewide e-procurement initiative. It is the Vendor’s responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to e-procurement.

- a. General information on the e-procurement service can be found at <http://eprocurement.nc.gov/>
- b. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <http://eprocurement.nc.gov/Vendor.html>
- c. As of the RFQ submittal date, the Vendor must be current on all e-Procurement fees. If the Vendor is not current on all e-Procurement fees, the State may disqualify the Vendor from participation in this RFQ.

TABULATIONS: Verbal tabulations of quotes and award information can be obtained by calling the purchaser listed on the first page of this document, after the closing date.

DELIVERY: Successful Vendor will complete delivery of services as described in the Scope of Work section and under the terms and conditions of this RFQ.

BID EVALUATION: Bids are requested on the items and/or equipment as hereinafter specified or like items similar in design, function and performance. The State reserves the right to reject any bid on the basis of function, compatibility with user requirements and/or costs. Vendors are cautioned that any/all information furnished or not furnished on this bid may be used as a factor in determining the award of this contract.

AWARD CRITERIA: Qualified bids will be evaluated and acceptance made in accordance with the lowest price technically acceptable source selection method as defined by 9 NCAC 06B .0302 (3).

The State reserves the right to waive any minor informality or technicality in bids received.

FURNISH AND DELIVER:

ITEM #	QTY	UNIT	DESCRIPTION	UNIT COST	EXTENDED COST
1	1	Each	Update Cape Fear River Basin and Neuse River Basin OASIS Model Inflow Data Sets	\$ 55,000.00	\$55,000.00
2	1	Each	Upgrade Cape Fear River Basin and Neuse River Basin OASIS Models	\$ 75,000.00	\$ 75,000.00

Note: All professional service costs are inclusive of travel expenses.

Total Bid Cost \$ 130,000.00

conditions submitted with a Vendor response. This applies to any language appearing in or attached to the document as part of the Vendor's response. Bids with terms and conditions attached will be subject to rejection.

4. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this bid, the order of precedence shall be (1) special terms and conditions specific to this bid, (2) specifications, (3) ITS Terms and Conditions, and (4) Instructions to Vendors.
5. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer shall be valid for 45 days from the date of bid opening.
6. **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this bid, each Vendor must submit with their bid sketches, descriptive literature and/or complete specifications covering the products offered. **Only information that is received in response to this RFQ will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Bids, which do not comply with these requirements, will be subject to rejection.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items, which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the purchasers in the Office of Information Technology Services those products or packaging they offer which have recycled content and that are recyclable.
9. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from ITS. The Vendor is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect.
10. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
11. **AWARD OF CONTRACT:** As directed by statute, qualified bids will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item bid. In addition, on agency specific or term contracts, ITS reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by ITS to be pertinent or peculiar to the purchase in question.
12. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the Vendor's expense. Written request for the return of samples must be made within 10 days following date of bid opening. Otherwise the samples will become the property of the State. Each individual sample must be labeled with the Vendor's name, bid number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
13. **PROTEST PROCEDURES:** When Vendor wants to protest a contract awarded pursuant to this solicitation which is over \$10,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within 15 calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bid status and Award notices are posted on the Internet at <http://www.ips.state.nc.us>. **All protests will be handled pursuant to Title 9, North Carolina Administrative Code, Chapter 6, Office of Information Technology Services.**
14. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.

North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services

Definitions: As used herein;

State shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

Note: The primary intent of this RFQ is to obtain the services of the Vendor. Provisions regarding Goods Deliverables may apply only tangentially.

1) Standards: Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All items comprising Deliverables are subject to inspection, and requirements under:

- State or federal Regulation,
- a Chief Information Officer's (CIO) policy or regulation, or
 - a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
 - b) **Goods Return:** Reserved
 - c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

2) Warranties: Reserved.

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

a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

b) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

i) Such use does not conflict with the terms, specifications or any amendments to this Contract, or

ii) Such use does not conflict with any procurement law, regulation or policy, or

iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

4) Subcontracting: Except as specifically provided above in the "Intent" and "Scope of Work" paragraphs, the Vendor may subcontract the performance of required services with other Vendors or third parties, or change subcontractors only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

5) Vendor's Representation: Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract

documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

a) **Intellectual Property.** Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) **Inherent Services.** If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables

c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction

d) **Warranty as to Equipment; Hardware.** Reserved

6) Software License (*for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto*): Reserved.

7) Maintenance/Support Services: Reserved.

8) Travel Expenses: Vendor may be reimbursed for travel expenses arising under the performance of this Contract at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Contract.

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

10) Prohibition Against Contingent Fees and Gratuities: Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B.1102 (f), 06B.1030, or other provision of law.

11) Availability of Funds: Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

12) Payment Terms: Except as specifically provided in "Scope of Work, Payment Terms" above, payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency

will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

13) Acceptance Criteria: In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following receipt of any Deliverable sub-task described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including any such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to fail to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.

14) Equal Employment Opportunity: Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

15) Inspection at Vendor's Site: Reserved.

16) Advertising/Press Release: The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

17) Confidentiality: In accordance with 9 NCAC 06B.0103, 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above.

However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

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

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

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

18) Deliverables: Deliverables, as used herein, shall comprise all services, database configurations, project materials, including any ancillary goods, software licenses, data, and documentation created during the performance or provision of services hereunder. Data Deliverables are the property of the State of North Carolina. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software.

19) Late Delivery, Back Order: Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

20) Patent, Copyright, and Trade Secret Protection:

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

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

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

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

ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

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

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

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

21) Access to Persons and Records: Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

22) Assignment: Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

23) Insurance Coverage: During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

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

24) Dispute Resolution: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

25) Default: In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) herein, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

26) Waiver of Default: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 40) herein below.

27) Termination: Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- a) The parties may mutually terminate this Contract by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - i) **Termination for Cause:** In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

- ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

28) Limitation of Vendor's Liability:

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

29) Vendor's Liability for Injury to Persons or Damage to Property:

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

30) General Indemnity: The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

- a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
- b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

31) Changes: This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

32) Stop Work Order: The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Vendor. The 90-day period may be extended for any further period for which the parties may agree.

- a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

- i) Cancel the Stop Work Order, or
- ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
- ii) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

33) Price Adjustments For Term Contracts: Reserved.

34) Time is of the Essence. Time is of the essence in the performance of this Contract.

35) Date and Time Warranty: The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

36) Independent Contractors: Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

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

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

39) Titles and Headings: Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

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

41) Taxes: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

42) Governing Laws, Jurisdiction, and Venue:

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

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

43) Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

44) Compliance with Laws: The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

45) Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

46) Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

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

a) Reserved.

b) Reserved.

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

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

48) Electronic Procurement (Applies only to Statewide Term Contracts): Reserved.

Services Terms and Conditions for Provision of Services

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

2) **Personal Services:** The State shall have and retain the right to obtain personal services of any individuals providing services under this Contract, whether services hereunder are originally provided under the employment of the Vendor, or any subcontractor. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor or any subcontractor to ensure continuity of services provided under this Contract. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal services due as all or part of any performance due under this Contract.

a) Vendor personnel shall perform any duties on the premises of the State during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work. Such work on state premises will be performed in accordance with any applicable agency facilities or security rules or policies.

b) The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under this Contract. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ good faith efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.

c) Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.

d) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

i. Such use does not conflict with the terms, specifications or any amendments to this Contract , or

ii. Such use does not conflict with any procurement law, regulation or policy, or

iii. Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

3) **Responsibilities of the State: Consistent with the provisions of the Scope of Work above:**

a) Any special requirements in addition to the specifications shall be identified in a statement of work, made in writing, and annexed to the Contract.

- b) The State will provide any information, data, documentation, test data, and other items or materials necessary, in its opinion, to facilitate Vendor's performance of the Contract.

Vendor shall provide written notice of any delay or failure of the State under (a) or (b) above.

- 4) **Unanticipated Tasks:** In the event that additional work must be performed that was wholly unanticipated, and that is not specified in this Contract, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed, along with any State Procurement regulations and procedures. For each item of unanticipated work, Vendor shall prepare a work authorization in accordance with the State's practices and procedures.
- 5) It is understood and agreed by both parties that all of the terms and conditions of this Contract shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from this Contract, nor in any manner amend or supersede any of the other terms or provisions of this Contract or any amendment hereto.
- 6) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to Vendor's personnel, an estimated time schedule for the provision of the services by Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.
- 7) All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by Vendor and the State prior to beginning work.
- 8) The State has the right to require Vendor to stop or suspend performance under the "Stop Work" provision of the General Terms and Conditions for Goods and Related Services.
- 9) Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless the procedure below is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under this Contract cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:
- Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
 - Terminate the work authorization, or
 - Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
 - The State will notify Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or services.
- 10) **Invoices, Payments:** Reserved.
- 11) **Reports: Reserved.** See "Scope of Work," above.
- 12) **Project Management:** All project management and coordination on behalf of agency shall be through a single point of contact designated as the agency Project Manager. Vendor shall designate a Vendor Project Manager who will provide the single point of contact for management and coordination of Vendor's work. All work performed pursuant to this Contract shall be coordinated between the agency Project Manager and the Vendor Project Manager.
- 13) **Meetings:** The Vendor is required to meet with agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Contract. Meetings will occur as problems arise and will be coordinated by agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at the Vendor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two (2) consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the Contract.

**Attachment A – Certification of Compliance With
Executive Order # 24**

The undersigned certifies, to the best of his or her knowledge and belief, that:

By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:


- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. § 133-32.

The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of this Attachment and submitting a bid in response to the accompanying solicitation, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

TYPE OR PRINT NAME & TITLE OF PERSON SIGNING: Brian J. McCrodden	E-MAIL: bmccrodden@hydrologics.net
AUTHORIZED SIGNATURE: 	DATE: 4/5/11