

STATE OF NORTH DAKOTA
Information Technology Department
Telecommunications Division
600 E Boulevard Ave, Dept. 112
Bismarck, ND 58505-0100



Request For Proposal (RFP)

RFP Title: Williston Dark Fiber

RFP Number: 112-1103

Date of Issue: May 2, 2011

Purpose of RFP: The State of North Dakota is requesting proposals for dark fiber services in the city of Williston.

Offerors are not required to return this form.

Procurement Officer: Brandy Peterson

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SECTION ONE - INTRODUCTION AND INSTRUCTIONS

1.01 Purpose of the RFP

This Request for Proposal (RFP) is issued by the State of North Dakota acting through its Information Technology Department (hereinafter referred to as the State) is soliciting proposals for dark fiber services in the city of Williston.

1.02 Contact Person, Telephone, Fax, E-mail

The procurement officer is the point of contact for this RFP. Vendors must direct all communications regarding this RFP to the procurement officer. Unauthorized contact regarding the RFP with other State employees may result in the State disqualifying the vendor. The State may also suspend or disbar vendor from the state bidders list.

PROCUREMENT OFFICER: Brandy Peterson
PHONE: 701-328-1888
FAX: 701-328-3000
TTY Users call: 1-800-366-6888
E-MAIL: blpeterson@nd.gov

1.03 RFP Schedule

This schedule of events represents the State's best estimate of the schedule for this RFP.

The approximate RFP schedule is as follows:

- RFP Issued May 2, 2011
- Questions, clarification requests, or objections due by 3pm Central Time May 9, 2011
- Responses to questions/RFP amendments (if required) May 11, 2011
- Proposals due by 3pm Central Time June 14, 2011
- Proposal evaluation completed by approximately June 24, 2011
- State issues Notice of Intent to Award a Contract approximately June 27, 2011
- State issues contract approximately July 5, 2011
- Contract start approximately August 1, 2012

1.04 Return Mailing Address and Deadline for Receipt of Proposals

Offerors must submit three/3 of its proposal in a sealed envelope or package.

Offerors must submit an electronic copy of their proposal on CD, DVD or USB Flash Drive.

Offerors must submit cost proposals in a separate sealed envelope or package, clearly labeled "cost proposal."

Offerors must clearly address all envelopes or packages containing proposals as described below to ensure proper delivery and to avoid having the State open them before the deadline for receipt. Offerors must address all envelopes or packages as follows:

**North Dakota Information Technology Department
Telecommunications Division
Attn: Brandy Peterson
Request for Proposal (RFP): Williston Dark Fiber
RFP Number: 112-1103
1615 Capitol Way
Bismarck, ND 58501**

The State must receive proposals at the location specified no later than **3:00 P.M., CENTRAL**, Time on **June 14, 2011**. The State will not publicly read the proposals at the opening.

Offerors may not deliver proposals orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The State of North Dakota ("State") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the State. An offeror's failure to submit its proposal prior to the deadline will cause the State to reject the proposal. Late proposals or amendments will not be opened or accepted for evaluation.

1.05 Assistance to Offerors with a Disability

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so the State can make reasonable accommodations.

1.06 Deadline for Receipt of Questions and Objections

Offerors must carefully review this solicitation, the contract (Attachment 2), and all attachments for defects, questionable, or objectionable material. All questions must be in writing submitted to the email address of the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of offeror's proposals upon which the State could not make an award. The State will disallow any protests based on the content of the solicitation, if the offeror does not bring these faults to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

If the procurement officer may answer the question by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written response directed to all offerors. The procurement officer will make this determination. The State considers oral communications unofficial and non-binding on the State. The offeror must confirm telephone conversations in writing.

1.07 Bidders List Registration Requirements

VENDORS MUST BE REGISTERED BEFORE CONTRACT AWARD

The State will accept proposals from vendors that are not currently approved vendors on the State's bidders list; however, the successful offeror will be required to become approved prior to award.

To become an approved vendor, offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry Office. Prospective offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list for this solicitation is commodity code(s) **725-23, 915-51 and 915-79**.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.nd.gov/spo/>. Contact the Vendor Registry Office at 701-328-2683 or SPOVendor@nd.gov for assistance.

The successful offeror must register and become approved within **60 CALENDAR DAYS** from the date of the Notice of Intent to Award. If an offeror fails to become an approved vendor by the time specified by the Procurement Officer, its proposal will be determined to be non-responsive, and the State will reject its proposal.

1.08 Pre-proposal Conference

The State will not hold a pre-proposal conference for this RFP. The State advises offerors to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

1.09 Letter of Interest

Vendors interested in receiving any notices related to this RFP are invited to submit a letter of interest to the procurement office at the following email address:

blpeterson@nd.gov

Include the name of the firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the State with a contact person to receive any notices related to the RFP. Submission of a letter of interest is not a requirement for submitting a proposal.

1.10 Notice Provided

Notice of this solicitation has been provided in accordance with N.D.C.C. 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.nd.gov/spo/vendor/>

1.11 News Releases

A vendor shall not make any news releases related to this RFP without prior approval of the procurement officer or project manager designated by the State.

SECTION TWO - BACKGROUND INFORMATION

2.01 Background Information

The State is currently utilizing dark fiber to connect various customer sites located in Williston, North Dakota. The State is seeking offerors who can provide “dark” (i.e. non-lit) fiber optic cabling to connect existing locations in Williston.

SECTION THREE -SCOPE OF WORK

3.01 Scope of Work

The Information Technology Department, is soliciting proposals for “dark” single mode fiber optic cable infrastructure to customer sites in Williston, North Dakota.

The Offeror is required to provide single-mode fiber optic cable segments in a hub and spoke (star) configuration for the sites below under Location of Work. The primary site to be used as the hub is Williston State College-Admin Bldg located at 1410 University Ave. A segment includes termination into the building demarc at each endpoint location. All Entrance costs for each location must be included in the proposed monthly rate. The Offeror is required to provide a detailed route map that clearly identifies all segments as outlined below under Location of Work.

The infrastructure would be such that at least twelve (12) strands of single-mode fiber would be brought from the intended source’s demarcation point, with at least twelve (12) strands being terminated in the building and at least two (2) strands spliced into the fiber backbone if backbone architecture is used.

The successful Offeror will be required to manage all right of way issues, obtain all necessary permits, and franchise authority from the respective locale.

All proposed fiber solutions should conform to the following specifications:

Acceptable DB loss

- 0.25db/Km + 0.3db/splice +.5db/connector pair (bi-directional)

PMD (Polarization Mode Dispersion)

- 40 ps (pico seconds) for 2.5 Gig <2.0 PMD coefficient
- 10 ps for 10 Gig <0.5 PMD coefficient
- 2.5ps for 40 Gig <0.125 PMD coefficient

CD (Chromatic Dispersion)

- 16640 ps/nm for 2.5 Gig
- 1040 ps/nm for 10 Gig
- 65 ps/nm for 40 Gig

Any fiber solutions that do not meet these specifications must be clearly noted for each segment or portion of fiber with the known specifications

The Offeror must identify the ownership of all fiber segments in their proposal, to include the Offeror and any third party provider. If there is any fiber included in the Offeror’s proposal that is not owned by the Offeror, the Offeror must disclose the owner and the contract terms.

All or part of these segments may be implemented into the contract.

Value Added Features

Offerors are invited to provide any other information that they feel is relevant to this RFP process. For example, would the vendor provide any additional services at no cost to the State, or assist the State in evaluating its existing needs and future needs.

Contract Schedule and Deliverables

The Offeror must describe in detail their plan to deliver the “dark” fiber to each of the locations listed under Location of Work by August 1, 2012.

The Offeror is encouraged provide a fiber installation schedule (such as a Gantt chart) that meets the August 1, 2012 construction deadline.

The Offeror is encouraged to outline a suggested transition period at no cost to the State for beneficial use. The transition period will be negotiated upon contract award.

Adds, Moves and Changes

During the term of the contract the State may add sites to the contract. The State will not be penalized or incur any costs during the term of the contract for the discontinuing service to a given segment. The State reserves the right to disconnect segments as needed and discontinue billing for those segments. The State reserves the right to aid construction in order to lower the monthly cost of the fiber.

Location of Work

If the Offerors intend to submit a proposal for the city of Williston, Offerors must submit a proposal for the required locations and may submit a proposal for the optional locations. When submitting the cost proposal please price the required locations separately from the optional locations.

Required Locations:

Segment Number	Site/Destination	Address	City	Number of Fiber Pairs
1	Northwest Human Service Center	316 2nd Ave W	Williston	1
2	Williams County Courthouse, & DC	205 E Broadway	Williston	1
3	Job Service	422 1st Ave W	Williston	1
4	Williston District DOT	605 Dakota Parkway W	Williston	1
5	Williston High School	502 W Highland Dr	Williston	1
6	Williston State College-Admin Bldg	1410 University Ave	Williston	1

Optional Locations:

Segment Number	Site/Destination	Address	City	Number of Fiber Pairs
7	Oil and Gas Division - Williston	11 1/2 E Broadway	Williston	1
8	Williston Research Extension Center	14120 Hwy 2	Williston	1

3.02 Product Support, Customer Service, Experience & Qualifications Requirements

Dedicated Contract Representative

Offeror must provide resumes for dedicated contract representative and the support staff or team. Information for the contract representative and support team must include name, phone number, fax numbers, e-mail address, mailing address and years of appropriate experience. Provide dedicated support or back-up staff names and titles, phone numbers, and fax numbers, as well as e-mail and mailing addresses. Provide the names and titles, phone numbers, fax numbers, and e-mail and mailing addresses for the contract representative's chain of command within your company.

Assigned contract representatives may be required to meet with the State on a regular basis, or when deemed necessary. The State may also require other support staff or team members identified on Offeror's escalation lists to be available for these meetings. Please verify that your company can and will make these staff members available to meet with the State, given adequate notice.

Customer Services

Offerors must describe:

- the process for placing orders,
- the process for handling customer inquiries and response time to inquiries,
- the proposed sales support/account representation and customer relationship services and strategies offered,
- billing procedures

Offerors must describe the experience of their firm in completing similar projects. Additionally, Offerors must provide information specific to the personnel assigned to accomplish the work called for in this RFP. Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract.

If an Offeror intends to use subcontractors, the Offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

The Offeror must have successfully completed at least three (3) telecommunications projects of similar scope and complexity in cities with similar demographics and have successfully negotiated city franchise agreements for the purposes of fiber optic cable installations.

Technical Support

- Vendors will be required to have a (4) four hour Maintenance window should the fiber be cut at a point within the area of responsibility.
- Vendors must describe: hours of operation, operator responsibilities, and technical skill levels (correct problems or refer them?)
- Response should provide any statistics that indicate the time duration from the time of problem detection to the time of problem resolution

Maintenance Procedures

The contractor must establish a formal procedure for providing maintenance service (to be approved by the State) that would include: 24-hour trouble desk, trouble reporting procedures, toll free telephone numbers for voice and facsimile, e-mail addresses, maintenance organizational chart (showing supervision and key personnel), and escalation procedures. All listed personnel shall include their telephone numbers and office e-mail addresses.

Maintenance for the fiber optic cable infrastructure will be the responsibility of the provider, with a 4 hour minimum response time requirement.

SECTION FOUR - GENERAL CONTRACT INFORMATION

4.01 Contract Term, Extension and Renewal Options

The State intends to enter into a contract with an effective date beginning August 1, 2012 and ending June 30, 2017.

Renewal Option

The State may renew this contract upon satisfactory completion of the initial contract term. The state reserves the right to execute up to five options to renew this contract annually under the same terms and conditions for a period of 12 months each. This contract will not automatically renew. The State will provide written notice to the contractor of its intent to renew this contract at least sixty before the scheduled contract expiration date.

Renegotiation Option

In view of the fact that it is unknown how long the products and services will be employed 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 the contract including any extensions and renewals, STATE and CONTRACTOR may renegotiate the contract upon mutual agreement of the parties.

4.02 Contract Type

This contract is a firm fixed price contract.

4.03 Standard Contract Provisions

The successful offeror will be required to sign and submit a contract substantially similar to the contract attached to this RFP (Attachment 2). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the offeror's proposal. The State will not permit alteration of these provisions without prior written approval.

The State instructs offerors to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

4.04 Proposal as a Part of the Contract

The State may incorporate part or all of this RFP and the successful proposal into the contract.

4.05 Additional Terms and Conditions

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

4.06 Supplemental Terms and Conditions

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- [a] if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- [b] if the result of the application of a supplemental term or condition included in the proposal would diminish the State's rights, the supplemental term or condition will be considered null and void.

4.07 Contract Approval

This RFP does not, by itself, obligate the State. The State's obligation will commence when the State signs the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

4.08 Contract Changes - Unanticipated Amendments

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a time schedule for accomplishing the additional work and a price for the additional work. The contractor must provide cost and pricing data to justify the cost of amendments.

The contractor will not commence additional work until the project director has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the State.

4.09 Indemnification and Insurance Requirements

Offerors must review the attached Service Contract for indemnification and insurance requirements. The State will incorporate indemnification and insurance provisions into the final contract.

The offeror must submit objections to any of the provisions of the Indemnification and Insurance Requirements in writing to the attention of the procurement officer by the time and date set for receipt of questions. The State will not permit any alteration of these provisions without prior written approval from the purchasing agency in consultation with the North Dakota Risk Management Division.

Upon receipt of the Notice of Intent to Award, the successful offeror must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the purchasing agency, in consultation with the North Dakota Risk Management Division. An offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the

contract.

4.10 Taxes and Taxpayer Identification

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and the State will furnish certificates upon request.

A contractor performing any contract, including service contracts, for the United States Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-3470 or visit its website at www.nd.gov/tax for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the state as required by law. Contact the North Dakota Tax Department at 701-328-3125 or visit its web site for more information

4.11 F.O.B. Point and Freight

All commodities purchased through this contract will 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 will pass to the State at destination, and the vendor will be responsible for any freight claims.

4.12 Proposed Payment Procedures

Negotiated Payment Schedule

The State will make payments based on a negotiated payment schedule that is associated with progress toward mutually agreed deliverables and milestones.

Advance Payments

The State will not make any advanced payments before performance by the contractor under this contract.

4.13 Payment Terms

The State will normally make payment for commodities and services received under contracts within 30 calendar days after receipt and acceptance by the State or after receipt of a correct invoice, whichever is later. The contractor must direct any payment inquiries to the purchasing agency.

The purchasing agency may take Prompt Payment Discount Terms offered by the contractor if the purchasing agency makes payment within the specified terms.

4.14 Right to Inspect Place of Business

At reasonable times, the State may inspect those areas of the contractor's place of business that relate to the performance of a contract. If the State makes an inspection, the contractor must provide reasonable assistance.

4.15 Inspection & Modification - Reimbursement for Unacceptable Deliverables

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and the work being performed is in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order to accomplish its intent; the project manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Failure of the contractor to timely perform the contract, including any corrections or modifications directed by the State, may cause the State to terminate the contract, for default by the contractor. In this event, the State may require the contractor to reimburse, within 30 days of State's notice to terminate, all payments made to contractor for the deficient work. State shall return deliverables and services which are deficient, and further has the option of returning all deliverables and services which State previously accepted, but which are affiliated with the deficient deliverables and which, without the deficient deliverables, are rendered incapable of performance or impractical for the State to retain. Contractor shall also, within 30 days thereafter of the State's notice to terminate, reimburse the State for payments made for such previously accepted but subsequently returned deliverables and services. This clause does not restrict the State's right to seek associated damages, for contractor's failure to timely perform its obligations, including corrections and modifications, under the contract.

4.16 Termination for Default

If the project manager designated by the State determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

4.17 Informal Debriefing

When the contract is completed, the State may perform an informal debriefing at the discretion of the procurement officer or project manager designated by the State. If performed, the scope of the debriefing will be limited to the work performed by the contractor. The State will negotiate the debriefing time and location between the State and contractor.

4.19 Liquidated Damages

The State will include liquidated damages in this contract to assure its timely completion, and not as a penalty. The amount of actual damages will be difficult to accurately estimate.

SECTION FIVE - EVALUATION CRITERIA AND CONTRACTOR SELECTION

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100

5.01 Scope of Work & Information Technology Solution

Twenty-five Percent (25%) of the total possible evaluation points will be assigned to this criterion.

5.02 Product Support and Customer Service

Twenty-five Percent (25%) of the total possible evaluation points will be assigned to this criterion.

5.03 Experience, Qualifications, and Financial Strength

Five Percent (5%) of the total possible points will be assigned to this criterion.

5.04 Contract Cost

Forty-five Percent (45%) of the total possible evaluation points will be assigned to cost. The State will not consider any prompt payment discounts terms proposed by the offeror in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The State will evaluate the point allocations for cost on the other proposals according to the method set forth in the Proposal Evaluation form attached to this RFP.

5.06 Oral Presentations

After any discussions for clarifications and the initial evaluation of proposals received, offerors whose proposal receive the highest scores and are determined to be reasonably susceptible for award may be required to make an oral presentation of the proposed solution for the evaluation committee. The State will factor information presented during demonstrations into the evaluation scoring.

Offerors will be responsible for all costs associated with the providing the presentation.

5.07 Site Inspection of Offeror's Facility

The State may conduct on-site visits to the offeror's firm or offeror's customer where the offeror is performing a comparable service to evaluate the offeror's capacity to perform the contract. An offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the State reasonable access to relevant portions of its work sites. Individuals designated by the State will conduct the site inspection at the State's expense.

SECTION SIX - PROPOSAL FORMAT AND CONTENT

6.01 Proposal Format and Content

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, offerors must follow the format set out in this RFP and provide all information requested.

6.02 Introduction

Proposals must include the complete name and address of offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

A company officer empowered to bind the company must sign proposals. An offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the State may reject the proposal.

6.03 Scope of Work & Information Technology Solution

Offerors must provide a comprehensive response to the Information Technology Solution specified in Section 3.01. Responses must be in the same sequence as they appear in Section 3.01. Offerors must provide supporting narrative and documentation when required in response to the requirements of this section.

6.04 Product Support, Customer Service, Experience & Qualifications Requirements

Offerors must provide a comprehensive response to the product support and customer service requirements specified in Section 3.02. Responses must be in the same sequence as they appear in Section 3.02. Offerors must provide supporting narrative and documentation when required in response to the product support requirements.

6.05 Financial Requirements

- A. The offeror shall provide financial information in such a manner that the State can reasonably formulate a determination about the stability and financial strength of the organization. This must include but not be limited to company size, organization, date of incorporation, ownership, number of employees, revenues for the last fiscal year, and, if available, audited financial statements for the most recent 3 years. A current Dun and Bradstreet Report that includes a financial analysis of the firm would fulfill this requirement. An offeror can use an Annual Report as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm. The State reserves the right to contact the accounting firm if questions arise. As an alternative, for those offerors unable to provide audited financial statements or Dun and Bradstreet report, the offeror shall provide tax returns and financial

statements including income statements and balance sheets for the most recent 3 years, and any available credit reports.

- B.** Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the offeror's organization; or certify that no such condition is known to exist.
- C.** A confidentiality statement may be included if this portion is considered non-public information. The State may request reports on financial stability from independent financial rating services in order to further substantiate stability.

6.08 Cost Proposal

The State requests that the Offerors price the required sites and optional sites separately. The State would prefer a postalized rate for the required sites.

The offeror must state all costs associated with the contract in U.S. currency. The offeror must identify any commodities the offeror will import, and the price must include any applicable customs, brokerage agency fees, and duties.

The offeror must submit cost proposals with consideration to the State's standard terms and conditions included in the attached sample contract.

Offerors should describe any discounts terms for prompt payment. The State will not consider discounts for prompt payment when evaluating cost.

Offerors must complete cost proposal attached to this RFP (see Attachment 3) or prepare a cost proposal following the same format.

6.09 Required Enclosures

Offerors must provide all documents, samples, or other information specifically required in this RFP.

SECTION SEVEN - STANDARD PROPOSAL INFORMATION

7.01 Authorized Signature

An individual authorized to bind the offeror to the provisions of the RFP must sign all proposals.

7.02 State Not Responsible for Preparation Costs

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

7.03 Conflict of Interest

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

7.04 Offeror's Certification

By signature on the proposal, an offeror certifies that it complies with:

- [a] the laws of the State of North Dakota;
- [b] North Dakota Administrative Code;
- [c] all applicable local, state, and federal laws, code, and regulations;
- [d] the applicable portion of the Federal Civil Rights Act of 1964;
- [e] the Equal Employment Opportunity Act and the regulations issued by the federal government;
- [f] the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- [g] all terms, conditions, and requirements set forth in this RFP;
- [h] a condition that the proposal submitted was independently arrived at, without collusion;
- [i] a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- [j] a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

7.05 Offer Held firm

Proposals must remain open and valid for at least **90 DAYS** from the deadline specified for submission of proposals. In the event the State does not award within **90 DAYS**, the State will send a written request to all offerors deemed susceptible for award asking offerors to hold their price firm for a longer specified period of time.

7.06 Amendments to Proposals and Withdrawals of Proposals

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. The State will not accept amendments after the deadline unless they are in response to the State's request. After the deadline, offerors may make a written request to withdraw proposals and provide evidence that they made a substantial mistake. The procurement officer may permit withdrawal of the proposal upon verifying that the offeror made a substantial mistake, and the State may retain the offeror's bid bond or other bid type of bid security, if one was required.

7.07 Alternate Proposals

Offerors may submit only one proposal for evaluation.

Alternate proposals (proposals that offer something different than what the State requested) will be rejected.

7.08 Subcontractors

Offerors may use subcontractors to perform work under this contract. If an offeror intends to use subcontractors, the offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If the State selects a proposal with subcontractors, the offeror must provide the following information concerning each prospective subcontractor within **FIVE WORKING DAYS** from the date of the State's request:

- [a] complete name of the subcontractor;
- [b] complete address of the subcontractor;
- [c] type of work the subcontractor will be performing;
- [d] percentage of work the subcontractor will be providing;
- [e] evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and
- [f] a written statement, signed by each proposed subcontractor, which clearly verifies that the subcontractor is committed to render the services required by the contract.

An offeror's failure to provide this information, within the time set, may cause the State to consider its proposal non-responsive and reject it. The offeror may substitute one subcontractor for another only at the discretion and with prior written approval of the State's designated procurement officer or project manager.

7.09 Joint Ventures

Joint ventures are acceptable. If submitting a proposal as a joint venture, the offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

7.10 Disclosure of Proposal Contents and Compliance with State's Open Records Laws

All proposals and other material submitted become the property of the State and the State may return them only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request to hold confidential any trade secrets and other proprietary data contained in proposals. The offeror must clearly identify the material considered confidential, and the offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.nd.gov/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If the State receives a request for public information, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed accordingly.

7.11 Evaluation of Proposals

The State will review all proposals to determine if they are responsive to the requirements of this solicitation. The procurement officer or an evaluation committee will evaluate responsive proposals. The State will base the evaluation solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with offerors determined to be reasonably susceptible for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

7.12 Right of Rejection

The State reserves the right to reject any proposals, in whole or in part. The State will reject proposals received from debarred or suspended vendors. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If an offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the State may reject the proposal.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an offeror determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

7.13 Clarification of Offers

In order to determine if a proposal is reasonably susceptible for award, the State permits communications by the procurement officer or the proposal evaluation committee with an offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The State may adjust the initial evaluation because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, the State will issue an amendment. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. The State may adjust evaluations as a result of receiving new or amended proposals.

7.14 Discussions and Best and Final Offers

The State may conduct discussions or request best and final offers with offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after initial evaluation of proposals by the proposal evaluation committee. If the State requests modifications to the proposal as a result of these discussions, the offeror must put the modifications in writing. If the State requests best and final offers, the State will evaluate the best and final offer submitted by the offeror against the criteria stated in the RFP and any subsequent amendments to the RFP including the best and final offer request. If an offeror does not submit a best and final offer, the State will consider its original proposal as its best and final offer.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that the State can make reasonable accommodations.

7.15 Preference Laws

The preference given to a resident North Dakota offeror will be equal to the preference given or required by the state of the nonresident offeror. A "resident" North Dakota bidder, offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which the State awarded a contract. For a listing of state preference laws, visit the following website:

http://www.oregon.gov/DAS/SSD/SPO/reciprocal_detail.shtml or contact the North Dakota State Procurement Office at 701-328-2683.

7.16 Contract Negotiation

After final evaluation, the procurement officer may negotiate with the offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked offeror fails to provide necessary information for negotiations in a timely manner, or fails

to negotiate in good faith, the State may terminate negotiations and negotiate with the offeror of the next highest-ranked proposal.

If the State holds contract negotiations, the offeror will be responsible for all cost including its travel and per diem expenses.

7.17 Failure to Negotiate

If the selected offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or

If the offeror and the State, after a good faith effort, cannot come to terms, the State may terminate negotiations with the offeror initially selected and commence negotiations with the next highest ranked offeror.

7.18 Notice of Intent to Award

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award to all offerors that responded to this Request for Proposal. The Notice of Intent to Award will set out the names and addresses of all offerors and identify the proposal selected for award. The scores and placement of other offerors will not be part of the Notice of Intent to Award.

The State advises the successful offeror named in the Notice of Intent to Award not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful offeror and the State sign the contract.

7.19 Protest and Appeal

North Dakota law provides that an interested party may protest a solicitation.

If an interested party wishes to protest the content of this RFP, the procurement office must receive, in writing, the protest at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract.

If an offeror wishes to protest the award of a contract or proposed award of a contract, the procurement office must receive the protest, in writing, within seven calendar days after the date the State issues the Notice of Intent to Award.

SECTION EIGHT - ATTACHMENTS

8.01 Attachments

Attachments

1. Proposal Evaluation Form
2. Contract Form
3. Cost Proposal Format

**ATTACHMENT 1
EVALUATION CRITERIA AND SCORING**

Person or Firm Name:
Name of Proposal Evaluation (PEC) Member:
Date of Review:
RFP Title/Number:

THE TOTAL NUMBER OF POINTS USED TO SCORE THIS CONTRACT IS 100

SCOPE OF WORK & SOLUTION

Weight **25 Percent**. Maximum Point Value for this Section
 100 Points x **25 Percent = 25 Points**

Rating Scale (25 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-7	Fair. Limited applicability
8-16	Good. Some applicability
17-23	Very Good. Substantial applicability
24-25	Excellent. Total applicability

Proposals will be evaluated against the question set out below.

1. Evaluation of the overall Scope of Work & Information Technology Solution as outlined in Sections 3.01.

•

EVALUATOR'S POINT TOTAL FOR SCOPE OF WORK & INFORMATION TECHNOLOGY SOLUTION:

PRODUCT SUPPORT, CUSTOMER SERVICE, EXPERIENCE, & QUALIFICATIONS

Weight **25 Percent**. Maximum Point Value for this Section
100 Points x **25 Percent = 25 Points**

Rating Scale (25 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1-7	Fair. Limited applicability
8-16	Good. Some applicability
17-23	Very Good. Substantial applicability
24-25	Excellent. Total applicability

Proposals will be evaluated against the question set out below.

1. Evaluation of the overall Product Support, Customer Service, Experience & Qualifications as outlined in Sections 3.02.

•

EVALUATOR'S POINT TOTAL FOR PRODUCT SUPPORT, CUSTOMER SERVICE, EXPERIENCE, & QUALIFICATIONS:

FINANCIAL STRENGTH

Weight **5 Percent**. Maximum Point Value for this Section
100 Points x **5 Percent = 5 Points**

Rating Scale (5 POINT Maximum)	
Point Value	Explanation
0	None. Not addressed or response of no value
1	Fair. Limited applicability
2	Good. Some applicability
3-4	Very Good. Substantial applicability
5	Excellent. Total applicability

Proposals will be evaluated against the question set out below.

2. Evaluation of the overall Financial Requirements as outlined in Section 6.05.

•

EVALUATOR'S POINT TOTAL FOR FINANCIAL STRENGTH:

CONTRACT COST

Weight **45 Percent**: Maximum Point Value for this Section
100 Points x **45 Percent = 45 Points**

Applying Preference Laws

The State will not consider any prompt payment discounts terms proposed by the offeror when evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The preference given to a resident offeror will be equal to the preference given or required by the state of the nonresident offeror (i.e. reciprocal preference).

When evaluating cost proposals from nonresident (out-of-state) offerors, the State will determine whether the offeror's state of residence has a preference law for vendors resident in that state. The State will increase the cost proposal of the nonresident offeror by the same percentage of preference given to vendors resident in that state.

For example, if the state law of the nonresident offeror requires a 5% preference for vendors resident in that state, the procurement officer will increase that offeror's cost proposal by 5% before evaluation.

See <http://www.nd.gov/spo/legal/docs/preference-laws.pdf> for a list of States Preference Laws or contact the North Dakota State Procurement Office at 701-328-2683.

COST PROPOSAL EVALUATION

EVALUATOR'S POINT TOTAL FOR COST

NOTES:

**Request for Proposal
Evaluation Summary**

Name of RFP:		
RFP Number		
Vendor Being Evaluated:		
Evaluator Name:		
Date:		
Technical Evaluation (Maximum 55 Points)	Maximum Points by Category	Score
1. Scope of Work & Information Technology Solution	25	
2. Product Support, Customer Service, Experience, & Qualifications	25	
3. Financial Strength	5	
Cost Evaluation (Maximum 45 Points)		
<ul style="list-style-type: none"> • Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: http://www.nd.gov/spo/ • Calculated points awarded for price. 		
4. Cost	45	
Total		

**ATTACHMENT 2
SAMPLE TECHNOLOGY SERVICES CONTRACT**

The parties to this contract are the State of North Dakota, acting through its Department of Information Technology (STATE), and _____
(CONTRACTOR);

1. SCOPE OF SERVICES

CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:

2. TERM OF CONTRACT

The term of this contract is for a period of _____ months, commencing on the ____ day of _____, 20__, and terminating on the ____ day of _____, 20__.

Extension Option

The State reserves the right to extend the contract period for an additional period of time, not to exceed _____, beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

Renewal Option

The State may renew this contract upon satisfactory completion of the initial contract term. The state reserves the right to execute up to _____ options to renew this contract annually under the same terms and conditions for a period of _____ months each.

Renegotiation Option

In view of the fact that it is unknown how long the products and services will be employed 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 the contract including any extensions and renewals, STATE and CONTRACTOR may renegotiate the contract upon mutual agreement of the parties.

3. NO AUTOMATIC RENEWAL

This contract will not automatically renew. STATE will provide written notice to CONTRACTOR of its intent to renew this contract at least sixty days before the scheduled termination date.

4. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

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:

- a) The terms of this Contract as may be amended;
- b) STATE's Solicitation Amendment #1 to Request for Proposal ("RFP") number _____ dated _____;
- c) STATE's Request for Proposal ("RFP") number _____, dated _____;
- d) CONTRACTOR's proposal dated _____ in response to RFP number _____.

Any automated (click through) end user license agreement is superseded by this contract.

5. TERMINATION OF CONTRACT

1. **Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.
2. **Termination for lack of funding or authority.** STATE may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, 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. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 - 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.

3. **Termination for cause.** STATE by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:
 - 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 the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

6. FORCE MAJEURE

CONTRACTOR will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond CONTRACTOR's reasonable control and CONTRACTOR gives notice to STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

7. SEVERABILITY

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

8. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE’s express written consent. However, CONTRACTOR may enter into subcontracts provided that any such 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. CONTRACTOR will not have the authority to contract for or incur obligations on behalf of STATE.

9. NOTICE

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

10. 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 brought and solely litigated in the District Court of Burleigh County, North Dakota.

11. SPOILIATION – 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 the evidence, including the scene of an accident.

12. INDEMNITY

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. Contractor also agrees to defend, indemnify, and hold the State harmless 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 agreement.

Further:

1. CONTRACTOR, at its own expense, will 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.
2. 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.
3. CONTRACTOR will comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of the contract and conduct its activities so as not to endanger any person or property.

13. INSURANCE

Contractor shall secure and keep in force during the term of this agreement 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 agreement, 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 \$250,000 per person and \$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.
- 4) 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.
- 5) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
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.

- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
 - a. "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b. a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
 - c. a provision that any attorney who represents the State under this policy 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;
 - d. a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - e. cross liability/severability of interest for all policies and endorsements;
 - f. The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
 - g. The insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- 6) The 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 the State to terminate this agreement immediately.

14. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due of any kind under this contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

15. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

16. CONFIDENTIALITY

Absent a court order, CONTRACTOR agrees not to 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. Absent a court order, STATE agrees not to disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and which STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information

under this section continues beyond the term of this contract, or any extensions or renewals of it.

17. COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for disclosures prohibited in Section 17, Confidentiality, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under Section 17, Confidentiality, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the open records law and to comply with STATE's instructions on how to respond to the request.

18. 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 Workers' Compensation 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.

19. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. 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 and 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.

20. 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 or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

21. PREPAYMENT

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

22. TAXPAYER ID

CONTRACTOR's federal employer ID number is: _____.

23. EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

24. STATE TECHNOLOGY STANDARDS

CONTRACTOR agrees that technology products and services delivered as part of this agreement will comply with STATE's information technology standards. These standards can be found on STATE's web site at <http://www.state.nd.us/ea/standards/>

25. **PERSONNEL AND PROJECT MANAGEMENT**

1. 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 statements of work.
2. STATE will designate a Project Manager to serve as the primary point of contact for this contract. If, during the course of the contract, it becomes necessary for STATE to change the person assigned as STATE's Project Manager, STATE will notify CONTRACTOR in writing, pursuant to Section <#>, Notice, above.
3. CONTRACTOR personnel will be responsible for providing written, <weekly/monthly> time utilizations, for each individual, to STATE's Project Manager, or STATE's project staff, as STATE's Project Manager may assign.
4. CONTRACTOR's Project Manager shall deliver to STATE's Project Manager, <weekly/monthly> reports of CONTRACTOR's progress on the project and meeting the objective/deliverables as stated in the scope of services. 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 <week/month>, and the problems encountered, the proposed solutions to them and their effect, if any, on the deliverable schedule.

5. **Project Variance Reporting**

<Option 1>

Each status report must contain an analysis that provides schedule and cost variance utilizing a methodology of calculation approved by STATE's project manager. Any report of negative variance must include the identification of the type and cause of that variance. If the analysis shows a negative cost or schedule variance exceeding 20%, the report must also provide proposed corrective measures to address the issues.

<Option 2>

CONTRACTOR must provide data to allow STATE's project manager to calculate cost and schedule variance in accordance with NDCC 54-59-23 as determined by State. If the 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.

6. 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 in producing the contract deliverables.
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 will only be obligated to work a forty-hour workweek, Monday through Friday, and will be allowed reasonable vacation, sick or educational absences.
9. CONTRACTOR's personnel will not be expected to work on state holidays or other mandatory leave days.
10. CONTRACTOR agrees and understands that STATE's execution of the contract is predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified; primary being <name of

appropriate personnel, if applicable, >. Therefore, CONTRACTOR agrees that no substitution of such specific individuals and/or personnel qualification will be made without the prior written approval of STATE and that such substitution will be made at no additional cost to STATE. CONTRACTOR further agrees that 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 will not be construed as an acceptance of the substitution's performance potential. STATE agrees that an approval of a substitution will not be unreasonably withheld. The personnel furnished must have the knowledge necessary to complete requirements as defined in the Contract.

11. Upon request by STATE, CONTRACTOR shall replace any CONTRACTOR personnel who STATE determines, in its sole discretion, to be unable to perform the responsibilities of the contract acceptably, e.g. inappropriate or unprofessional personal conduct, professional inabilities, etc.
12. 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. 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:
 - Criminal History, <applicable/not applicable>
 - References, <applicable/not applicable>
 - Employment, <applicable/not applicable>
 - Motor vehicle, <applicable/not applicable>
 - Credit, <applicable/not applicable>
 - Education, <applicable/not applicable>
13. 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 and 12-60-24. 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.
14. CONTRACTOR shall assign personnel on a full-time basis. In the event that a work assignment does not justify full-time participation, CONTRACTOR shall assign person on a part-time basis with prior written approval of STATE's Project Manager. However, if the part-time assignments are specified in the contract, no written approval from STATE's Project Manager will be necessary except for substitution of CONTRACTOR personnel.
15. CONTRACTOR shall warrant that personnel assigned to perform tasks in response to this contract will remain assigned, for the agreed-upon length of time, and will not be replaced or reassigned except by mutual agreement and written notice of STATE. Prior to assignment of personnel, CONTRACTOR shall obtain written approval from STATE for all personnel to be assigned to this project.
16. Each change request duly authorized in writing by STATE and agreed to by CONTRACTOR will be deemed incorporated into and part of this contract.

26. EQUIPMENT, MATERIALS AND WORKSPACE

CONTRACTOR's assigned contract staff will be on site for the duration of the contract.

CONTRACTOR's assigned contract staff will be on site during a portion of the contract.

1. On site will be **<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 will provide the necessary supervised remote access security to enable CONTRACTOR access to the appropriate STATE systems.

27. REVIEW, APPROVAL, AND ACCEPTANCE PROCESS

1. Unless otherwise noted in this contract or agreed upon in writing by both parties, acceptance testing will be performed on-site, on STATE's platform.
2. Prior to acceptance testing, CONTRACTOR will furnish STATE with documentation of the deliverable item and the expected performance.
3. The review, approval, and acceptance process for all project deliverables as specified in scope of services will be the responsibility of STATE's Project Manager. The Project Manager will be responsible for ensuring that the approval process follows the proper procedures prior to acceptance of deliverables by STATE. STATE shall apply the following procedures to acceptance of all deliverables:
 - 1) For the life of this contract, STATE has the right to complete a review of any deliverable received from CONTRACTOR and notify CONTRACTOR of STATE's findings; and
 - 2) If the deliverable is unacceptable, CONTRACTOR shall resubmit the deliverable after the appropriate correction or modifications have been made.
4. The process described above will be repeated until acceptance is obtained, STATE terminates for cause or a waiver is obtained.

28. CHANGE CONTROL PROCESS

<Option 1>

CONTRACTOR and STATE will implement a change control process to manage changes during the life of the project. This process will be documented in the project management plan. It will minimally include:

1. A change request must be in writing to document the potential change.
2. 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.
3. CONTRACTOR will continue performing the services in accordance with the original agreement unless otherwise agreed upon by the STATE's project manager. Work cannot commence on any new activities related to the change request until all parties agree in writing.
4. All change orders will be logged and tracked.
5. CONTRACTOR's Project Manager and STATE's Project Manager will adapt project plans to incorporate approved changes.

<Option 2>

CONTRACTOR and STATE will implement a change control process to manage changes during the life of the project. This process is as follows:

- a. 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
- b. All change orders will be logged and tracked. The STATE's Project Manager will record the request in the change control log and will update the log throughout the process.
- c. 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.
- d. CONTRACTOR will continue performing the services in accordance with the original agreement unless otherwise agreed upon by the STATE's project manager. Work cannot commence on any new activities related to the change request until all parties agree in writing.
- e. CONTRACTOR's Project Manager and STATE's Project Manager will adapt project plans to incorporate approved changes.

Steps for the change control process:

- 1) Complete a write-up for the proposed change and submit copies to CONTRACTOR and STATE's Project Managers who will in turn provide to relevant parties for assessment.
- 2) Record the request in the change control log.
- 3) Investigate the impact of the proposed change and evaluate the impact of not performing the change.
- 4) Prepare a response to the proposed change.
- 5) Retain the original in the project library.
- 6) CONTRACTOR and STATE agree whether the change should be performed and obtain authorization sign-off of the change request. The appropriate document is created.

If change is not accepted:

- A. Contractor's Project Manager will discuss and document the issue with STATE's Project Manager
- B. The proposed change can be modified and re-submitted or withdrawn if it is agreed to be non-essential. In this case, the reasons will be documented.

If change is accepted:

- A. Once the change request has been approved and signed by the authorized parties, work may begin.
- B. CONTRACTOR's Project Manager and STATE's Project Manager will adapt project plans to incorporate the approved change.
- 7. Both CONTRACTOR and STATE must sign-off that a change has been complete
- 8. The log will be updated
- 9. The log will be supplied at the progress meetings and/or in status reports.

29. FINAL ACCEPTANCE

"Final Acceptance" will be defined as:

- a. The successful completion of all deliverables as stated in the scope of services and following the Review, Approval, and Acceptance processes described above, **AND**
- b. The final delivered product fully implemented in STATE's live production environment no later than _____, **AND**
- c. STATE will have sixty-days thereafter in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR will 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 agreement upon written notice to CONTRACTOR.

30. LIQUIDATED DAMAGES

The parties agree that STATE may suffer damages due to a failure by CONTRACTOR to provide deliverables or services according to the schedule specified in the project plan. Since it is difficult to fix the actual damages sustained in the event of such implementation delays, STATE and CONTRACTOR agree that the amount of damages will be determined as per this Section. In the event of any non-performance the 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 fees 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.

STATE will notify CONTRACTOR, in writing, of any claim for liquidated damages no later than 15 days prior to the date the State deducts such sums from money payable to CONTRACTOR and, in any case, within 90 days after CONTRACTOR's failure to perform in accordance with the terms of the contract.

Delays due to causes of Force Majeure or due to the responsibility of STATE or 3rd parties shall extend the time for performance on a day-to-day basis.

Failure to Complete Project on Schedule:

It is agreed by the parties that in the event CONTRACTOR fails to complete the project per the schedule as specified in **<SOW or project schedule reference>**, STATE will deduct from fees payable to CONTRACTOR \$**<amount>** per day not to exceed \$**<maximum amount>** for each day that the implementation is delayed as a reasonable approximation of the actual damages incurred by STATE.

31. PAYMENTS

1. The contractual amount to be paid for this project shall constitute the entire compensation due CONTRACTOR for the service and all of CONTRACTOR's obligations regardless of the difficulty, materials or equipment required. The contractual amount includes fees, licenses, overhead, profit and all other direct and indirect costs incurred or to be incurred, by CONTRACTOR, except as noted in this section of the contract. A valid change order processed in accordance with this contract may modify the contractual amount.
2. STATE has tax-exempt status. The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and the State will furnish certificates upon request.
<Option 1>
3. The cost of the project is firm for the duration of the contract and is not subject to escalation for any reason, unless this contract is amended, or a valid change order is processed in accordance with this contract.
<Option 2> -
4. Any cost adjustments to the contract must be agreed upon by the parties by amending this contract or processing a valid change order.

5. The project cost will be billed by CONTRACTOR to STATE, and is tied directly to STATE's acceptance of agreed upon deliverables as specified in the scope of services. Payment will be made upon receipt of invoices from CONTRACTOR.
6. All deliverable payments will be subject to 10% retainage. Retained amounts are to be paid upon Final Acceptance.
7. The final cost of each billing will be as specified in the scope of services.
8. Total dollar contractual amount of \$_____, shall not be exceeded.
9. State will be allowed thirty-days to process each payment.
10. No claim for additional services, not specifically provided herein, will be allowed by STATE except to the extent provided by a valid change order or amendment to this contract.
11. The 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, on the basis of audits conducted in accordance with the terms of this contract, not to constitute allowable costs. Any payment will be reduced for overpayments, or increased for underpayments on subsequent invoices.
12. STATE reserves the right to deduct from amounts that are or will become due and payable to CONTRACTOR under this, or any contract between the parties, any amounts that are or will become due and payable to STATE by CONTRACTOR.
13. CONTRACTOR shall maintain documentation for all charges against STATE under this contract. The books, records and documents of CONTRACTOR, as they relate to work performed or money received under this contract, must be maintained for a period of three (3) full years following completion of this contract and must be subject to audit, at any reasonable time and upon reasonable notice, by STATE or the State Auditor or the Federal Auditor or their duly appointed representatives.

Reimbursement for contracted staff travel and travel-related costs associated with on-site work done in performance of this contract will be paid at the same rate payable to State employees under North Dakota Century Code Section 44-08-04. Meals will be reimbursed on a per diem basis at the current State rate. Copies of receipts are required for travel and lodging reimbursement. CONTRACTOR will make every reasonable attempt to book air travel in advance to reduce costs. Payment for any travel costs that exceed the travel budget as agreed upon by the parties must be approved by STATE's project manager.

32. 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. 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.

33. PRODUCT CONFORMITY

STATE will have 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 performs according to CONTRACTOR system design specifications. Upon recognition of an error, deficiency, or defect, by STATE, CONTRACTOR will 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, will provide a correction or provide a mutually acceptable plan for correction within thirty-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 will be required to reimburse STATE for any such costs incurred or STATE may consider this to be cause for breach of contract.

34. WORK PRODUCT

Product(s) created or purchased under this contract belong to STATE and must be delivered or returned upon termination of this contract if these items were charged to and paid for by STATE in the course of CONTRACTOR's performance of this contract. All software and related materials developed by CONTRACTOR in performance of this contract for STATE will be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE.

35. SOFTWARE LICENSE

All ownership rights to CONTRACTOR's software provided to STATE under this contract (intellectual property owned by CONTRACTOR prior to performance of this contract) will 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 the software to use that software for its intended purpose.

a. LICENSE GRANT AND SCOPE OF USE

- 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, 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.

b. SOFTWARE FUNCTIONALITY AND REPLACEMENT

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

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.
- c. **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.
 - d. **DELIVERY OF AUTHORIZED SOFTWARE ONLY**
CONTRACTOR shall not ship any software to STATE that STATE is not authorized to use.
 - e. **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.

36. MAINTENANCE

CONTRACTOR will provide, and STATE may subscribe to, maintenance services, including software/hardware updates and technical support services, for the product(s) delivered pursuant to this contract commencing at the end of the warranty period. CONTRACTOR and STATE will 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 three (3) years from the date of final acceptance or installation date of any software/product update.

- a. **MAINTENANCE FEE CAP**
CONTRACTOR agrees that any change to the annual maintenance and support fee may increase by not more than 5% per year for the life of this agreement including any renewals.
- b. **RIGHT TO CHANGE SUPPORT PLAN LEVEL**
STATE may choose to change its subscription to CONTRACTOR's software maintenance and support plan to a higher or lower level plan that is offered by CONTRACTOR at the agreement next renewal date upon thirty (30) calendar days notice to CONTRACTOR.
- c. **RIGHT TO MODIFY OR CANCEL SUPPORT**
 - 1) STATE may choose to cancel software maintenance and support at the agreement 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 software maintenance and support at the agreement next renewal date upon thirty (30) days notice to CONTRACTOR.
 - 3) STATE may resume software maintenance and support for lapsed periods by paying CONTRACTOR an amount no greater than the support fee that would have been due if maintenance and support had been continued over the lapsed period. Upon payment of such fees for lapsed periods, CONTRACTOR agrees to provide STATE with right to any software upgrades released during that period.

37. **SOFTWARE SUPPORT - SERVICE LEVEL REQUIREMENT**

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, facsimile or electronic mail.

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

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%
1 st Failure to meet Response or Resolution Time	Warning, 0%
2 nd Failure to meet Response or Resolution Time	10%
3 rd 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 consecutive months of the term, STATE may terminate this agreement 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.

SCHEDULED MAINTENANCE AND NOTIFICATIONS

- a. Standard Maintenance Windows:
 - <Define maintenance window schedule>
- b. Notification of Scheduled Maintenance Downtime:
 CONTRACTOR will notify STATE of any schedule 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 will use its best efforts to notify STATE of a planned downtime as soon as practicable.

38. SOFTWARE ESCROW

CONTRACTOR agrees that that the software is to be held in escrow. CONTRACTOR will, within sixty (60) calendar days after the parties sign this contract, include STATE as a named beneficiary to an Escrow Services Agreement which will be established with an escrow agent approved by STATE on terms approved by STATE at the cost of CONTRACTOR. Within thirty (30) days after the delivery of any enhancements, upgrades, versions or custom software, CONTRACTOR will transfer a copy into escrow including source code and documentation. STATE is entitled to a release of the source code and documentation for the software in the following instances:

- a. CONTRACTOR, or its successor in interest, enters voluntary or involuntary petition for bankruptcy during the term of this Agreement, and such proceedings are not dismissed with sixty (60) days after such proceedings commence.
- b. CONTRACTOR is otherwise unable to provide support and maintenance services for the software sufficient to meet its support obligations to STATE.
- c. CONTRACTOR, or its successor in interest, discontinues developing and manufacturing the software.
- d. 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.

CONTRACTOR

BY: _____

ITS: _____

DATE: _____

STATE OF NORTH DAKOTA, acting through its
Information Technology Department

BY: _____

ITS: _____

DATE: _____

ATTACHMENT A - SCOPE OF SERVICES

- CONTRACTOR, in exchange for the compensation paid by STATE under this contract, agrees to provide the following services:
- **Sample Deliverable 1: Project Plan**
 - **Description:** CONTRACTOR, in cooperation with the State, will prepare a detailed Project Plan that provides, at a minimum, the following:
 - Management plans to control scope, schedule, cost and quality
 - An integrated change control process
 - A human resource management plan
 - A communication management plan
 - A risk management plan
 - Issue management plan
 - A procurement management plan
 - A detailed project schedule

Completion Date: CONTRACTOR will submit Project Plan to STATE within 10 (ten) working days after the parties sign this contract.

Acceptance: Upon receipt of the Project Plan document from CONTRACTOR, STATE will have 10 (ten) working days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise the Project Plan to make it acceptable to STATE within the following 10 (ten) working days. If STATE rejects the Project Plan a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

Sample Deliverable 2: Software Delivery and Installation

Description: CONTRACTOR, in cooperation with the STATE technical staff, will deliver and install on STATE's hosting platform the COTS software system consisting of the following:

- CONTRACTOR will work in cooperation with STATE to plan the COTS hosting environment
- CONTRACTOR will assist STATE with installation and configuration of the COTS base software modules

Completion Date: To be defined in Project Plan

Acceptance: Upon completion of Software Delivery and Installation, STATE will have 10 (ten) working days in which to accept or reject in writing. 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 COTS base system to be acceptable to the STATE within the following 10 (ten) days. If STATE rejects it a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

Sample Deliverable 3: Gap Analysis

Description: CONTRACTOR shall work with STATE staff to generate a gap analysis between the base COTS system and STATE's requirements:

- Identify STATE specific functional requirements
- Identify STATE specific security/authentication requirements
- Identify STATE specific reporting requirements
- Generate gap analysis and COTS configuration design

Completion Date: To be defined in Project Plan

Acceptance: Upon receipt of the Gap Analysis document from CONTRACTOR, STATE will have 10 (ten) working days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise the Gap Analysis to make it acceptable to STATE within the following 10 (ten) working days. If STATE rejects Gap Analysis design a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

Sample Deliverable 4: Custom Development

Description: CONTRACTOR shall customize and configure the COTS software per STATE's requirements as identified in the gap analysis:

- COTS Configuration
- STATE specific customization
- STATE specific interfaces
- Demonstration of COTS system with STATE customization

Completion Date: To be defined in Project Plan

Acceptance: Upon completion of the Custom Development activities, STATE will have 10 (ten) working days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to resolve the issues identified to make it acceptable to STATE within the following 10 (ten) working days. If STATE rejects the Custom Development activities a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

Sample Deliverable 5: Implementation

Description: CONTRACTOR will implement the COTS system including

- Conversion of existing STATE data
- CONTRACTOR will work in cooperation with STATE to implement the COTS system on State's hosting platform
- Functionality Testing - CONTRACTOR will conduct quality assurance testing of the software prior to end-user testing

- Performance/load testing of COTS software – CONTRACTOR will work in cooperation with STATE to tune COTS system performance to meet STATE's performance expectations
- Train STATE system administrators on COTS system administration
- Train STATE end-user staff on use of COTS application

Completion Date: To be defined in Project Plan

Acceptance: Upon completion of Implementation, STATE will have 30 (thirty) working days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to resolve the Implementation issues identified to make it acceptable to STATE within the following 20 (twenty) working days. If STATE rejects the Implementation a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

Sample Deliverable 6: Production Ready (Final Acceptance)

Description: Upon completion of Implementation activities CONTRACTOR will turn over COTS system in production-ready state:

- STATE users are able to use COTS in production environment

Completion Date: To be defined in Project Plan

Acceptance: Upon completion of the Production Ready status as reported to STATE by CONTRACTOR's project manager, STATE will have 60 (sixty) calendar days in which to accept or reject it in writing. If STATE rejects it, STATE will specify in writing its grounds for rejection and CONTRACTOR shall use its best efforts to revise the COTS Production Ready state to make it acceptable to STATE within the following 20 (twenty) working days. If STATE rejects the COTS Production Ready status a second time, STATE will have the option of repeating the procedure as described in this acceptance statement above or terminating this agreement upon written notice to CONTRACTOR.

Sample Payments Schedule:

Deliverables	Payment	Retainage (10%)
Project Management Plan	\$10,000	\$1,000
Software Delivery & Installation	\$50,000	\$5,000
Gap Analysis	\$20,000	\$2,000
Custom Development	\$50,000	\$5,000
Implementation	\$40,000	\$4,000
Production Ready (Final Acceptance)	\$17,000	(\$17,000)
Total Payments	\$170,000	

ATTACHMENT 3 COST PROPOSAL FORMAT

Costs listed below must be inclusive of all costs necessary to implement the proposed solution. The State requests that the Offerors price the required sites and optional sites separately. The State would prefer a postalized rate for the required sites.

Listed below are the required locations:

Segment Number	Required Locations	Address	City	Number of Pairs	Monthly Cost	Any Additional Cost
1	Northwest Human Service Center	316 2nd Ave W	Williston	1		
2	Williams County Courthouse, & DC	205 E Broadway	Williston	1		
3	Job Service	422 1st Ave W	Williston	1		
4	Williston District DOT	605 Dakota Parkway W	Williston	1		
5	Williston High School	502 W Highland Dr	Williston	1		
6	Williston State College-Admin Bldg	1410 University Ave	Williston	1		

Listed below are the optional locations:

Segment Number	Site/Destination	Address	City	Number of Pairs	Monthly Cost	Any Additional Cost
7	Oil and Gas Division - Williston	11 1/2 E Broadway	Williston	1		
8	Williston Research Extension Center	14120 Hwy 2	Williston	1		