

STATE OF NORTH CAROLINA

AGREEMENT

UNION COUNTY

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, by and between UNION COUNTY, a political subdivision of the State of North Carolina, hereinafter referred to as "Union," and DLT SOLUTIONS, LLC, a foreign corporation authorized to do business in North Carolina with a registered address of 160 Mine Lake Ct Ste 200, Raleigh, NC 27615, hereinafter referred to as "DLT."

W I T N E S S E T H

WHEREAS, Union desires to purchase cybersecurity identity threat protection services;

WHEREAS, pursuant to G.S. § 160A-279(a), Union is authorized to make purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract; and

WHEREAS, NC Statewide IT Contract Number 208M – Endpoint Protection designates DLT as an authorized reseller with the authority to license CrowdStrike products.

WHEREAS, DLT is willing to extend to Union the same or more favorable prices, terms, and conditions as established in Statewide IT Contract Number 208M.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto do each contract and agree with the other as follows:

1. Union agrees to purchase services as identified on the attached price quotation dated March 12, 2025, which is attached hereto and incorporated herein by reference.
2. This Agreement shall be effective on July 1, 2025 and have a term of three years.
3. The North Carolina General Terms & Conditions are attached hereto are incorporated herein by reference.
4. DLT shall ensure this Agreement is covered by a NETWORK SECURITY & PRIVACY LIABILITY (CYBER) insurance policy with limits of \$1,000,000 Claims Made with insurers authorized to do business in North Carolina and rated A-VII or better by A.M. Best. DLT shall provide evidence of Network Security & Privacy Liability Insurance for a period of two (2) years following termination of the Agreement.
5. E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. Contractor shall ensure that DLT and any subcontractor performing work under this Agreement: (i) uses E-Verify if required to do so by North Carolina law;

and (ii) otherwise complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. A breach of this provision by DLT will be considered a breach of this Agreement, which entitles Union to terminate this Agreement, without penalty, upon notice to DLT.

6. Each signatory below warrants that it has the corporate or other organizational power and authority to execute, deliver and perform this Agreement. Each signatory further warrants that the execution, delivery and performance by it of this Agreement has been duly authorized and approved by all requisite action of the party's management and appropriate governing body.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have hereunto set their hands and seals and have caused this Agreement to be duly executed, this the day and year first above written.

UNION COUNTY

By: \_\_\_\_\_(SEAL)  
Brian W. Matthews, County Manager

DLT SOLUTIONS, LLC

By: \_\_\_\_\_(SEAL)

Approved as to Legal Form CJB

This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Deputy Finance Officer



# Price Quotation

Quote: 5271820  
Reference: 1921207  
Date: 03/12/2025  
Expires: 07/09/2025

To: Heath Stewart  
Union County (NC)  
500 N. Main Street  
Monroe, NC 28112

From: Charles Barnholt  
DLT Solutions, LLC  
2411 Dulles Corner Park  
Suite 800  
Herndon, VA 20171

Phone: (704) 283-3568  
Fax:  
Email: [heath.stewart@unioncountync.gov](mailto:heath.stewart@unioncountync.gov)

Phone: (571) 346-1850  
Fax: (571) 346-1850  
Email: [charles.barnholt@dlt.com](mailto:charles.barnholt@dlt.com)

#	MFG Part No.	Contract [ Contract Price ]	Qty	Unit Price	Ext. Price
1	CS.ITP.SOLN	S-NC-CS [ \$155.55 ]	2500	\$32.07	\$80,175.00
	Identity Threat Protection (Accounts) 36 M Term				
2	CS.EPPENT.SOLN	S-NC-CS [ \$88.08 ]	1500	\$45.22	\$67,830.00
	Falcon Endpoint Protection Enterprise Flexible Bundle				
3	CS.TG.STD	S-NC-CS [ \$20.16 ]	1500	\$6.95	\$10,425.00
	Threat Graph Standard				
4	CS.PREVENT.SOLN	S-NC-CS [ \$67.74 ]	1500	\$0.00	\$0.00
	Prevent				
5	CS.INSIGHT.SOLN	S-NC-CS [ \$67.74 ]	1500	\$0.00	\$0.00
	Insight				
6	RR.HOS.ENT.EXPS	S-NC-CS [ \$300,000.00 ]	1	\$16,309.08	\$16,309.08
	Express Support				
	NOTE				
	DLT shall invoice the Reseller for the total amount listed above as follows: Invoiced on June-16-2025: \$58,246.36 Invoiced on June-16-2026: \$58,246.36 Invoiced on June-16-2027: \$58,246.36 This Order is non-cancellable and extended payment terms do not provide for cancellation or refund.				

Total **\$174,739.08**

This represents a savings of **\$879,715.92 [ 83.43% ]** off the Total Contract Price **\$1,054,455.00**.



DLT Solutions

# Price Quotation

Quote: 5271820  
Reference: 1921207  
Date: 03/12/2025  
Expires: 07/09/2025

State of North Carolina Contract#: STC 208M  
Expires: 1/19/2026  
Federal Tax ID#: 54-1599882  
UEI - F1N2KDGBDTU8  
Payment Terms: Net 30  
FOB: Destination  
DLT accepts VISA/MC/AMEX

THIS QUOTE IS SUBJECT TO THE TERMS AND CONDITIONS OF CONTRACT NUMBER STC 208M AND THE TERMS AND CONDITIONS AT <http://www.dlt.com/products/client-commercial-licenses> THAT APPLY TO THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTATION. CUSTOMER IS DIRECTED TO INCORPORATE (BY REFERENCE) THIS QUOTE IN ANY RESULTING TASK/DELIVERY ORDER OR AWARD. THE TERMS OF THE AFOREMENTIONED CONTRACT ARE THE ONLY CONTROLLING TERMS AND ANY TERMS OR CONDITIONS CONTAINED IN AN ORDER, AWARD OR OTHER INSTRUMENT OF BUYER, WHICH ARE IN ADDITION TO OR INCONSISTENT WITH ANY OF THE TERMS OR CONDITIONS CONTAINED IN THOSE REFERENCED HEREIN, SHALL NOT BE BINDING ON DLT OR ITS MANUFACTURERS AND SHALL NOT APPLY UNLESS SPECIFICALLY AGREED TO IN WRITING BY DLT.

CPARs requests should be sent to the attention of Steve Wells at [cpars@dlt.com](mailto:cpars@dlt.com)

**PLEASE REMIT  
PAYMENT TO:**

ACH: DLT Solutions, LLC  
Bank of America  
ABA # 111000012  
Acct # 4451063799

**-OR-**

Mail: DLT Solutions, LLC  
P.O. Box 743359  
Atlanta, GA 30374-3359

Customer orders are subject to all applicable taxes and regulatory fees.

Documentation to be submitted to validate Invoice for payment:

- Authorized Services shall be invoiced with a corresponding time report for the period of performance identifying names, days, and hours worked.
- Authorized reimbursable expenses shall be invoiced with a detailed expense report, documented by copies of supporting receipts.
- Authorized Education or Training shall be invoiced with a Report identifying date and name of class completed, and where applicable the name of attendees.



**STATE OF NORTH CAROLINA  
DEPARTMENT OF INFORMATION TECHNOLOGY (DIT)  
STATEWIDE IT PROCUREMENT OFFICE**

NC Statewide IT Contract Number **208M** – Endpoint Protection

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Bid / Solicitation Number DIT- 400438

Contract Award Type Mandatory for Executive Branch State Agencies

Effective Dates **September 30, 2025**  
**No renewal options**

Administrator Allison Howard, IT Sourcing Specialist  
NC DIT– Statewide IT Division – Strategic Sourcing  
Allison.howard@nc.gov

### **Scope**

This contract is for Native Cloud Endpoint Protection Services and Products which includes Anti-Virus/ Malware/Adware Components, Encryption Components, or a Full Endpoint Product Suite (both AV/ Malware/Adware and Encryption) available from the following licensors using their designated Resellers:

**Broadcom CA, Inc.**

**Sophos**

**Trellix (Formerly McAfee)**

**CrowdStrike**

**Cisco**

This is a **MANDATORY Statewide Term Contract** for use by **State Governmental Agencies** and a **Convenience** Contract, not mandatory, for use by **non-State Agencies**.

Non-state Agencies include the **North Carolina University System** and its member campuses, **Instructional components of the Department of Public Instruction**, **Instructional components of the Department of Community Colleges**, as well as **Local** (Municipal and County) **Governments**.

State Agencies with the need to acquire subscription licenses not covered by this contract are required to follow the established purchasing procedures of the Department of Information Technology (DIT).

### **Ordering and Vendor Contact Information**

<b>Awarded Reseller</b>	<b>Licensor</b>	<b>Reseller Contact Information</b>
<b>Carahsoft</b>	<b>Broadcom CA, Inc. (Symantec Products)</b>  <b>Trellix (Formerly McAfee)</b>	<b>Patrick Donoughe</b> Contracts Coordinator 11493 Sunset Hills Road, Ste 100 Reston, VA 20190  Phone: (703) 581-6728 Email: <a href="mailto:patrick.donoughe@carahsoft.com">patrick.donoughe@carahsoft.com</a>
<b>DLT</b>	<b>CrowdStrike</b>	<b>Chris Kline</b> Program Manager I 2411 Dulles Corner Park, Suite 800 Herndon, VA 20171  Phone: (703) 773-9233 Mobile: (571) 296-5226 Toll-Free: 800-262-4358 Email: <a href="mailto:chris.kline@dlt.com">chris.kline@dlt.com</a>
<b>Presidio</b>	<b>Cisco</b>	<b>Nathan Zinteck</b> Account Manager 5444 Wade Park Boulevard Suite 150, Raleigh, NC 27607  Phone: (919) 323-8079 Email: <a href="mailto:nzinteck@presidio.com">nzinteck@presidio.com</a>
<b>SHI</b>	<b>Sophos</b>  <b>Trellix (Formerly McAfee)</b>  <b>CrowdStrike</b>	<b>Todd Enter</b> Pubsec Account Executive 290 Davidson Ave. Somerset, NJ 08873  Phone: (336) 254-3197 Email: <a href="mailto:todd.enter@shi.com">todd.enter@shi.com</a>

### **Transportation Charges (When Applicable)**

FOB – Destination

Freight, handling and distribution charges shall be included in the total price of each item listed.

### **Delivery**

Most deliverables will be downloaded via the Internet or license key activated after Vendor's receipt of the Purchase Order.

### **Warranty**

Licensors' warranties will apply pursuant to each Licensors' negotiated Master License Agreements.

## **Taxes**

Prices do not include North Carolina sales or use taxes.

## **Value-Added Services**

Additional value-added services may be provided under this contract including implementation, training, support, and consulting services.

Please reference the price list for professional services rates

Professional Services rates include travel expenses.

The terms and conditions of State Term Contract 208M shall govern all Value-Added Services.

## **Return of Merchandise (When Applicable)**

Please see the Delivery Section above.

## **HISTORY**

**10-16-2024** Exercised the last renewal option and co-termed the contracts to end on September 30, 2025.

**1-16-2024** Updated CrowdStrike reseller contract dates.

**11-16-2023** Updated vendor list to reflect that CDWG did not renew to resell Trend Micro; that Presidio chose not to renew to sell McAfee and SentinelOne; and that Cylance did not respond to renew their Negotiated License Addendum and therefore cannot be resold by SHI. Updated Vendor contact information for Carahsoft and SHI.



## NORTH CAROLINA GENERAL TERMS & CONDITIONS

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### 1. PERFORMANCE:

- a) It is anticipated that the tasks and duties undertaken by the Vendor under the contract which results from the State solicitation in this matter (Contract) shall include Services, and/or the manufacturing, furnishing, or development of goods and other tangible features or components, as deliverables.
- b) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any deliverables not subject to an agreed Vendor license and provided by Vendor in performance of this Contract shall be and remain property of the State. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in this Contract. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this Contract. Vendor agrees to timely remedy defective performance or any nonconforming deliverables on its own or upon such notice provided by the State.
- c) Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.
- d) Vendor or its suppliers, as specified and agreed in the Contract, shall provide support assistance to the State related to all Services performed or other deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed at a minimum in accordance with generally accepted and applicable industry standards.
- e) The State may document and take into account in awarding or renewing future procurement contracts the general reputation, performance and performance capabilities of the Vendor under this Contract as provided by G.S. 143-52 and 143-135.9 (a) and (b) (Best Value).

### 2. DEFAULT AND TERMINATION:

- a) In the event of default by the Vendor, the State may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. *See, G.S. 25-2-712.* In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and if permitted by applicable law, debar the Vendor from doing future business with the State. 01 NCAC 05B.1520.
- b) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these North Carolina General Terms and Conditions, the State shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables that are



prepared by the Vendor under the Contract shall, at the option of the State, become the property of the State (and under any applicable Vendor license

to the extent necessary for the State to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable deliverable completed (or partially completed at the State's option) as to which such option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State, if insecure as to receiving proper performance or provision of goods deliverables, or if documented Vendor Services performance issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the State as provided by applicable law. G.S. 143-52(a); 01 NCAC 05B.1521; G.S. 25-2-609.

- c) If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this Contract shall, at the option of the State, become its property, and under any applicable Vendor license to the extent necessary for the State to use such property. If the Contract is terminated by the State for convenience, the State shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

### **3. INTERPRETATION, CONFLICT OF TERMS:**

- a) The definitions in the Instructions to Vendors in the relevant solicitation for this Contract, and in 01 NCAC 05A.0112 are specifically incorporated herein.
- b) If federal funds are involved in the transactions under this Contract, the Vendor shall comply with all applicable state and federal requirements and laws, except where State requirements are more restrictive. See the additional federal requirements included in the "Federal Funds Provisions" section below.
- c) "Purchasing Agency" herein is as defined in 01 NCAC 05A.0112, except that if this Contract has been entered into by the NC Department of Administration, Division of Purchase and Contract (P&C) as indicated in the Contract (e.g., a State Term Contract), then P&C will then be a Purchasing Agency for the purposes herein and in the Federal Funds Provisions, below.
- d) Contracts made in contravention of General Statutes, Chapter 143, Article 3 and the Rules in 05 NCAC Chapter 5, are void. G.S. 143-58.
- e) In cases of conflict between specific provisions in this Contract and any other referenced documents, the Order of Precedence shall be (high to low) (1) any special terms and conditions specific to this Contract, including any negotiated terms; (2) requirements, specifications and administrative terms; (3) these NORTH CAROLINA GENERAL TERMS AND CONDITIONS, including the Federal Funds Provisions; (4) Definitions and other provisions in INSTRUCTIONS TO VENDORS in this solicitation, which is specifically incorporated in this Contract; (5) PRICING, and (6) Vendor's Bid, to the extent specifically and mutually incorporated into this Contract.
- f) In the event of conflict of terms between applicable provisions of the Federal Funds Provisions and the other provisions of these North Carolina General Contract Terms and Conditions, the more restrictive provision will govern.

- 4. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

5. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds appropriated or allocated to the agency for the purpose set forth in the Contract.
6. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
  - b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
  - c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

7. **SITUS AND GOVERNING LAWS:**

- a) This Contract is made under and shall be governed by and construed in accordance with the laws of the State of North Carolina, including, without limitation, the relevant provisions of G.S. Chapter 143, Article 3, and the Rules in 01 NCAC Chapter 05, and any applicable successor provisions, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract, tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined. G.S. 22B-3.
- b) Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

8. **NON-DISCRIMINATION COMPLIANCE:**

*Wholly State Funded Contracts.*

- a) The Vendor will take affirmative action in complying with all State requirements and laws concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability or rights, such as preserved by Governor Roy Cooper Order E.O. 24 or 25, and will take necessary action to ensure that its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.
- b) Federal Law, such as the following, applies as provided for therein: Titles VI and VII of the Civil Rights Act of 1964 (PL 88-352), and the regulations issued pursuant thereto (prohibiting discrimination on the basis race, color, national origin and ensuring that individuals are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age); Title IX of the Education Amendments of 1972 (codified as amended at 20 U.S.C. § 1681 et seq.) (prohibiting discrimination on the basis of sex); Titles I, II, III, IV, and V of the Americans with Disability Act of 1990 (prohibiting discrimination on the basis of disability); Section 504 of the Rehabilitation Act of 1973 (codified as amended at 29 U.S.C. § 794) (prohibiting discrimination on the basis of handicap); the Age Discrimination Act of 1975 (codified as amended at 42 U.S.C. § 6101 et seq.) (prohibiting age discrimination); Executive Order 11063 as amended by Executive Order 2259; and Section 109 of the Housing and Community Development Act of 1974, as amended.

*Contracts Partially or Wholly Federally Funded.*

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

- c) The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- d) The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
- e) The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information.
- f) The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- g) In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts.
- h) The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
- i) The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
- j) The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering

agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

k) proceedings.

9. **PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Procuring Agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card. If the Vendor accepts Visa, MasterCard, etc., from other customers, it shall accept procurement card payment by the State under the terms provided for the procurement card. 01 NCAC 05B.1523. If payment is made by procurement card, then payment for amounts then due may be processed immediately by the Vendor.

The State does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

10. **CONDITION AND PACKAGING:** Unless otherwise expressly provided by special terms and conditions or specifications in the Contract or by express, specific federal law or rule, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose, is newly manufactured, and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

11. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

a) Vendor warrants to the best of its knowledge that:

1. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
2. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor for such deliverables and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or other deliverables.

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

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

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

d) Vendor will not be required to defend or indemnify the State to the extent any claim by a third party against the State for infringement or misappropriation results solely from the State's material alteration of any Vendor-branded deliverables or Services, or from the continued use of the Services or other deliverables after receiving written notice from the Vendor of the claimed infringement.

**12. ADVERTISING:** Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the State is willing to be included on a listing of its existing customers.

**13. ACCESS TO PERSONS AND RECORDS:**

(a) During, and after the term hereof during the relevant period required for retention of records by State law (G.S. 121-5, 132-1 *et seq.*, typically five years), the State Auditor and any Purchasing Agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9). However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of such retention of records period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the record retentions period, whichever is later.

(b) The following entities may audit the records of this contract during and after the term of the contract to verify accounts and data affecting fees or performance:

1. The State Auditor.
2. The internal auditors of the affected department, agency or institution.
3. The Joint Legislative Commission on Governmental Operations and legislative employees whose primary responsibility is to provide professional or administrative services to the Commission.

(c) The Joint Legislative Commission on Governmental Operations has the authority to:

1. Study the efficiency, economy and effectiveness of any non-State entity receiving public funds.
2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity receiving public funds.
3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, public funds, as it relates to the officer's or employee's responsibilities regarding the receipt of public funds.
4. Receive reports as required by law or as requested by the Commission.
5. Access and review
  - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
  - b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the

contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.

(d) The Joint Legislative Commission on Governmental Operations has the power to:

1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, public funds, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with public funds.
2. Compel attendance of any officer or employee of any non-State entity receiving public funds, provided the officer or employee is responsible for implementing a program or providing a service paid for with public funds.

(e) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving public funds provided (i) the building or facility is used to implement a program or provide a service paid for with public funds and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with public funds.

(f) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.

(g) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.

(h) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

#### **14. ASSIGNMENT OR DELEGATION OF DUTIES:**

- a) As a convenience to the Vendor, the State may include any person or entity designated by the Vendor in writing as a joint payee on the Vendor's payment check. In no event shall such approval and action obligate the State to anyone other than the Vendor.
- b) If Vendor requests any assignment, or delegation of duties, the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon written request, the State may, in its unfettered discretion, approve an assignment or delegation to another responsible entity acceptable to the State, such as the surviving entity of a merger, acquisition or a corporate reorganization if made as part of the transfer of all or substantially all of the Vendor's assets. 01 NCAC 05B.1507. Any purported assignment or delegation made in violation of this provision shall be void and a material breach of the Contract. G.S. 143-58.

**15. INSURANCE:** This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors:

1. Potential for damage to State property or property of a third party,
2. Potential for bodily injury to State employees or third parties,
3. Whether Vendor will transport State property, clients, or employees,
4. Use of a vehicle to accomplish the work or to travel to or from State locations,
5. Anticipated physical contacts of the Vendor with the State,
6. Anticipated number and activity of Vendor personnel within the State, and
7. Any other unique considerations that could result in harm, bodily injury, or property damage.

The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.

- a) **REQUIREMENTS-** Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.
- b) **COVERAGE-** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:
1. **For Small Purchases** as defined under North Carolina Administrative Code 01 NCAC 05A.0112 (35) and 05B.0301 (1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial General Liability coverage consistent with the assessed risks involved in the procurement.
  2. **For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:**
    - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
    - ii. **Commercial General Liability**- General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
    - iii. **Automobile**- Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.
  3. **For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:**
    - i. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
    - ii. **Commercial General Liability**- General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
    - iii. **Automobile**- Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The

minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

**16. GENERAL INDEMNITY:**

- a) The Vendor shall indemnify, defend and hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims.
- b) The Vendor, at its own expense shall defend any action brought against the State, under this section. The Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- c) The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State does not participate in indemnification due to Constitutional restrictions, or arbitration, which effectively and unacceptably waives jury trial. *See*, G.S. 22B-3,-10.

**17. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)**

**GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:**

- a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. Vendor shall be responsible for all activity and all charges by its agents or employees. Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

**E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS PURCHASES**



- d) **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) FOR THE AMOUNT OF ANY GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT**

**SERVICE).** G.S. 66-58.12; See, *NC E-Procurement Terms of Use*. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Contract.

- e) Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee, or it shall be considered a material breach of Contract.

Pursuant to G.S. 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to G.S. 105-241.21 as of the date the balances are past due, and, 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

18. **SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein.
19. **CONFIDENTIALITY:** Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the State Public Records Act (SPRA), beginning at G.S. 132.1. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the SPRA will be honored. Vendors are notified that if the confidentiality of material is challenged by other parties, the Vendor has the responsibility of defending the assertion of confidentiality. G.S. 143-52(a).
20. **CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement.

The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B1379. For further information, see, G.S. 75-60 *et seq.* **Notice** is given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. See, e.g., G.S. 143B-1376.

21. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State Purchasing Agency. Vendor shall give notice to the Purchasing Agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States. *See, G.S. 14359.4.*

- 22. ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from a relevant solicitation represents the entire agreement between the parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
- 24. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the Vendor.
- 25. NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 26. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including, without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, other catastrophic epidemic or pandemic, natural event or Act of God.
- 27. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
- 28. FEDERAL FUNDS PROVISIONS:**

*Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract.* Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

**Any links to websites not maintained by the State are provided as a courtesy. The State does not warrant or guarantee the accuracy of the hyperlink or the information contained therein.**

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.

- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
- c) **Remedies and Termination.** For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

1. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).
3. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).
4. *SubContracts.* The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).

e) **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

Clean Air Act

1. The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

## Federal Water Pollution Control Act

1. The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
3. The Vendor agrees that these requirements will be included in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

### **f) Debarment and Suspension.**

1. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

### **g) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (as Amended).**

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonFederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See the latest version of "Certification for Contracts, Grants, Loans, and Cooperative Agreements" found at <https://ncadmin.nc.gov/documents/vendor-forms>.

### **h) Procurement of Recovered Materials.**

1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA designated items unless the product cannot be acquired:
  - Competitively within a timeframe providing for compliance with the Contract performance schedule;
  - Meeting Contract performance requirements; or

- At a reasonable price.
2. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site: <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
  3. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."
- i) **Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled "**ACCESS TO PERSONS AND RECORDS**" included in this Contract, the following access to records requirements apply to this Contract:
1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
  4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.
- j) **Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled "**AMENDMENTS**," except as approval and signature by any federal official may also be required.
- k) **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.
- l) **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).
- m) **Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.
- n) **No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.
- o) **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.
- p) **Federal Seals, Logos, and Flags.** In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled "**ADVERTISING**," the Vendor shall not use the seal(s), logos, crests, or

reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.

- q) **System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/SAM/> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

**CrowdStrike Terms and Conditions  
GOVERNMENT CUSTOMER**

These Terms and Conditions by and between CrowdStrike Services, Inc., and CrowdStrike, Inc., each a Delaware corporation (collectively, "CrowdStrike") with their principal place of business at 150 Mathilda Place, 3rd Floor, Sunnyvale, CA 94086 and the customer placing the Order under the prime Federal contract referenced in the Order ("Customer"), with a place of business as specified in such Order under the referenced prime contract is entered into as of the effective date of such Order (the "Effective Date").

**These Terms and Conditions cover all CrowdStrike Products and Services (defined in Section 1); however, only the provisions for Products and Services that you use or Order apply to the parties.**

**1. DEFINITIONS.**

1.1 "Affiliate" shall mean any entity that a party directly or indirectly controls (e.g., subsidiary) or is controlled by (e.g., parent), or with which it is under common control (e.g., sibling).

1.2 "API" shall mean an application programming interface.

1.3 "Authorized Subcontractor" shall mean an individual or entity contractor that performs services for you and is subject to an obligation of confidentiality that includes confidential information obtained from another party (e.g., CrowdStrike).

1.4 "CrowdStrike Competitor" shall mean a person or entity in the business of Internet security products or services substantially similar to CrowdStrike's products or services.

1.5 "CrowdStrike Tools" shall mean the CrowdStrike proprietary software-as-a-service, software and/or hardware tools specified in a Statement of Work and used by CrowdStrike when conducting Professional Services. The Falcon Application may be used as a CrowdStrike Tool.

1.6 "Documentation" shall mean the end-user technical documentation that CrowdStrike supplies with the Products and Services. Advertising, proposals and marketing materials are not Documentation.

1.7 "Error" shall mean a reproducible failure of the Product(s) to perform in substantial conformity with the applicable Product Documentation.

1.8 "Execution Profile/Metric Data" shall mean the anonymous and/or aggregated tasks, commands, resources, and associated metadata derived from the Products.

1.9 "Falcon DNS" shall mean the CrowdStrike cloud-based DNS resolution product.

1.10 "Falcon Platform" shall mean the CrowdStrike cloud software referred to as the Falcon Platform and which may be more specifically described in an Order, including any updates that may be made available from time to time by CrowdStrike.

1.11 "Falcon Application" shall mean the CrowdStrike device application(s) and API's for the Falcon Platform specified in an Order (e.g., Falcon Host), including any updates that may be made available from time to time by CrowdStrike.

1.12 "Falcon Intelligence" shall mean the Falcon Intelligence product described in your Order and may include one or more of the following: (i) the CrowdStrike web portal that makes available strategic and technical reports ("Reports"), (ii) intelligence signatures/indicator data (which may be provided via an API), (iii) threat actor profiles (via an API or portal), and (iv) malware identification upon your submission, and any updates to the foregoing that may be made available from time to time by CrowdStrike.

1.14 "Internal Use" shall mean uses intended only to serve your information or operational needs (as distinguished from the needs of your business or government partners, suppliers, customers and affiliates (unless Affiliates are otherwise expressly allowed in these Terms and Conditions or an Order)), not to be used directly or indirectly to develop a substitute or competing product and, unless expressly stated otherwise in this Agreement, only to be seen by your officers and employees obligated to treat the Products as CrowdStrike confidential.

1.15 "Intellectual Property Rights" shall mean copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, contractual rights of non-disclosure or any other intellectual property or proprietary rights, however arising, throughout the world.

1.16 “Limited External Audience Use” shall mean: (i) sharing with third parties who are not CrowdStrike Competitors and who are subject to an express obligation of confidentiality which would include or is regarding the shared information, and (ii) requires that the information not be accessible by, or distributed to, the general public.

1.17 “Order” shall mean: any and all delivery, task, purchase or other orders placed by a prime contractor for the Products with a reference to the CrowdStrike quote/order number and date..

1.18 “Personal Data” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity.

1.19 “Products” shall mean one or more of: the Falcon Applications, Falcon Intelligence, Falcon DNS, and/or the Falcon Platform as specified on your Order and to the extent expressly stated in a Statement of Work, the CrowdStrike Tools, and any applicable Documentation and all Intellectual Property Rights therein.

1.20 “Product Related Services” shall mean: (i) services provided through the CrowdStrike Operations Center, and/or (ii) technical support for the Products, either as listed or described in an Order and that typically accompany a Product.

1.21 “Professional Services” means consulting services as more fully described in a Statement of Work, for example, incident response, investigation and forensic services related to cyber security adversaries, tabletop exercises and next generation penetration tests related to cyber security.

1.22 “Reseller” shall mean a CrowdStrike designated reseller.

1.23 “Services” shall mean Professional Services and/or Product Related Services.

1.24 “Statement of Work” or “SOW” shall mean a mutually agreed upon and fully executed document describing the Professional Services, deliverables, fees, and expenses related thereto.

1.25 “Threat Actor Data” shall mean the malicious code, URL’s, malware, commands, techniques, or other information of unauthorized third parties either provided by you to CrowdStrike or collected or discovered during the course of providing the Products and Services and does not identify you.

1.26 “You” or “Your” (“you” or “your”) shall mean the Customer identified above.

## 2. CONTROLLING AGREEMENT.

2.1 This Agreement. These Terms and Conditions and the Order(s) (if any) are the entire agreement (this “Agreement”) between you and CrowdStrike regarding the Products and Services. This Agreement supersedes all agreements, understandings, and communications, whether written or oral between you and CrowdStrike unless an officer of CrowdStrike executes such agreement. In such event, that agreement shall only supersede this Agreement to the extent such agreement conflicts with this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms and Conditions. Nothing in this Agreement modifies any terms and conditions between you and any prime contractor under which the Products and Services were ordered.

2.2 Orders and Taxes. Unless you are participating in a free beta test, evaluation, or demonstration, you or a Reseller must provide CrowdStrike with an Order as a condition to receiving the Products and Services that you ordered. The term of your Product license or Services is stated in the Order or as otherwise mutually agreed. Except as expressly provided in this Agreement or in the Reseller’s prime contract, all Orders are non-cancellable. In the event of a permitted termination or cancellation all fees and other amounts you paid to CrowdStrike are non-refundable by CrowdStrike.

2.3 Your Forms. As between you and CrowdStrike, any terms and conditions in your purchase order, request for proposal or quotation, or a response to those documents are superseded by these Terms and Conditions. If a Reseller accepts your purchase order, the Reseller will be responsible for compliance with the terms of such purchase order. Except as set forth in a separate agreement with the Reseller, CrowdStrike is not accepting any terms and conditions from the prime contract or purchase order issued thereunder. In the event of any conflict between these Terms and Conditions and your purchase order, these Terms and Conditions shall prevail with respect to you and CrowdStrike. Nothing in this Agreement modifies your prime contract with Reseller.



2.4 Reseller Forms. A Reseller may place an Order with CrowdStrike and resell the Products or Services to you. Any Order from a Reseller is subject to these Terms and Conditions and they are passed on to you. CrowdStrike is not obligated under any Reseller's agreement with you unless an officer of CrowdStrike executes the agreement.

2.5 Third Party Agreements. Certain third party services, software or hardware (for example, Internet service and computers) will be necessary or desirable to access and utilize the Products and Services from your chosen location. You are responsible for obtaining and maintaining these services, software and hardware and abiding by the third party agreements. CrowdStrike shall not be responsible or liable in the event services, software or hardware provided by third parties limits or prohibits access or utilization of the Products or Services.

### 3. LICENSE GRANT.

3.1 Limited License. This Section 3.1 and each of its subsections only apply to the extent you are using the specific Product identified below. The Products are licensed, not sold and subject to this Agreement. Subject to the terms of this Agreement, CrowdStrike grants you a non-exclusive, non-transferable (except as provided in the Section entitled Assignment), non-sublicensable license to use the Products as set forth below:

3.1.1 Falcon Platform and Applications. During evaluation or after purchase, you may use the Falcon Platform and Falcon Applications for Internal Use for the mutually agreed upon period. You may simultaneously install and run multiple copies of the Falcon Applications up to the number of licensed devices: (i) approved by CrowdStrike during your evaluation, or (ii) after purchase, indicated in your Order. After purchase, your Authorized Subcontractors may use the Falcon Platform and Falcon Applications on your devices solely for your benefit and subject to these Terms and Conditions.

3.1.2 Falcon DNS. During evaluation or after purchase, you may use Falcon DNS for Internal Use up to the number of serviced devices for the mutually agreed upon period: (i) approved by CrowdStrike during your evaluation, or (ii) after purchase, indicated in your Order. Due to the hierarchical nature of the global DNS system, CrowdStrike shall not be responsible for upstream server blocks or failures outside CrowdStrike's control or influence.

3.1.3 Falcon Intelligence. During an evaluation, for Internal Use only for the mutually agreed upon period. After purchase, you may for the period of time mutually agreed upon use: (i) Falcon Intelligence for your Internal Use, and (ii) Falcon Intelligence Reports for Limited External Audience Use subject to the next sentence. The use under (i) and (ii) includes the right to quote or paraphrase individual sentences or occasional paragraphs from Reports (not to exceed 1500 characters in total from any individual Report) in your works for Internal Use or for Limited External Audience Use so long as CrowdStrike is given prominent attribution ("Copyright CrowdStrike, Inc. \_\_\_\_\_ [year]") as the author of the content that is shared.

3.1.4 Falcon Malware Search. Malware Search is a large scale system capable of indexing large collections of malware samples with byte granularity in a file-type agnostic manner. Malware Search is limited to the number of searches per month indicated in your Order.

3.1.5 CrowdStrike Tools. During a Professional Services engagement, CrowdStrike may provide you with one or more of the CrowdStrike Tools as specified in the applicable Statement of Work. During such time, you and your Affiliates may use the CrowdStrike Tools for Internal Use to the extent provided for in the Statement of Work.

3.2 Restrictions. You may not access or use the Products: (i) if you are a CrowdStrike Competitor or on behalf of a CrowdStrike Competitor, or (ii) to perform any competitive analysis on the Products. You shall not (a) alter, publicly display, translate, create derivative works of or otherwise modify the Products; (b) sublicense, distribute or otherwise transfer the Products to any third party (except as expressly provided in the Section entitled Assignment and Limited License); (c) allow third parties to access or use the Products (except as expressly provided for in the Section entitled Limited License); (d) create public Internet "links" to the Products or "frame" or "mirror" any content on any other server or wireless or Internet-based device; (e) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code for the Products, circumvent their functions, or attempt to gain unauthorized access to the Products or their related systems or networks; or (f) use the Products to circumvent the security of another party's network/information. You agree to use the Products in accordance with applicable laws, rules and regulations (collectively, "Laws") and acknowledge that you are solely responsible for determining whether a particular use of the Products is compliant with such Laws.

3.3 Installation and User Accounts. You are responsible for installing the Falcon Applications unless you purchase installation services from CrowdStrike or a CrowdStrike approved third party pursuant to a separate agreement. You are responsible for all activity occurring under your user accounts for the Products; including the acts or omissions of your Authorized Subcontractors. You shall notify CrowdStrike if you learn of any unauthorized use of a user account or password.

3.4 Third Party Software. CrowdStrike uses certain third party software in its Products and Services, including what is commonly referred to as open source software..

#### 4. SERVICES.

4.1 Professional Services. Professional Services will commence on a mutually agreed upon date. Estimates provided for Professional Services performed on a time and material basis are estimates only and not a guaranteed time of completion. Professional Services performed on a fixed fee basis are limited to the scope of services stated in the Order. Professional Services hours prepaid under a retainer must be used within one year from the date of the Order. Additional blocks of hours purchased under the retainer will expire one year from the date of the corresponding Order for additional hours.

4.2 Product Related Services. Product Related Services as listed or described in an Order may accompany certain Products for the term agreed to in the Order. You understand and agree that Product Related Services provided on a 24x7 basis may be provided by CrowdStrike personnel located in a country other than your country of origin.

4.3 Work Product. The Services do not constitute works for hire. You agree that relative to you, CrowdStrike exclusively owns any and all object code, source code, flow charts, documentation, adversary information, report templates, know-how, techniques, CrowdStrike trademarks, ideas and any and all works and other materials developed hereunder excluding any of your Confidential Information (collectively, the "Work Product") and that title thereto shall remain with CrowdStrike. All Intellectual Property Rights in the Work Product are and shall remain entirely in CrowdStrike. Upon payment in full of the amounts due under the prime contract Order, you shall have a perpetual, non-transferable, non-exclusive license to use any deliverables specified as such in a Professional Services Order for its internal business purposes. Nothing herein shall transfer ownership of any of your Intellectual Property Rights to CrowdStrike.

4.4 Change Orders. Unless otherwise stated in the Order, any change to the scope of Services effecting price, payment terms or delivery dates will be agreed upon in writing by both parties in advance of the change, and documented as an amendment to the applicable Order. An extension or addition of hours to an Order with time and materials Services may be approved by an email from your technical contact.

#### 5. DATA COLLECTION AND USE.

5.1 Falcon Applications and Platform. The Falcon Platform uses a crowd-sourced environment, for the benefit of all customers, to protect customers against suspicious and potentially destructive activities. The Falcon Application(s) and the Falcon Platform detect and track hackers by collecting and analyzing data that includes, but is not limited to, systems files, log files; dll files; login data, binary files, tasks, resource information, commands, protocol identifiers, URLs, network data, and/or other executable code and metadata. Subject to the Section entitled Confidentiality, CrowdStrike uses the data to analyze, characterize, attribute, warn of, and/or respond to threats against you and other customers, and to analyze trends and to optimize the functionality of CrowdStrike's products and services. While using the Falcon Platform and Falcon Applications you may have the option to upload (by submission, configuration, and/or by CrowdStrike personnel retrieval) files and other information related to the files for security analysis and response or, when submitting crash reports, to make the product more reliable.

5.2 Falcon Intelligence. While using Falcon Intelligence you have the option to upload files and other information related to the files for security analysis and response or, when submitting crash reports, to make the product more reliable.

5.3 Personal Data. Personal Data may be collected and used during the provisioning and use of the Products and Services but solely in accordance with your instructions which includes carrying out and administering this Agreement and the parties' business relationship. CrowdStrike will maintain appropriate technical and organizational security measures commensurate with the sensitivity of the Personal Data processed by it on your behalf that are designed to protect such Personal Data against unauthorized or unlawful use. You confirm that you have obtained all necessary consents and authorizations for the lawful processing of Personal Data by CrowdStrike, before passing Personal Data to CrowdStrike. You authorize CrowdStrike to collect, use, store and transfer the Personal Data that you provide to CrowdStrike as contemplated in this Agreement. CrowdStrike complies with the EU-US Privacy Shield Framework as set forth by the US Department of Commerce regarding the collection, use, and retention of Personal Data from European Union member countries. In addition, CrowdStrike complies with the U.S. - Swiss Safe Harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of Personal Data from Switzerland.

5.4 Updates and Feedback. CrowdStrike provides automatic updates to its Products and Services, which remain subject to this Agreement. CrowdStrike may collect information regarding the use of its web portals to analyze trends, secure, operate and improve its products and services. Any feedback or suggestions that you provide to CrowdStrike regarding its products and services will be treated by CrowdStrike as non-proprietary to you, and may be used by CrowdStrike for any purpose

without acknowledgement or compensation; provided, you will not be identified publicly as the source of the feedback or suggestion.

## 6. CONFIDENTIALITY.

6.1 Definitions. In connection with this Agreement, each party ("Recipient") may be exposed to or acquire Confidential Information of the other party ("Discloser") or third parties to whom Discloser has a duty of confidentiality. "Confidential Information" means non-public information in any form and regardless of the method of acquisition that the Discloser designates as confidential to Recipient or should be reasonably known by the Recipient to be Confidential Information due to the nature of the information disclosed and/or the circumstances surrounding the disclosure. Confidential Information shall not include information that is: (i) in or becomes part of the public domain (other than by disclosure by Recipient in violation of this Agreement); (ii) previously known to Recipient without an obligation of confidentiality and demonstrable by the Recipient; (iii) independently developed by Recipient without use of Discloser's Confidential Information; (iv) rightfully obtained by Recipient from third parties without an obligation of confidentiality; (v) Threat Actor Data; and (vi) Execution Profile/Metric Data.

6.2 Restrictions on Use. Except as allowed in the Section entitled Exceptions, Recipient shall hold Discloser's Confidential Information in strict confidence and shall not disclose any such Confidential Information to any third party, other than to its employees, agents and contractors, including without limitation, counsel, accountants and advisors (collectively, "Representatives"), its Affiliates and their Representatives who need to know such information and who are bound by restrictions regarding disclosure and use of such information comparable to and no less restrictive than those set forth herein. Recipient shall not use Discloser's Confidential Information for any purpose other than: (i) to carry out the terms of this Agreement, (ii) as set forth in this Agreement, including but not limited to the Section entitled Data Collection and Use and (iii) to further the parties' business relationship. Recipient shall take the same degree of care that it uses to protect its own confidential information of a similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Discloser's Confidential Information. Recipient shall promptly notify Discloser of any breach of this provision that it becomes aware, and in any event, shall be responsible for any breach of this provision by any of its Affiliates, Representatives or Affiliates' Representatives.

6.3 Exceptions. Recipient may disclose Discloser's Confidential Information: (i) to the extent required by applicable law or regulation, or (ii) pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction, or (iii) in connection with any regulatory report, audit or inquiry, or (iv) where requested by a regulator with jurisdiction over Recipient. In the event of such a requirement or request, Recipient shall give the Discloser prompt written notice of such requirement or request prior to such disclosure and reasonable assistance (at Discloser's expense) in obtaining an order protecting the information from public disclosure. You understand and agree that CrowdStrike may make these Terms and Conditions publicly available without identifying any party who has agreed to them. Orders are the Confidential Information of both parties. Notwithstanding the foregoing exceptions for law, regulation and other regulatory requirements, the Confidential Information is exempt from release under the Freedom of Information Act, 5 USC §552(b)(4) and is protected under the Federal Trade Secrets Act, 18 USC §1905 and is not disclosable.

6.4 Return or Destruction. Upon Discloser's written request, Recipient shall use commercially reasonable efforts to either return or destroy the Confidential Information and any copies or extracts thereof. However, Recipient, its Affiliates and their Representatives may retain any Confidential Information that: (i) they are required to keep for compliance purposes under a document retention policy or as required by applicable law, professional standards, a court, or regulatory agency; or (b) have been created electronically pursuant to automatic or ordinary course archiving, back-up, security or disaster recovery systems or procedures; provided, however, that any such retained information shall remain subject to this Agreement. If Recipient elects to destroy Discloser's Confidential Information (subject to any retention rights provided in this Agreement), Discloser may request that Recipient provide it with written confirmation of destruction in compliance with this provision.

6.5 Equitable Relief. Each party acknowledges that a breach of this Section (Confidentiality) shall cause the other party irreparable injury and damage. Therefore, each party agrees that, unless prohibited by Federal procurement law, those breaches may be stopped through injunctive proceedings in addition to any other rights and remedies which may be available to the injured party at law or in equity without the posting of a bond.

## 7. YOUR REPRESENTATIONS.

7.1 Cooperation and Consent. You shall provide all requested information, access and full, good faith cooperation reasonably necessary to facilitate the Services or Product delivery. If you fail or delay in your performance of any of the foregoing, CrowdStrike shall be relieved of its obligations hereunder to the extent such obligations are dependent on such

performance. You represent and warrant that: (i) it owns/leases and controls, directly or indirectly, all of the premises, software and computer systems ("Facilities") that will be accessed to provide the Products and Services, or that all such Facilities are provided for your use by a third party, (ii) you have authorized CrowdStrike to access such Facilities to perform under this Agreement, (iii) you have full power and authority to engage and direct CrowdStrike to access such Facilities and to conduct the Services and Products, and (iv) except as has been obtained previously, no consent, approval, authorization or other notice to a third party (including but not limited to employees, contractors, sub-contractors, and other entities with access to your Facilities) are required in connection with CrowdStrike's performance under this Agreement.

## 8. LIMITED WARRANTY.

8.1 No Warranty for Free Usage. If the Products and Services are provided to you at no cost, the Products and Services are provided AS-IS WITHOUT WARRANTY OF ANY KIND. Any Products or Services provided in a beta form are experimental and shall not create any obligation for CrowdStrike to continue to develop, productize, support, repair, offer for sale or in any other way continue to provide or develop the Products or Services.

8.2 Warranty for Paid Users. If you have paid the applicable fee for the Products and/or Services, CrowdStrike warrants to you and for your sole benefit that, subject to the Section entitled Exclusions: (i) the Products when used as permitted under this Agreement and in accordance with the Documentation, will operate substantially without Error; (ii) that CrowdStrike has used industry standard techniques to prevent the Products at the time of delivery from injecting malicious software viruses into your devices where the Products are installed; and (iii) that it will perform the Services in a professional manner consistent with industry standards.

8.3 Exclusions. There is no warranty of any kind for the Malware Search Product. Your access to and use of the Malware Search Product is at your own risk. You understand and agree that the Malware Search Product is provided to you on an "AS IS" and "AS AVAILABLE" basis. In addition, CrowdStrike will have no obligation to correct, and CrowdStrike makes no warranty with respect to, Errors caused by: (a) improper installation of the Products; (b) changes that you have made to the Products; (c) use of the Products in a manner inconsistent with the Documentation; (d) any part or feature of the Products in a beta or test phase. If any part of the Products references websites, hypertext links, network addresses, or other third party locations, information, or activities, it is provided either for its intelligence value or as a convenience only. CrowdStrike has no responsibility for third party content and does not endorse, authorize, approve, certify, maintain, or control them and does not guarantee the accuracy, completeness, efficacy or timeliness of the information located within them. CrowdStrike does not endorse any third party services, products or content.

8.4 Remedy for Errors. For Errors reported to CrowdStrike during the period of your paid subscription, your exclusive remedy and CrowdStrike's sole liability for breach of this warranty is that CrowdStrike shall, at its own expense do at least one of the following: (a) use commercially reasonable efforts to provide a work-around or correct such Error; or (b) terminate your access to the Products and refund the pre-paid fee paid to CrowdStrike prorated for the remainder of your then current subscription term. CrowdStrike shall have no obligation regarding Errors reported, or returns made, after the subscription term.

8.5 Remedy for Deficient Services. If during the period the Services are being performed or within 30 days after the conclusion of the Services (the "Warranty Period"), you provide CrowdStrike written notice of a non-conformity with the warranty, CrowdStrike shall use commercially reasonable efforts to correct and re-perform the Services in a manner that does conform to the warranty. Notwithstanding any other exclusions or limitation of damages included in this Agreement, in the event of any claim by you regarding the Services, your exclusive remedy, and CrowdStrike's total liability, shall be the re-performance of the Services. If CrowdStrike fails to re-perform the Services as warranted, your exclusive remedy shall be the fees paid to CrowdStrike for the deficient Services.

8.6 No Guarantee. YOU ACKNOWLEDGE, UNDERSTAND AND AGREE THAT CROWDSTRIKE DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE OR DISCOVER ALL OF YOUR SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, AND WILL NOT HOLD CROWDSTRIKE RESPONSIBLE THEREFOR. YOU AGREE NOT TO REPRESENT TO ANY THIRD PARTY THAT CROWDSTRIKE HAS PROVIDED SUCH GUARANTEE OR WARRANTY.

8.7 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY IN THE SECTION ENTITLED LIMITED WARRANTY, CROWDSTRIKE AND ITS AFFILIATES DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RESULT, EFFORT, TITLE AND NON-INFRINGEMENT. THERE IS NO WARRANTY THAT THE PRODUCTS OR SERVICES WILL BE ERROR FREE, OR THAT THEY WILL OPERATE WITHOUT INTERRUPTION OR WILL FULFILL ANY OF YOUR PARTICULAR PURPOSES OR NEEDS.

**8.8 DISCLAIMER FOR MALWARE SEARCH.** CROWDSTRIKE SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL DUE TO YOUR ACCESS TO OR USE OF THE MALWARE SEARCH PRODUCT OR ANY THIRD PARTY CONTENT OR WEBSITES.

## **9. INFRINGEMENT INDEMNIFICATION.**

**9.1 CrowdStrike's Obligation.** Subject to the Sections entitled Conditions and Exclusions, if a third party makes a claim against you alleging that the Products or Services infringe any U.S. patent or copyright registered or issued as of the start date of your subscription, CrowdStrike shall: (a) pay all reasonable costs to defend you; and (b) pay any damages assessed against you in a final judgment by a court of competent jurisdiction or any settlement that CrowdStrike has agreed upon with such third party.

**9.2 Conditions.** CrowdStrike shall be obligated to pay these costs only if you: (a) notify CrowdStrike promptly in writing of any such claim; (b) give CrowdStrike full information and assistance in settling and/or defending the claim; and (c) except as prohibited by 28 USC §516, give CrowdStrike full authority and control of the defense and settlement of any such claim. You may also participate in the defense at your own expense.

**9.3 Exclusions.** CrowdStrike shall not be liable for: (a) any costs or expenses incurred by you without CrowdStrike's prior written authorization; (b) any use of the Products or Services not in accordance with this Agreement or the Documentation; (c) for any claim based on the use or a combination of the Products or Services with any other process, software, firmware, hardware or data not provided or approved by CrowdStrike; (d) use of any version of the Products or Services other than the most current version made available to you; or (e) any alterations or modification of the Products or Services by any person other than CrowdStrike or its authorized agents.

**9.4 Remedy.** In the event CrowdStrike is required, or in CrowdStrike's sole opinion is likely to be required, to indemnify you under the Section entitled CrowdStrike's Obligation, CrowdStrike shall do one of the following: (a) obtain the right for you to continue using the Products or Services; (b) replace or modify the Products or Services with a functional equivalent that is non-infringing; or (c) terminate the subscription to the Products or Services and this Agreement and refund any fee CrowdStrike received, prorated over the remainder of the then current subscription term.

**9.5 Exclusive Remedy.** THE PROVISIONS OF THIS SECTION (INFRINGEMENT INDEMNIFICATION) SET FORTH CROWDSTRIKE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. EXCEPT AS SET FORTH ABOVE, CROWDSTRIKE AND ITS SUPPLIERS DISCLAIM ALL IMPLIED OBLIGATIONS WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

**10. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: CROWDSTRIKE AND ITS AFFILIATES SHALL NOT BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR RELIANCE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS AND SERVICES, UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST DATA, BUSINESS INTERRUPTION, PERSONAL INJURY, FOR LOSS OF PRIVACY, NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER, EVEN IF CROWDSTRIKE KNOWS OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

CROWDSTRIKE'S AND ITS AFFILIATES' TOTAL CUMULATIVE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES YOU PAID FOR THE PRODUCT(S) OR SERVICE(S) AT ISSUE REGARDLESS OF THE CAUSE OR FORM OF ACTION. THIS SECTION SHALL APPLY EVEN IF YOUR EXCLUSIVE REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE. YOU ACKNOWLEDGE AND AGREE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT CROWDSTRIKE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

THE PRODUCTS AND SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENT REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE PRODUCTS OR SERVICES ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY OR PROPERTY DAMAGE.



**11. EXPORT RESTRICTIONS.** You acknowledge that the Products and Services are subject to export restrictions by the United States government and import restrictions by certain foreign governments. You shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Products or Services or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders (Denied Persons List) or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You warrant that you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products and Services are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

**12. U.S. GOVERNMENT END USERS.** The Products and Services are "commercial items" as that term is defined at FAR 2.101. If Customer is the US Federal Government (Government) Executive Agency (as defined in FAR 2.101), CrowdStrike provides the Products and Services, including any related technical data, and/or professional services in accordance with the following: If acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement. If acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative or Judicial Agency shall obtain only those rights in technical data and software customarily provided to the public as defined in this Agreement. If any Federal Executive, Legislative, or Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with CrowdStrike to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written and signed addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. If this Agreement fails to meet the Government's needs or is inconsistent in any way with Federal law, and the parties cannot reach a mutual agreement on terms for this Agreement, the Government agrees to terminate its use of the Products and Services and stop any use of, and return or destroy, the Products and Services and any other software or technical data delivered as part of the Products and Services to CrowdStrike. This U.S. Government Rights clause in this Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

### 13. TERMINATION.

**13.1 Termination.** If you are using the Products and Services pursuant to a beta test, evaluation or demonstration, the term of this Agreement and the duration of your use shall be in CrowdStrike's sole discretion with the understanding that you can stop using the Products and Services at any time. If you violate this Agreement or fail to pay CrowdStrike on time, in addition to all other rights and remedies that CrowdStrike may have at law or in equity, CrowdStrike may, without terminating this Agreement, and in its sole discretion and without further notice to you, suspend your access to the Products and Services. Either one of us may terminate this Agreement if the other party breaches a material obligation under this Agreement and such party does not dispute that the breach occurred and such breach continues uncured or, without a mutually agreed plan for a cure, for a period of thirty (30) days after written notice to the breaching party. Upon termination of this Agreement for any reason: (a) all license rights granted in this Agreement will immediately terminate and your access to the Products and Services will end, and (b) you must promptly stop all use of the Products and Services. Any disputed breach will be subject to the Contract Disputes Act.

**13.2 Survival.** The Sections entitled Controlling Agreement, Restrictions, Data Collection and Use, Confidentiality, Your Representations and Indemnification, Limited Warranty, Limitation of Liability, Termination, Survival, Assignment, Relationship, Governing Law and Venue, Equitable Relief and Severability shall survive the expiration or termination of this Agreement.

### 14. GENERAL.

**14.1 Assignment.** You may not assign or transfer this Agreement without the prior written consent of CrowdStrike. You shall provide written notice to CrowdStrike of any such assignment upon consummation of the assignment. Any attempted assignment or transfer in violation of the foregoing will be void. Subject to the requirements of FAR 42.12, at any time, CrowdStrike may assign its rights or delegate its obligations under this Agreement without notice or consent.

14.2 Relationship. The parties are independent contractors under this Agreement, and nothing contained herein shall be construed as creating any agency, partnership, employment, or other form of joint enterprise between the parties. Nothing contained in this Agreement will be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) create a principal-agent or employer-employee relationship, or (iii) give either party the authority to bind the other party to any contract with a third party.

14.3 Subcontractors. Unless otherwise specified in a Statement of Work, we may use third party subcontractors and/or our Affiliates in the performance of this Agreement. CrowdStrike shall be responsible for its subcontractors and Affiliates complying with this Agreement.

14.4 Governing Law and Venue. The laws of the United States govern this Agreement if between a U.S. Government agency and CrowdStrike. If there is no applicable U.S. Federal law, the laws of the State of California govern this Agreement. For all other Customers, the laws of the State of California govern this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. Except if the Customer is a U.S. Federal agency, any action or proceeding arising from or relating to this Agreement must be brought exclusively in a federal or state court seated in Orange County, California, and in no other venue. Except if the Customer is a U.S. Federal agency, each party irrevocably consents to the personal jurisdiction and venue in, and agrees to service of process issued by, any such court. Notwithstanding the foregoing, CrowdStrike reserves the right to file a suit or action in any court of competent jurisdiction as CrowdStrike deems necessary to protect its intellectual property and proprietary rights and to recoup any unpaid fees.

14.5 Equitable Relief. You agree that the Products and Services contains CrowdStrike's valuable trade secrets and proprietary information and that any actual or threatened disclosure or misappropriation of such information would constitute immediate, irreparable harm to CrowdStrike for which monetary damages would be an inadequate remedy. Therefore, in addition to any other rights and remedies that may be available to CrowdStrike at law or in equity, any such actual or threatened disclosure may be stopped through injunctive proceedings without the posting of a bond.

14.6 Waivers and Amendments. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. This Agreement may be amended only by a written document signed by you and CrowdStrike.

14.7 Severability. If any provision of this Agreement is held by a court to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

14.8 Force Majeure and Availability. Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations) as a result of a cause beyond its control, including but not limited to, any act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of communications (including the Internet or other networked environment), power or other utility, labor problem, or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented with reasonable care. You acknowledge and agree that the Products and Services are subject to downtime for routine and emergency maintenance and no refunds or credits will be provided for such service unavailability.



14.9 Signatures. These Terms and Conditions may be executed in two counterparts, each of which will be considered an original but all of which together will constitute one agreement. Any signature delivered by electronic means shall be treated for all purposes as an original. Each of the parties below represents and warrants that the signatory is duly authorized to execute and deliver this Agreement and each of CrowdStrike and Customer agrees to be bound hereby.

**BY THE SIGNATURES BELOW THESE TERMS AND CONDITIONS ARE AGREED AS OF THE EFFECTIVE DATE:**

**CROWDSTRIKE SERVICES, INC.  
CROWDSTRIKE, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
**(CUSTOMER)**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_