

**MASTER SERVICES AGREEMENT FOR
ELECTRONIC FUNDS TRANSFER FINANCIAL SERVICES
STATE OF NORTH CAROLINA AND WACHOVIA BANK, NA
Contract Number 14-05001**

THIS CONTRACT, made this the first day of October, 2005 by and among the North Carolina State Controller and the North Carolina State Treasurer (hereinafter referred to as the “**STATE**”) and **WACHOVIA BANK, NA**, a nationally chartered banking corporation, with its principal office located at Charlotte, North Carolina (hereinafter referred to as the “**VENDOR**”) (hereinafter collectively referred to as the “Parties”).

WITNESSETH:

WHEREAS, since March 18, 2002, the **VENDOR** has provided the **STATE** Electronic Funds Transfer (EFT) financial services for various agencies, such services being performed pursuant to an agreement executed on behalf of the State jointly by the State Controller and the State Treasurer;

WHEREAS, the **VENDOR** has provided various State agencies EFT financial services, such services being performed pursuant to various agreements executed by various State agency officials;

WHEREAS, the State Controller issued Request for Proposals (RFP) Number 14-05001, dated June 9, 2005, soliciting proposals from qualified financial institutions to provide various EFT financial services to eligible participating entities (hereinafter referred to as “**PARTICIPANTS**”) under a master services agreement, which the Participants may elect to subscribe;

WHEREAS, the **VENDOR**, submitted an initial proposal dated July 22, 2005 in response to the RFP, and a Best and Final Offer (BAFO) dated September 7, 2005, which were deemed to represent the best value to the **STATE**;

WHEREAS, the **VENDOR** is a qualified financial institution located in North Carolina and designated as an official depository by the State Treasurer pursuant to North Carolina General Statutes 147-78, and as such is also referred to interchangeably herein as the **BANK** or the **VENDOR**.

NOW THEREFORE, FOR AND IN CONSIDERATION of the performance by each of the Parties of its promises and obligations herein set forth, the **STATE** and the **VENDOR** do hereby mutually covenant and agree as follows:

1. Scope of Services

- A. The Bank shall perform electronic funds transfer services required of the State**, including acting as one of the State’s Originating Depository Financial Institutions (ODFI), and as one of the State’s Receiving Depository Financial Institutions (RDFI).
- 1) The services may be provided to any State agency or local unit of government authorized and designated as eligible Participants by the Office of the State Controller (OSC).
 - 2) All electronic funds transfer services provided shall be in accordance with and governed by the National Automated Clearing House Association (NACHA) Operating Rules, Federal Reserve Bank Regulation E, and the Uniform Commercial Code Article 4A as codified in North Carolina as N.C.G.S. §25-4A-101 et. seq.
 - 3) The services shall only be provided to participating entities, under the terms of this Agreement, if Participant has agreed to, and agrees to be bound by the terms and conditions set forth herein. Each Participant may subscribe to any or all of the services provided for herein. Each Participant, prior to delivery of the services, shall execute a separate Agency Participation Agreement (APA). Parties to the APA will be the Bank, OSC, and the Participant. DST will be a party in the case of a State Agency Participant. The APA is incorporated herein by reference.

- 4) Funds risk exposure approval shall be accorded State Agency Participants based upon the State's public credit ratings. Local units of government and other Participants not considered a State Agency are subject to approval by the Bank on a case-by-case basis, and may be disapproved as Participants.

B. For outbound ACH transactions, the Bank's Daylight Overdraft Cap as determined by the Federal Reserve Bank (FRB) must be sufficient to accommodate daylight overdrafts in the settlement accounts of at least \$300 million. Based upon need, the Bank will accommodate daylight overdrafts up to a minimum of \$700 million. For State Agency Participants, the Department of State Treasurer (DST) shall fund the settlement accounts in immediately available funds prior to 12:00 noon on the settlement date. For non-State Agency Participants, the Participant shall fund the account in immediately available funds prior to 12:00 noon on the settlement date.

C. For inbound ACH transactions, in the case of State Agency Participants banking with the Department of State Treasurer (DST), the Bank shall provide DST availability to the funds based on an account consolidation basis. ACH receipts shall be credited first to a Zero Balance Account (ZBA) and then be swept to the master account at the end of the banking day. While not yet swept from the settlement account, the funds shall be available for disbursement by the DST from the master account as soon as the funds become available in the settlement account. The DST shall be provided no later than "noon-time availability" of the inbound ACH receipts. For non-State agency Participants not banking with DST, the funds shall be credited to an account designated by the Participant, and the Participant shall be provided no later than "noon-time availability" of the inbound ACH receipts.

D. ACH Credit Origination Services

- 1) The Bank shall provide for the receipt of ACH credit origination files from eligible Participants via various methods. These methods shall include but not be limited to direct transmission, transmission through a Value Added Network (VAN), transmission through the Common Payment Service (CPS) gateway, or transmission through a third-party gateway service.
- 2) The Bank shall provide Participants so electing, either a PC-based or Web-based method of creating and submitting the ACH origination files, with the Web-based method being the preferred method. The Web-base product method is known as WebAchieve.
- 3) The Bank shall provide for an acknowledgement for the file and items received. The method of notification shall be by email for transmissions other than those through the Web-based option. Email acknowledgements shall accommodate multiple email addresses if requested and shall be provided within one hour of file receipt. The method of notification for transmissions via the Web-based option shall be by online inquiry, and shall be provided immediately upon input. Regardless of the delivery method, the file acknowledgment shall include the following information:
 - a. Transmission ID
 - b. File Create Date/Time
 - c. Total Batch Count
 - d. Entry Hash Total
 - e. Total Item Count
 - f. Total Debit Dollar Amount
 - g. Total Credit Dollar Amount
 - h. File Processing Status
- 4) The Bank shall process the ACH transactions in accordance with applicable rules and regulations, including the NACHA Operating Rules.

- 5) On the settlement date, the Bank shall memo-post the settlement debit by 8:00 a.m. The State or eligible Participants shall provide funding for the ACH credit file as specified in Paragraph 1-B above.
- 6) Unless otherwise arranged, all files shall be transmitted to the Bank in the standard NACHA format. If requested by a Participant, the Bank shall arrange for the files to be received in nonstandard NACHA format.

E. ACH Debit Origination Services

- 1) The Bank shall provide for the receipt of ACH debit origination files from eligible Participants via various methods. These methods shall include but not be limited to direct transmission, transmission through a VAN, transmission through the Common Payment Service (CPS) gateway, or transmission through a third-party data collection agent.
- 2) The Bank shall provide Participants so electing, either a PC-based or Web-based method of creating and submitting the ACH origination files, with the Web-based method being the preferred method. The Web-base product method is known as WebAchieve.
- 3) The Bank shall provide for an acknowledgement for the file and items received. The method of notification shall be by email for transmissions other than those through the Web-based option. Email acknowledgements shall accommodate multiple email addresses if requested and shall be provided within one hour of file receipt. The method of notification for transmissions via the Web-based option shall be by online inquiry, and shall be provided immediately upon input. Regardless of the delivery method, the file acknowledgment shall include the following information:
 - a. Transmission ID
 - b. File Create Date/Time
 - c. Total Batch Count
 - d. Entry Hash Total
 - e. Total Item Count
 - f. Total Debit Dollar Amount
 - g. Total Credit Dollar Amount
 - h. File Processing Status
- 4) The Bank shall process the ACH transactions in accordance with applicable rules and regulations, including the NACHA Operating Rules.
- 5) On the settlement date, the Bank shall memo-post the settlement credit by 8:00 a.m. to a designated account of the State or non-State Agency Participant in the form of immediately available funds as specified in Paragraph 1-C above.
- 6) Unless otherwise arranged by the State or non-State Agency Participant, all files shall be transmitted to the Bank in the standard NACHA format. If requested by a Participant, the Bank shall arrange for the files to be received in nonstandard NACHA format.

F. ACH Credits Receipt Services

- 1) The Bank shall provide for the receipt of ACH credits and payment addenda generated by originators other than the State (e.g., taxpayers). Various addenda convention formats may be received (e.g., TXP, CSE, DED, etc.).
- 2) The Bank shall provide for the transmission of the data to the respective Participants.
- 3) The Bank shall provide for a transmission of the data electronically, to be interfaced with the Participant's accounts receivable system, if the Participant so chooses. Each Participant may have its own editing and interfacing requirements, which shall be identified at the time of

implementation. The Participant shall have the option of receiving the data in a standard NACHA format, or through the Bank's Integrated Receivables service, which provides for the delivery of the data in ANSI X12 820 format, or a proprietary format as mutually agreed upon between the Participant and the Bank. For Participants having low volumes of transactions containing addenda, the Participant shall use the online Wachovia Connection feature to receive the data.

- 4) The Bank shall provide for posting of the individual ACH credits payments to a bank settlement account established for the respective Participant as specified in Paragraph H(1) below.
- 5) The Bank shall provide timely reporting of amounts and addenda data to the receiving Participant in a secure manner. The Bank shall offer the two levels of reporting options. The first level shall be prior day detail transaction activity, and the second level option shall be prior day and same day transaction activity.
- 6) The Bank shall provide global access to the DST and OSC for all accounts established for State Participants, at the same reporting level subscribed by the Participant.

G. Wire Transfer Receipt Services

- 1) For those Participants requiring the service, the Bank shall provide for the receipt of wire transfers (both Fed wires and bank wires from various remitters). Domestic wire transfers shall receive immediate availability while international wire transfers shall receive availability within two banking days.
- 2) For those Participants requiring the service, the Bank shall provide timely reporting of amounts of wire transfers received and "originator to beneficiary information" (OBI) to the receiving Participant in a secure manner. Reporting will be via Wachovia Connection for those Participants subscribing to same-day reporting. Additionally, the Bank shall provide email notification for wires meeting certain amount and/or time received criteria established by the Participant.

H. Dedicated Bank Account Services

- 1) For each Participant receiving inbound payments, the Bank shall provide a separate Deposit Demand Account (DDA) to settle the electronic payments received (ACH and wire transfers). In the case of State Agency Participants, the DDA shall be a zero balance account (ZBA) that sweeps "net" to either: a DST master account, or be a sub-ZBA that sweeps to another DST ZBA account.
- 2) Availability of ACH receipts shall be as specified in Paragraph 1-C above.
- 3) Availability of wire transfer receipts shall be on a "when received" basis, as specified in Paragraph 1-G(1) above.
- 4) For each Participant sending outbound payments, the Bank shall provide a separate Deposit Demand Account (DDA) to accommodate the funding for the payments. Settlement accounts for outbound payments shall not be designated as ZBA accounts. Funding of the accounts shall be as specified in Paragraph 1-B above.
- 5) When requested by the Participant, the Bank shall establish a separate DDA account to accommodate ACH returns.

- 6) The Bank shall provide ACH debit blocks and filtering on the DDA accounts to prevent fraudulent transactions. The Bank shall implement controls to prevent the posting of any unauthorized paper checks against the accounts.
- 7) The Bank shall provide for the execution of appropriate signature cards for the DDA accounts, with execution being by the appropriate governmental official, pursuant to the applicable governing North Carolina General Statute.
- 8) The Bank shall provide for the collateralization of any funds in the DDA accounts pursuant to the Collateralization Rules for Public Deposits (20 NCAC 7).
- 9) The Bank shall provide for an equitable method of compensating the owner of a DDA settlement account (either the DST or non-State Agency Participant, as applicable), and/or compensating the Bank, in the event one party is unduly enriched as the result of either excess or deficit funding, or Bank's failure to process a transaction(s) timely. This shall include, but not be limited to the following: inadvertent premature funding, over-funding, under-funding, erroneous entry, and failure of Bank to process an origination file or a funds transfer. Unless otherwise agreed upon or negotiated for a particular incident, the rate applied in calculations shall be the Federal Funds rate for the applicable period. No overdraft fees shall be charged.

I. Monthly Invoice Services

- 1) The Bank shall provide a monthly detailed invoice (analysis statement) for each Participant for agency-specific services, as per the rates specified in the approved Bank's Fee Schedule, as indicated in Exhibit A herein attached. The invoice will be sent either to the Participant, or to the DST as part of the DST's combined analysis statement, depending upon set up instructions provided the Bank at the time the settlement account is established. The analysis statement shall be available to the State and to Participant via the Bank's online Wachovia Connection System.
- 2) The Bank shall establish internal controls to ensure that the monthly invoices submitted are accurate. The controls shall include, but not be limited to, providing a verification process that involves a government banking team professional and a treasury services team professional reviewing each invoice for accuracy prior to the issuing of each invoice.
- 3) For central management purposes, the Bank shall provide OSC a monthly summary report depicting transaction volumes (item count and dollar totals of all inbound and outbound ACH transactions) for all Participants. The report shall be in a spreadsheet format allowing for the calculation of year-to-date data. The Bank shall make available to OSC any future enhancements that may apply to the management reporting.
- 4) Fees for the services of a third-party data collection center (DCC) shall normally be paid by the Participant directly to the DCC. If requested by a Participant and arranged with the DCC, the Bank shall accommodate the pass-through invoicing of fees charged by the DCC by including the DCC monthly fees on the Bank's monthly invoice, by collecting the fees from the Participant, and by paying the DCC on behalf of the Participant.

J. Information Reporting Services

- 1) The Bank shall provide Web-based online reporting capabilities to each Participant, via the Bank's Wachovia Connection System.
- 2) The Bank shall provide online previous day DDA account transaction activity (both summary report and detailed report).

- 3) The Bank shall provide online previous day ACH origination transaction activity.
- 4) The Bank shall provide an online ACH Returns report (including “notifications of change”). Information provided shall include: Return Date, Transaction Amount, ACH Return Window, Standard Entry Class, Type (Debit/Credit), Originating Account #, Originating ABA #, Customer ID #, Customer Name, Original Trace #, Return Trace # and Return Reason.
- 5) For the Participants subscribing to same-day online reporting, the Bank shall provide online current day EFT transaction reports (both ACH and wire transfers).
- 6) The Bank shall provide for online historical transaction inquiries as follows:
 - a. Previous Day Balance and Detail Report – six business days.
 - b. Interim Account Statement – 90 calendar days
 - c. Comprehensive Balance Report – Previous banking day
 - d. Balance History Report – 90 calendar days
 - e. ACH Returns Report – six business days
 - f. EFT Advice Report – 60 calendar days
- 7) The Bank shall provide secured access to web-based reporting via SSL technology and required user ID and password.
- 8) The Bank shall provide global access to the DST and OSC for all accounts established for State Participants, at the same reporting level subscribed by the Participant.

K. Common Payment Service (CPS) Interaction

- 1) The CPS shall utilize a Virtual Private Network (VPN) communications link with the Bank to accommodate File Transfer Protocol (FTP) to the Bank’s secure server, according to security standards and features approved by the State.
- 2) The transmission of multiple files throughout the processing day shall be accommodated and shall be processed using the Bank’s established ACH processing guidelines. Participants shall input necessary payment information into a specific PC template or a file format.
- 3) The payment information shall be collected by the CPS system and reformatted in the standard NACHA (National Automated Clearing House Association) format.
- 4) A single payment file containing multiple batches may be transmitted daily, via FTP link, to the Bank for further disbursement through the ACH Network. The file shall contain one header, with each batch within the file possibly having different company IDs, if representing different Participants.
- 5) Payment file formats shall be in NACHA standard format.
- 6) File control totals shall either be emailed to the bank or the standard Vendor’s electronic control total file format will be used.
- 7) The CPS, using Vendor’s established procedures, may cancel files or transactions.
- 8) ACH returns and “notifications of change” will be reported to the respective Participant through the Web based reporting system, Wachovia Connection.

L. Department of Revenue (DOR) Interaction

- 1) The DOR, as a Participant, can have ACH files (both credit and debit) originated through multiple means: through a third-party data collection center (DCC), through CPS, or directly.
- 2) For ACH debit files (inbound transactions) created by the DCC, the addendum records shall be provided to DOR directly by the DCC. The Bank must accommodate the daily transfers of the ACH files to be originated from the third-party DCC. The DOR may elect to discontinue utilizing a DCC, in which case DOR would transmit an origination file either directly to the Bank or through the CPS.
- 3) For ACH credit transactions received from taxpayers (inbound transactions), the addendum records shall be transmitted to DOR through an interface. The bank shall perform certain format edits and content validation edits on the data fields contained in the TXP addendum record. For failed edits, a Note segment (NTE) is to be added in front of the Addenda Record. These edits shall include:
 - a. Batch Type Code is 220.
 - b. Transaction Type is 22.
 - c. Julian Settlement Date is current banking day.
 - d. Only CCD transactions are reported.
 - e. Only TXP Addenda Records are reported.
 - f. Validation of TAX ID is left-justified and 11 characters
 - g. Validation of a valid calendar day
 - h. Other similar edits regarding alpha/numeric and field lengths.
- 4) Transmissions to DOR shall be the Office of State Information Technology Services via the IBM Global Network provided by Advantis (IIN Network). The Bank shall incur all costs associated with using the Network.
- 5) The IBM Global Network shall access to the State's IBM mainframe utilizing SNA SDLC protocol standards. In addition, to allow batch transfer capabilities, SNA RJE/NJE shall be utilized by IBM Global Network and the State.
- 6) All files shall be transmitted in the standard NACHA format. DOR utilizes only the "Cash Concentration or Disbursement Plus" (CCD+) format with the TXP Banking Convention Addendum Records.

M. Department of Health and Human Services (DHHS) Interaction

- 1) For ACH credit transactions received from remitters of child support payments (inbound transactions), the addendum records shall be transmitted to the Department of Health and Human Services (DHHS), a Participant, through an interface.
- 2) The bank shall perform certain format edits and content validation edits on the data fields contained in the DED addendum record, as specified by DHHS.

N. New Participants and Customer Service

- 1) The Bank shall provide a process for the enrollment of new Participants, including settlement accounts setup, online banking setup, transmission setup and testing, and hands on training if

needed. For major implementation, as determined by OSC, the Bank will provide a conversion plan.

- 2) The Bank shall provide ongoing customer service to the State and the Participants, as provided by the Bank's Commercial Customer service model. The model shall provide the flexibility of relying on a local Relationship Manager and Relationship Specialists (RS) team located in Raleigh, North Carolina, or a centralized team, using an 800 number, for customer service. Both options shall be available to the State and the Participants on a case-by-case basis depending upon the nature of the inquiry. Benefits of the services include:
 - a. Prompt turnaround – with the primary goal of responding to questions on the first call, with all inquiries handled within a 24-hour period.
 - b. Quality tracking – with incoming calls being monitored and tracked to ensure that quality service is provided in a timely manner.
 - c. Advanced technology – with service analysts having access to numerous bank systems, enabling quick retrieval of customer information.
 - d. Easy access – providing a dial 1-800 service with a three-digit team number being used, anytime between 7 a.m. ET and 7 p.m. ET, Monday through Friday.
- 3) The Bank shall make available to all Participants its Wachovia Connection Virtual University, which provides various training sessions.

2. Contractual Terms and Conditions

Definitions: As used herein;

State shall mean the State of North Carolina, as represented by the State Controller and the State Treasurer, and by the Office of Information Technology Services in its capacity as the Award Authority.

Purchasing State Agency or Agency shall mean the Office of the State Controller.

Participant shall mean an agency or local unit of government that subscribes to any of the services provided under this contract.

1) Standards: Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or federal Regulation,
- by the Chief Information Officer's (CIO) Standards, Policies or Rules, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

a) **Site Preparation:** Vendors shall provide the State and the Participants complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the Participants of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

b) **Goods Return:** Deliverables of services and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense.

- c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State or Participant, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State or Participant; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State or Participant that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 2) **Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the State and the Participants.
- 3) **Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the State's Contract Administrator. Any desired substitution shall be noticed to the State's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.
- 4) **Subcontracting:** The Vendor may subcontract the performance of required services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 5) **Vendor's Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- 6) **Reserved.**
- 7) **Reserved.**
- 8) **Reserved.**
- 9) **Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the State's Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.
- 10) **Prohibition Against Contingent Fees and Gratuities:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their

respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

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

12) Payment Terms: Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Participant. Each Participant is responsible for all payments of the services subscribed to and received under the Contract, unless arrangements have been made by the Participant for payment to be made by the State Treasurer. No additional charges to the Participant or State Treasurer will be permitted based upon, or arising from, the Participant's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Participant, the Participant or State Treasurer may:

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

13) Reserved.

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

15) Reserved.

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

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

However, under no circumstances shall price information be designated as confidential. The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and

participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

- a) Care of Information: Vendor agrees to use commercially reasonable efforts to safeguard and protect any data, documents, files, and other materials received from the State or a Participant during performance of any contractual obligation from loss, destruction or erasure.
- b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

18) Reserved.

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

20) Patent, Copyright, and Trade Secret Protection:

- a) To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.
- b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing

and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State or Participants have paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State or Participants have paid Vendor less any reasonable amount for use or damage.

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

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

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

22) Assignment: Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. An assignment by Vendor to a wholly owned or majority controlled corporation, or as the result of a merger in which the Vendor is the surviving corporation shall not be unreasonably withheld upon receipt of reasonable notice thereof, provided that any assignee shall affirm this Agreement attorning to the terms and conditions of the awarded contract.

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

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and

b) **Commercial General Liability** - The Vendor shall provide and maintain Commercial General Liability insurance generally provided by financial institutions, including Bankers Blanket Bond coverage; and

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$1,000.00 medical payment; and

d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

24) Dispute Resolution: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the State's Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in

good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty -(30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

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

a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

26) Waiver of Default: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 30)b herein below.

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

a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25, or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

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

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

28) Limitation of Vendor's Liability:

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

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

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

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

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

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

32) Price Adjustments For Term Contracts: Changes in prices or costs quoted by Vendor may be permitted during the term of the Contract, but shall be subject to the requirements of this Paragraph, and any additional terms of the solicitation document. Permitted changes during the Contract period must be general, either by reason of market change, change in manufacturer's list price or price adjustments authorized by Contract.

- a) Notification: Vendor must provide written notification of any proposed pricing change to the State and to the Office of Information Technology Services not less than sixty (60) days prior to the desired effective date of

any proposed price adjustment. If Vendor is a reseller, MCL, VAR, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.

b) Decreases: The State and the Participants shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the Contract period.

c) Increases: All prices and costs shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with the State reserving the right to accept or reject the increase, or cancel the Contract. The State shall exercise this right not later than 30 days after the receipt by of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.

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

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

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

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

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

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

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

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

41) Governing Laws, Jurisdiction, and Venue:

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

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

42) Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or

refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

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

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

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

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

a) Reserved.

b) Reserved.

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

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

47) Electronic Procurement (Applies only to Statewide Term Contracts): Within fifteen (15) calendar days of notice, the Vendor shall provide supplier information, contract pricing and other product related information requested by the State or the Supplier Manager. This information shall include such information as Vendor name, SKU, brand/manufacture, product name and a brief description, unit of measure, price, and other similar information or properly requested by the State of the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the Vendor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the Vendor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display Vendor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with Vendor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the Vendor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

48) Contract Administrators: The Contract Administrators for this Contract shall be as follows:

For the State – David C. Reavis, E-Commerce Manager, Office of the State Controller

For the Vendor –G. Page Allen, Senior Vice President, Wachovia Bank, NA

Either party may change the administrator by notifying the other party in writing.

49) Contract Term: The term of this Contract shall be five (5) years, and will expire upon the anniversary date of the effective date. The State retains the option to extend this contract for two (2) additional one (1) year periods at its sole discretion. In the event a transition to a new vendor is needed for any reason, the Vendor will continue to provide required services until such transition is completed.

IN WITNESS WHEREOF, each of the Parties, by authority duly given, has caused this Contract to be executed in two (2) original counterparts, in its name and its seal to be hereto attached, all on the day and year first above written.

NORTH CAROLINA STATE CONTROLLER

Robert L. Powell
State Controller

Date: _____

NORTH CAROLINA STATE TREASURER

Richard H. Moore
State Treasurer

Date: _____

WACHOVIA BANK, NA

G. Page Allen
Senior Vice President

Date: _____

**EXHIBIT A - SCHEDULE OF FEES
ELECTRONIC FUNDS TRANSFER FINANCIAL SERVICES
STATE OF NORTH CAROLINA AND WACHOVIA BANK, NA
Contract Number 14-05001**

<u>Subscribed Service</u>	<u>Per Unit Cost</u>
ACH Origination Services	
ACH Maintenance per Account	5.00
ACH Credits/Debits/Prenotes Originated *	0.009*
ACH Addenda Originated	0.005
ACH Origination Files Transmitted	3.00
Other ACH Related Services	
ACH Returns	0.75
ACH Notifications of Change	0.50
ACH Reversals	8.00
ACH Updates / Changes	8.00
ACH Received Entries File Transmissions	3.00
ACH Received Credit Items Reported	0.0125
Settlement Account Services	
Bank Account Maintenance	10.00
ZBA Account Maintenance	5.00
ACH Debit Block Maintenance	5.00
Wire Transfers Incoming	6.00
Book Transfers	2.00
Electronic Credits Posted	0.03
Non-Electronic Credits Posted	0.30
Debit Postings	0.05
Checks Deposited	0.05
Online Bank Account Reporting	
Online Reporting Maintenance - Prior Day	20.00
Online Reporting Maintenance - Same Day (Optional)	20.00

*** ACH Credits/Debits/Origination fee shall be based on a tiered structure:**

Originated items under the MSA are less than 5 million per year	0.009
Originated items under the MSA exceed 5 million per year	0.0075
The \$.0075 fee shall be applicable the first month following the month that the total items under the Contract reaches 416,667 items per month, and it is determined that the annualized number of transactions will consistently be at least 5 million. The "per item" fee is subject to reverting back to \$.009 should the total annualized volume not remain at 5 million transactions. The OSC will notify Participants whenever the new threshold is reached and the Bank has made the billing change.	