



STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

CONTRACT FOR THE **DESCRIPTION OF PURCHASE**

This Contract (hereinafter referred to as the “Agreement”) for **Type Description of Purchase** is entered into as of this **Type Day** of **Type Month** by and between Mecklenburg County (hereinafter referred to as the “County”), a political subdivision of the State of North Carolina, and **Type Vendor** (hereinafter referred to as the “Company”), an **Type of Business** , doing business in **Type State of Business** .

RECITALS

WHEREAS, the County **Type Process Here** .

WHEREAS, the County and the Company have negotiated and now desire to enter into an Agreement for the Company to **Description of Purchase** for the County, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the terms and conditions contained in this Agreement, the parties agree as follows:

AGREEMENT

1. INCORPORATION.

The following Exhibits and Statement of Work are attached to this agreement and incorporated herein and made a part of this Agreement by reference:

[Enter Exhibits and Appendices Here]

Each reference to the Agreement shall be deemed to include all Exhibits and Statements of Work. Additional Statements of Work that may be agreed to in writing by both parties during the term of this Agreement shall also be incorporated herein. Any conflict between the language in an Exhibit or Statement of Work to this Agreement and the main body of this Agreement shall be resolved in favor of the main body of this Agreement; provided, however, if the parties have executed a Business Associate Agreement, either as an Exhibit to this Agreement or as a separate agreement, any conflict between the Business Associate Agreement and this Agreement shall be resolved in favor of the Business Associate Agreement.

2. TERMS AND CONDITIONS

- 2.1. **DEFINITIONS.** The following terms shall have the following meanings for purposes of this Agreement:
- 2.1.1. **Acceptance.** Refers to the receipt and approval by the County of a Product, Deliverable or Service in accordance with the acceptance process set forth herein.
 - 2.1.2. **Agreement.** Refers to the Contract between the County and the Company as detailed herein including all Exhibits and Statements of Work.
 - 2.1.3. **Company.** Refers to Type Company Name.
 - 2.1.4. **Company Representative.** Refers to each person provided by the Company to perform services under this agreement and/or any individual authorized to act on behalf of the Company.
 - 2.1.5. **Confidentiality Agreement.** Refers to the written agreement between the County and the Company defining what information can and cannot be disclosed.
 - 2.1.6. **County.** Refers to Mecklenburg County, North Carolina.
 - 2.1.7. **Defect.** Refers to the absence of something that is necessary for completeness, a deficiency in something essential for the intended and proper use or not meeting the Specifications and Requirements. A Product is defective if it is not fit for the ordinary purposes for which it is sold and used. Defects may include latent (not apparent to the County by reasonable observation) and patent (a defect that is apparent on normal inspection).
 - 2.1.8. **Deliverable.** Refers to the completion of a Milestone or the accomplishment of a task.
 - 2.1.9. **Effective Date.** Refers to the date stated in the first sentence of this Agreement.
 - 2.1.10. **Electronic Funds Transfer (EFT).** Refers to the direct payment to the Company by the County through electronic transfer of funds between financial institutions.
 - 2.1.11. **Liquidated Damages.** Monetary payments due to the County by the Company for any breach of this Agreement resulting in damage to the County.
 - 2.1.12. **Milestone.** Refers to the benchmarks of performance (consisting of an identified deadline for the completion of specific services and/or the acceptance of identified Deliverables), as specified in a Statement of Work.
 - 2.1.13. **Product.** Refers to the item(s) produced by the Company or a Third Party and sold to the County under this Agreement.
 - 2.1.14. **Rejection Notice.** Refers to written notice to the Company by the County that a Milestone and/or Deliverable has not been Accepted.

- 2.1.15. **Services.** Refers to all services that the Company provides or is required to provide under this Agreement.
- 2.1.16. **Specifications and Requirements.** Refers to the precise description of the physical or functional characteristics and requirements for the Product(s) or Service(s) including, but not limited to, all definitions, descriptions, criteria, warranties and performance standards.
- 2.1.17. **Statement of Work.** Refers to the formal Statement of Work (SOW) defining the Products and Services the Company has agreed to provide to the County. The SOW includes a detailed description of the County requirements, solution/service(s) to be delivered, pricing, delivery schedule and support provisions.
- 2.1.18. **Third Party.** Refers to a contractor or vendor who receives monetary payment from the Company as a result of providing Products and/or Services funded under this Agreement.
- 2.1.19. **Work Product.** Refers to any Deliverables and all other programs, algorithms, reports, information, designs, plans and other items developed by the Company in connection with this Agreement, and all partial, intermediate or preliminary versions of any of the foregoing.

3. **APPLICABILITY, AMENDMENTS, AND ADDITIONS TO AGREEMENT.**

- 3.1. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Agreement supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 3.2. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses, or sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement so long as the material purposes of this Agreement can be determined and effectuated. If the provision of this Agreement is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Agreement shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 3.3. **TITLES OF SECTIONS.** The section headings inserted herein are for convenience only and are not intended to be used as aids to interpretation and are not binding on the parties.
- 3.4. **CONSTRUCTION OF TERMS.** Each of the parties has agreed to the use of the particular language of the provisions of this Agreement and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties.
- 3.5. **GOVERNING LAW AND VENUE.** As required by North Carolina General Statutes 22B-2 and 22B-3, North Carolina law shall govern the interpretation and

enforcement of this Agreement, and any other matters relating to this Agreement (all without regard to North Carolina conflict of law principles). All legal actions or other proceedings relating to this Agreement shall be brought in a state or federal court sitting in Mecklenburg County, North Carolina. By execution of this Agreement, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections they may have with respect to venue in any court sitting in Mecklenburg County, North Carolina.

- 3.6. **GOVERNMENTAL IMMUNITY.** The County to the extent it applies does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.
- 3.7. **BINDING NATURE AND ASSIGNMENT.** This Agreement shall bind the parties and their successors and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void. For purposes of this Agreement, a Change in Control, as defined herein shall constitute an assignment.
- 3.8. **CHANGE IN CONTROL.** In the event of a Change in Control (as defined herein) of the Company, the County shall have the option of terminating this Agreement by written notice to the Company. The Company shall notify the County within ten days of the occurrence of a change in control. As used in this Agreement, "Change in Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company.
- 3.9. **AMENDMENTS.** No amendments or changes to the Agreement, or additional Statements of Work, shall be valid unless in writing and signed by authorized agents of both the Company and the County.
- 3.10. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Agreement shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party waiving the rights.

4. **RELATIONSHIP OF THE PARTIES.**

The relationship of the parties established by this Agreement is solely that of independent Contractors, and nothing contained in this Agreement shall be construed to (i) give any party the power to direct or control the day-to-day activities of the other; (ii) constitute such parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking; (iii) make either party an agent of the other for any purpose whatsoever, or (iv) give either party the authority to act for, bind, or otherwise create or assume any obligation on

behalf of the other. Nothing herein shall be deemed to eliminate any fiduciary duty on the part of the Company to the County that may arise under law or under the terms of this Agreement.

5. NON-EXCLUSIVITY.

The Company acknowledges that the County is not obligated to solely contract with the Company for the Products and/or Services covered under this Agreement.

6. TERM AND TERMINATION.

- 6.1. **TERM.** This Agreement shall commence on the Effective Date and shall continue in effect for **thirty-six (36) months with the option to renew for two (2) additional one-year terms** unless the Agreement is sooner terminated in accordance with the terms as provided herein. This Agreement will remain in effect with regard to any SOW or purchase order already in effect as of the date terminated, unless such SOW or purchase order is terminated as provided herein.
- 6.2. **TERMINATION WITHOUT CAUSE.** The County may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, Company shall submit a statement to the County showing in detail the Services performed under this Agreement through the date of termination.
- 6.3. **NONAPPROPRIATION.** If the Board of County Commissioners (BOCC) do not appropriate the funding needed by the County to make payments under this Agreement for a given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will promptly notify the Company of the non-appropriation and this Agreement will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County which is attributable to non-appropriation of funds shall constitute a breach of or default under this Agreement.
- 6.4. **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Agreement upon the occurrence of one or more of the following events:
 - 6.4.1. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Agreement, provided that, unless otherwise stated in this Agreement, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or
 - 6.4.2. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and

performance of all its obligations under this Agreement shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default pursuant to this section shall identify Section 3.4 of this Agreement and shall state the party's intent to terminate this Agreement if the default is not cured within the specified period.

- 6.5. **NO SUSPENSION.** In the event that the County disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Agreement, the Company agrees that it will not terminate this Agreement or suspend or limit any services or warranties or repossess, disable or render unusable any goods supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise; provided, however, this dispute period is limited to a ninety (90) day period.
- 6.6. **AUTHORITY TO TERMINATE.** The County Manager or the County Manager's Designee is authorized to terminate this Agreement in accordance with its terms on behalf of the County.
- 6.7. **ADDITIONAL GROUNDS FOR TERMINATION BY THE COUNTY.** By giving thirty (30) days written notice to the Company, the County may also terminate this Agreement upon the occurrence of one or more of the following events provided that such failure or breach shall continue unremedied for a period of thirty (30) days after the Company is notified in writing of such failure or breach:
 - 6.7.1. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Company's proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or
 - 6.7.2. The Company fails to obtain or maintain the insurance policies and endorsements as required by this Agreement, or fails to provide proof of insurance as required by this Agreement.
- 6.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Agreement the Company shall:
 - 6.8.1. Return to the County all computer programs, files, documentation, data, media, related material and any other material and equipment that is owned by the County;
 - 6.8.2. Deliver to the County all Work Product for which payment has been received by the Company;
 - 6.8.3. Cooperate with County to assist with an orderly transfer to a new vendor or to the County as deemed appropriate. County shall fairly compensate Company for transition services; and
 - 6.8.4. Refund to the County pre-paid expenses on a pro-rata basis as determined by the County.

7. COMPENSATION.

- 7.1. **TOTAL FEES AND CHARGES.** The County and the Company agree that the fees for Products and/or Services performed under this Agreement are set forth in the Pricing Sheet attached hereto and incorporated herein. These prices constitute the maximum total fees and charges payable to the Company under this Agreement and shall not be increased except by a written instrument duly executed by both parties.
- 7.2. **PURCHASING VOLUME.** The Company signifies its understanding and agreement by signing this document that this Agreement does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the County identifies a need and issues a purchase order or SOW under this Agreement.
- 7.3. **CANCELLATION AND PRE-CONTRACT COSTS.** The County reserves the right to cancel a purchase order or SOW within a reasonable period of time after issuance. Should a purchase order or SOW be cancelled, the County agrees to reimburse the Company for actual and documented costs incurred. The County will not reimburse the Company for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of Product or performance of Services prior to issuance of a purchase order or SOW.
- 7.4. **PRICE PROTECTION.** The Company warrants that prices extended to the County under this Agreement are comparable to or better than those being offered to any other customer purchasing similar quantities. During the term of this agreement, if the Company enters into a contract with another entity that provides better pricing and terms than this Agreement, then the Company shall be obligated to provide the same to the County for subsequent purchases and the County shall be notified of changes to the Agreement pricing. During any term of this Agreement, if lower prices and rates become effective for like quantities of Products and/or Services, through a reduction in list prices, promotional discounts, or other circumstances, the County must be given immediate benefit of such lower prices and rates, and the County shall be notified of changes in Agreement pricing.
- 7.5. **PRICE ADJUSTMENT.** The price(s) stated in this Agreement shall not increase for the initial term. The Company shall provide the County with one hundred eighty (180) days prior written notice of the revised price(s), if any, for subsequent Agreement periods for which the County may elect to renew beyond the initial term. If the County agrees to the revised price(s), such changes will become effective the first day of the new applicable term and be reflected in a new Pricing Sheet Exhibit provided by the Company, which will replace the existing Pricing Sheet Exhibit for the successor term.

Price increases shall only be allowed when justified in the County's sole discretion based on legitimate, bona fide increases in the cost of providing the Products and/or Services covered under this Agreement. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs or for additional profit.

7.6. **INVOICING.**

7.6.1. As consideration for the performance of the Specifications and Requirements herein, the County shall pay the Company the sum(s) stated in the Pricing Sheet attached hereto and incorporated herein.

7.6.2. Invoices shall only be submitted after Acceptance of the Product and/or Service by the County.

7.6.3. Each invoice submitted shall include line item detail of all Products and/or Services delivered or performed under the terms of this Agreement.

7.6.4. The Company agrees to utilize the available County procurement system for submitting invoices electronically and to accept payment via a procurement credit card (i.e. Visa, MasterCard, etc.) or Electronic Funds Transfer (EFT) as desired by the County.

7.6.5. All purchase orders shall be invoiced separately.

7.6.6. The County shall pay all undisputed and properly completed invoices within thirty (30) days of receipt. Notwithstanding the foregoing, the County will not pay late fees on any charges under this Agreement.

7.7. **NO ADVANCED PAYMENT.** No advance payment shall be made for the Products and/or Services furnished by the Company pursuant to this Agreement.

7.8. **TAXES.** Except as specifically stated in the Agreement, the Company shall pay all applicable federal, state, and local taxes which may be chargeable against the delivery of their products and performance of the services.

7.9. **TRAVEL EXPENSES AND TRAVEL UPGRADES.** The County has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Agreement unless specified and agreed to by both parties. If reimbursement is required by the County:

7.9.1. All travel expenses must be in accordance with the County Travel Policy and Procedures and must be preapproved in writing by the County.

7.9.2. The County will only pay coach/economy rate airline fares; and

7.9.3. The Company's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the foregoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the Company so long as the County is not charged for or asked to reimburse the upgrade charge or the value of the miles, points or credits used.

7.10. **DISPUTED CHARGES.** If the County disputes any portion of the charges on any invoice received from the Company, the County shall inform the Company in writing of the disputed charges. Once the dispute has been resolved, the Company shall re-invoice the County for the previously disputed charges, and per any

resolution between the County and the Company, the County shall pay those charges in full at that time.

7.11. **RIGHT TO AUDIT.** During the term of this Agreement and for a period of two years after expiration or termination, the County shall have the right to audit, either itself or through an independent auditor, all books, records, and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Agreement or the County's payment obligations. The County shall pay for its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs to the Company.

7.12. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that all Company Representatives provided by the Company to perform the services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company Representative. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions which are required by law for each Company Representative. The Company agrees that the Company Representatives are not employees of the County.

8. **BACKGROUND CHECKS. [APPLIES TO SERVICES]**

8.1. **BACKGROUND CHECKS.** Prior to starting work under this Agreement, the Company is required to conduct a background check on each Company employee assigned to work under this Agreement, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Agreement (collectively, the "Background Checks"). The background checks must demonstrate the worker has not been convicted of any crime against a person, crimes against property where intent is an element, any drug or gambling related offense, or any motor vehicle offense related to the applicable position. For any individuals who will have responsibility for initiating or affecting financial transactions, or access to financial information, social security numbers, confidential or proprietary information, as determined by the County, the background checks must demonstrate the worker has not been convicted of financial wrongdoing including, but not limited to, embezzlement, fraud, money laundering, theft or others acts indicating dishonesty. Each background check must include:

8.1.1. A criminal conviction record check from the states and counties where the person lives or has lived in the past ten (10) years;

8.1.2. A sexual offender registry check; and

8.1.3. A reference check.

After starting work under this Agreement, the Company is required to subject each Company employee assigned to work under this Agreement to a background check upon initial hire with the Company, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Agreement, then prior to commencing performance of the project the Company shall perform a background check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees. Additionally, all Company employees have the responsibility to self-disclose any arrests for Driving While Impaired (DWI) or Driving Under the Influence (DUI) or for the use, sale, or possession of a controlled dangerous substance that occur while assigned to the County within forty-eight (48) hours of the arrest.

If a person's duties under this Agreement fall within the categories described below, the background checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

- 8.1.4. A motor vehicle records check: If the job duties require driving. All individuals must have a valid driver's license that is appropriate for the class of vehicle being driven. Any individual whose license has been revoked or suspended for any reason may not be assigned to the County if such assignment requires driving as part of their duties and responsibilities

The Company must follow all state and federal laws when conducting background checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same. The County may conduct its own background checks on principals of the Company as deemed appropriate. By operation of the public records law, background checks conducted by the County are subject to public review upon request.

The Company agrees to indemnify the County for any liability or harm resulting from the Company's failure to conduct background checks and/or obtain positive references and/or background on its employees, contractors, subcontractors, and/or agents assigned to perform services for the County. The Company further agrees to indemnify the County for any liability or harm resulting from the Company's failure to review or remove employees as appropriate when related to the results of a background check conducted on its employees, independent contractors, subcontractors, subcontractors, and/or agents assigned to perform services for the County. The Company further agrees to indemnify the County for any liability or harm, including fines, penalties, attorneys' fees, etc., resulting from the Company's violation of any state or federal laws when conducting background checks. Company further agrees to indemnify the County for any liability from Company's failure to discharge its obligations as forth herein.

9. ACCEPTANCE.

9.1. SERVICES.

- 9.1.1. Within a reasonable timeframe after a Deliverable(s) has been completed or a Milestone(s) has been reached, the Company shall submit a written notice to the County stating the Deliverable(s) or Milestone(s) that have been met. This notice shall include a signature page for sign-off by the County indicating Acceptance of such Deliverable(s) or Milestone(s).
- 9.1.2. If the County is not satisfied that the Deliverable(s) or Milestone (s) has been met, a Rejection Notice shall be submitted to the Company specifying the nature and scope of the deficiencies to be corrected. Upon receipt of a Rejection Notice, the Company shall act diligently and promptly to correct all deficiencies identified and immediately upon completing such corrections provide the County written, dated certification that all deficiencies have been corrected.
- 9.1.3. In the event the Company fails to correct all deficiencies identified in the Rejection Notice, the County may: (a) By contract or otherwise, perform the services and charge the Company any cost incurred by the County that is directly related to the performance of such service and/or (b) Terminate the Agreement for default.

9.2. PRODUCTS. Acceptance of the Products will occur within fifteen (15) days after receipt by the County unless:

- 9.2.1. The County notifies the Company of a Defect within such time period. In the event Products provided to the County are Defective, the County shall be entitled to terminate the order for such Products (and any related products) upon written notice to the Company and return such Products (and any related goods) to the Company at the Company's expense.
- 9.2.2. The Agreement provides for acceptance verification or testing by the County, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing and any agreed upon trial period of use.
- 9.2.3. The Products delivered under this Agreement shall remain the property of the Company until Acceptance by the County.

10. REPRESENTATIONS AND WARRANTIES OF COMPANY.

10.1. GENERAL WARRANTIES.

- 10.1.1. Company is a corporation qualified to do business and in good standing under the laws of the state of North Carolina;
- 10.1.2. Company has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;

- 10.1.3. The execution, delivery, and performance of this Agreement have been duly authorized by the Company;
- 10.1.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for Company to enter into and perform its obligations under this Agreement;
- 10.1.5. In connection with the Company's obligations under this Agreement, it shall comply with all applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and
- 10.1.6. The Company shall not violate any agreement with any third party by entering into or performing this Agreement.
- 10.1.7. Company warrants that all Products and/or Services provided will conform to the Specifications and Requirements of this Agreement.
- 10.1.8. The Products and/or Services provided by the Company under this Agreement will not violate, infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party, or any other third party rights (including without limitation non-compete agreements).
- 10.2. **SPECIFIC WARRANTIES.** In addition to the above referenced warranties, the Company shall represent, warrant and covenant the specific warranties attached hereto and incorporated herein by Exhibit.
- 10.3. **BREACH OF WARRANTIES.** If the Company breaches any of the warranties, the County, without limiting any other remedies it may have under this Agreement or at law, shall be entitled to an immediate refund of all amounts paid to the Company or its subcontractors or licensors under this Agreement.
- 10.4. **ASSIGNMENT OF WARRANTIES FOR THIRD PARTY PRODUCTS.** Without limiting the Company's obligations to provide warranty services or maintenance services, the Company hereby assigns to the County all of the Company's warranties from the Company's suppliers covering any Third Party product delivered under this Agreement. The Company will provide copies of such warranties to the County at the completion of Services. While the Company shall be entitled to make arrangements to have such warranty work performed by the supplier, nothing herein shall relieve the Company of its obligation to correct Defects or to meet the time deadlines provided in this Agreement for the correction of such Defects.

11. REMEDIES.

- 11.1. **RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth, due to no fault of the County, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:
 - 11.1.1. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved

and the Company is again able to resume performance under this Agreement; and

11.1.2. Deduct any and all expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Company and, should the County's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.

11.2. **RIGHT TO WITHHOLD PAYMENT.** The County reserves the right to withhold any portion, or all, of a scheduled payment if the Company fails to perform under this Agreement until such breach has been fully cured.

11.3. **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.** The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Products and/or Services required by this Agreement, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the County obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Agreement.

11.4. **SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

11.5. **LIQUIDATED DAMAGES.** The County and the Company acknowledge that the County will incur damages for inconveniences and delay if the Company fails to meet the deadlines set forth by Agreement (excluding any damages which the County may incur in the event it elects to terminate this Agreement). The parties further acknowledge that the damages that might be reasonably anticipated to accrue as a result of such failure are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees that it will pay Liquidated Damages in accordance with the schedule attached hereto and incorporated herein by Exhibit.

11.5.1. Liquidated damages may be assessed or waived at the discretion of the County. No failure on the County's part to timely assess Liquidated Damages for any given incident or set of incidents shall be considered either a waiver of such damages or a modification of this Agreement. Waiver of Liquidated Damages for one particular violation or set of violations shall not constitute a waiver of damages for any violation not specifically stated in such waiver.

11.5.2. The Liquidated Damages set forth herein are not intended to compensate the County for any damages other than the inconvenience and loss of use or delay of the Products and/or Services. The existence or recovery of such Liquidated Damages shall not preclude the County from recovering other

damages which the County can document as being attributable to a failure to meet one or more deadlines.

11.5.3. Notwithstanding anything contained herein to the contrary, the County will not impose Liquidated Damages for any failure that could not have been prevented through the exercise of reasonable precaution or that is due to a Force Majeure Event.

11.5.4. It is the responsibility of the Company to notify the County immediately should the Company believe that Liquidated Damages should not be assessed in a particular situation and to provide at the same time all information in which the company believes justifies a waiver. The Company agrees that failure to provide such notice and information within twenty-four (24) hours after a particular incident occurs will constitute a waiver of any right the Company may have to contest the imposition of Liquidated Damages in connection with such incident.

11.5.5. Liquidated Damages shall be assessed via withholding of the proper total amount from the payment due to the Company for that particular billing period. The assessment of Liquidated Damages shall not limit the County's right to exercise any termination options it may have under this Agreement.

11.6. **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

11.7. **NO LIENS.** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.

12. INDEMNIFICATION.

To the fullest extent permitted by law, the Company shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "Charges" (as defined below) paid or incurred any of them as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Work or any Services or deliverables provided to the County pursuant to this Agreement ("Infringement Claims"); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Agreement; or (iii) arising from the Company's failure to perform its obligations under this Agreement, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Agreement, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from the Company's violation of any law (including without limitation immigration laws); or (v) any claim that the Company or an employee or subcontractor of the Company is an employee of the County, including but not limited to claims relating to worker's compensation, failure to withhold taxes and the like or (vi) arising from a violation of any

federal, state or local law, regulation or ordinance by the Company or any of its subcontractors, including without limitation E-Verify or other immigration laws.

For purposes of this Section: (a) the term “Indemnitees” means the County and each of the County’s officers, officials, employees, agents and independent Contractors (excluding the Company); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall, at its expense, either defend or settle any claim, action or allegation brought against the County. Provided the County gives prompt written notice of any such claim, action or allegation of infringement and provided County gives Company the authority, information, and reasonable assistance to handle the claim or defense of any such suit or proceeding, Company may, at its sole option and expense either: (i) procure for the County the right to continue using the affected product; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall service(s) provided to the County shall not be adversely affected by such replacement or modification.

13. FORCE MAJEURE.

13.1. **FORCE MAJEURE.** The following force majeure provisions shall apply to the Company and to the County at all times. Neither party shall be liable for any failure or delay in the performance of its obligations pursuant to this Agreement, and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder if all of the following conditions are satisfied:

13.1.1. If such failure or delay:

13.1.1.1. Could not have been prevented by reasonable precaution;

13.1.1.2. Cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and

13.1.1.3. If, and to the extent, such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

13.1.2. An event which satisfies all of the conditions set forth above shall be referred to as a “Force Majeure Event.” Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the affected party continues to use reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

13.1.3. Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within five (5) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature

of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than fifteen (15) days, the County shall have the right to terminate this Agreement by written notice to the Company.

- 13.1.4. Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes of the Company or its subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision. Nothing in the preceding Force Majeure provisions shall relieve the Company of any obligation it may have regarding disaster recovery, whether under this Agreement or at law.

14. INSURANCE.

Throughout the term of the Agreement, the Company shall comply with the insurance requirements described in this Section. In the event the Company fails to procure and maintain each type of insurance required by this Agreement, or in the event the Company fails to provide the County with the required certificates of insurance, the County shall be entitled to terminate the Agreement immediately upon written notice to the Company.

14.1. GENERAL REQUIREMENTS.

- 14.1.1. The Company shall not commence any work in connection with this Agreement until it has obtained all of the types of insurance set forth in this section and the County has approved such insurance. The Company shall not allow any subcontractor to commence work on its subcontractor until all insurance required of the subcontractor has been obtained and approved.
- 14.1.2. All insurance policies required shall be with insurers qualified and doing business in North Carolina recognized by the Secretary of State and the Insurance Commissioner's Office. The Company shall name the County as an additional insured under the commercial general liability policy required.
- 14.1.3. The Company's insurance, except for Automobile Liability, shall be primary of any self-funding and/or insurance otherwise carried by the County for all loss or damages arising from the Consultant's operations under this agreement. The Company and each of its subcontractors shall and does waive all rights of subrogation against the County and each of the Indemnitees (as defined in this Agreement).
- 14.1.4. The County shall be exempt from, and in no way liable for any sums of money that may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.
- 14.1.5. Prior to execution of this Agreement, the Company shall provide the County with certificates of insurance documenting that the insurance requirements have been met, and that the County shall be given thirty (30) days' written notice of any intent to amend coverage or make material changes to or terminate any policy by either the insured or the insurer. The Company shall further provide such certificates of insurance to the County

at any time requested by the County after execution of this Agreement, and shall provide such certificates within five (5) days after the County's request. The County's failure to review a certificate of insurance sent by or on behalf of the Company shall not relieve the Company of its obligation to meet the insurance requirements set forth in this Agreement.

- 14.1.6. Should any or all of the required insurance coverage be self-funded/self-insured, the Company shall furnish to the County a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance.

If any part of the work under this Agreement is sublet, the subcontractor shall be required to meet all insurance requirements set forth in this section, provided that the amounts of the various types of insurance shall be such amounts as are approved by the County in writing. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

- 14.2. **TYPES OF INSURANCE.** The Company agrees that it or its employees or subcontractors will maintain the following liability insurance with an insurance company, acceptable to the County, authorized to do business in the State of North Carolina:

- 14.2.1. **Commercial General Liability.** Bodily injury and property damage liability as shall protect the Company and any subcontractor performing work under this Agreement, from claims of bodily injury or property damage which arise from operation of this Agreement, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal injury liability and Contractual liability, assumed under the indemnity provision of this Agreement.

The County shall be named as additional insured under the commercial general liability insurance for operations or Services rendered under this Agreement. Certificates of all required insurance shall be furnished to the County and shall contain the provision that the County will be given thirty (30) day written notice of any intent to amend or terminate by either the insured or the insuring company.

- 14.2.2. **Automobile Liability Insurance.** Agents of the Company driving onto County property in either their own or rented/hired automobiles shall carry Automobile Liability insurance providing bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$2,000,000 bodily injury each person, each accident

and \$2,000,000 property damage, or \$2,000,000 combined single limit - bodily injury and property damage.

- 14.2.3. **Professional Liability.** Professional liability as shall protect the Company and Company employees for negligent acts, errors or omissions in performing the Services under the Agreement. This policy shall be specific to the performance of the Agreement and shall provide combined single limit each occurrence/aggregate of \$1,000,000.
- 14.2.4. **Workers' Compensation Insurance.** The Company shall meet the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.
- 14.2.5. **Cyber Liability.** Cyber Liability as shall protect the Company and its employees from claims including, but not limited to, the failure: (1) to provide adequate electronic security to safeguard against intrusion or breach; or, (2) to protect private information obtained by the County. This policy shall be specific to the performance of the Agreement and shall provide combined single limit each occurrence/aggregate of \$1,000,000.
- 14.2.6. **Sole Proprietor.** Sole proprietor insurance as shall protect the Company and Company employees for negligent acts in performing the Services under this Agreement.

15. **SUBCONTRACTING.** The Company shall not subcontract any of its obligations under this Agreement without the County's prior written consent. In the event the County does consent in writing to a subcontracting arrangement, Company shall be the prime contractor and shall remain fully responsible for performance of all obligations which it is required to perform under this Agreement. Any subcontractor entered into by Company shall name the County as a third party beneficiary.

16. **NON-DISCRIMINATION.** The County is committed to promoting equal opportunities for all and to eliminating prohibited discrimination in all forms. For purposes of this section, prohibited discrimination means discrimination in the workplace or in the solicitation, selection, and / or treatment of any subcontractor, vendor, supplier or commercial customer on the basis of race, ethnicity, gender, age, religion, national origin, disability, color, ancestry, citizenship, sexual orientation, gender, gender identity, genetic information, political affiliation, or military/veteran status, and any other status protected by federal, state, or local law or other unlawful form of discrimination. Without limiting the foregoing, prohibited discrimination also includes retaliating against any person, business or other entity for reporting or participating in an investigation regarding any incident of prohibited discrimination. It is understood and agreed that not only is prohibited discrimination improper for legal and moral reasons, prohibited discrimination is also an anti-competitive practice that tends to increase the cost of goods and services to the County and others. As a condition of entering into the Agreement, the Company represents, warrants and agrees that it does not and will not engage in or condone prohibited discrimination and that prior to being deployed to a County assignment, employees and subcontractors will review and agree to abide by the

County's Harassment Policy . Without limiting any rights the County may have at law or under any other provision of the Agreement, it is understood and agreed that a violation of this provision constitutes grounds for the County to terminate the Agreement.

17. DRUG-FREE WORKPLACE. The Company agrees that it will provide a drug-free workplace by:

- 17.1. Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- 17.2. Establishing an ongoing drug-free awareness program to inform its employees about:
 - 17.2.1. The dangers of drug abuse in the workplace;
 - 17.2.2. The contractor's policy of maintaining a drug-free workplace;
 - 17.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 17.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- 17.3. Providing all employees engaged in performance of the Agreement with a copy of the statement required by **Section 17.1**;
- 17.4. Notifying all employees in writing in the statement required by **Section 17.1**, that as a condition of employment on this Agreement, the employee will:
 - 17.4.1. Abide by the terms of the statement; and
 - 17.4.2. Notify the Company in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;
- 17.5. Notifying the contracting officer in writing within 10 days after receiving notice under **Section 17.4.2**, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- 17.6. Within 30 days after receiving notice under **Section 17.4.2** of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - 17.6.1. Taking appropriate personnel action against such employee, up to and including termination; or
 - 17.6.2. Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- 17.7. Making a good faith effort to maintain a drug-free workplace through implementation of this section.

18. **E-VERIFY, FMLA, ADA, OSHA.** The Company agrees to make itself aware of and comply with, and cause its subcontractors to comply with all federal, state, and local laws, regulations and ordinances relating to the performance of this Agreement or to the Services delivered hereunder, including without limitation, E-Verify (Article 2 of Chapter 64 of the North Carolina General Statutes), Workers' Compensation, the Fair Labor Standards Act (FLSA) the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and Occupational Safety And Health Administration (OSHA). The Company further agrees to obtain all verifications, permits and licenses applicable to the performance of this Agreement. If any violation of this section has occurred or does occur, the Company will indemnify and hold harmless the County from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.

19. **OTHER OBLIGATIONS OF COMPANY.**

19.1. **DEBARMENT.** The Company certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency. The Company must notify the County within thirty (30) days if debarred by any governmental entity during this Agreement.

19.2. **VENDOR SCORECARD.** At the County's sole discretion, Company may be required to: work with County Representatives to develop a vendor scorecard that captures key performance indicators; participate in periodic meetings with County Representatives to review vendor performance; and provide the County with information sufficient to monitor and track performance including, but not limited to, data on key performance indicators and customer satisfaction.

19.3. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the County's premises including but not limited to:

- (a) The County is a drug-free workplace employer. Illegal controlled substances are not permitted at County facilities;
- (b) Smoking is not permitted on County property;
- (c) Park property (parks and buildings) is tobacco-free with the exception of some regional parks and County-owned golf courses; and
- (d) Weapons are not permitted at County facilities (the exception are weapons possessed by law enforcement officials).

19.4. **RESPECTFUL AND COURTEOUS BEHAVIOR.** The Company shall assure that its employees and subcontractors interact with County employees and with the public in a courteous, helpful and impartial manner. All employees and

subcontractors of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.

- 19.5. **DAMAGE TO EQUIPMENT, FACILITIES, PROPERTY OR DATA.** The Company shall be responsible for any damage to or loss of the County's equipment, facilities, property and/or data arising out of the negligent or willful act or omission of the Company or its subcontractors. In the event that the Company causes damage to the County's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.
- 19.6. **NON-ENDORSEMENT AND PUBLICITY.** The County is not endorsing the Company's Products and/or Services, nor suggesting that they are the best or only solution available. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Agreement or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.
- 19.7. **NO BRIBERY.** The Company certifies that neither it, nor any of its affiliates or subcontractors, in connection with this Agreement has bribed or attempted to bribe an officer or representative of the County.

20. NOTICES.

- 20.1. **DELIVERY OF NOTICES.** Any notice, consent or other communication required or contemplated by this Agreement shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below.
- 20.2. **EFFECTIVE DATE OF NOTICES.** Any notice shall be effective upon the date of receipt by the intended recipient; provided that any notice which is sent by telefax or electronic mail shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier.
- 20.3. **CHANGE OF NOTICE ADDRESS.** Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.
- 20.4. **NOTICE ADDRESS.** Communications that relate to any breach, default, termination, delay in performance, prevention of performance, modification, extension, amendment, or waiver of any provision of this Agreement shall be sent to:

For the County:

Marcy Mars
Mecklenburg County
Procurement
3205 Freedom Drive, Suite 101

Charlotte, NC 28208
Phone: 980-314-2401
Fax: 877-241-8104
E-Mail: Marcy.Mars@MecklenburgCountyNC.gov

With Copy To:
Tyrone Wade
Mecklenburg County
County Attorney's Office
600 East Fourth Street
CMGC 11th Floor
Charlotte, NC 28202
PHONE: (980) 314-2908

For the Company:

Name
Company
Address
Phone
Fax
Email

- 20.5. **OTHER NOTICES.** All other notices shall be sent to the other party's Project Manager at the most recent address provided in writing by the other party.

In WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

CONTRACTOR:

ATTEST:

Contractor Signature

(N/A for Sole Proprietor)

**MECKLENBURG COUNTY AUTHORIZED OFFICER SIGNATURES FOLLOW ON
NEXT PAGE**