

ONSLOW COUNTY SCHOOLS

PURCHASING DEPARTMENT

200 Broadhurst Road, Jacksonville, NC 28540
P. O. Box 99, Jacksonville, North Carolina 28541-0099
Phone (910) 455-2211 Fax (910) 455-1548

August 7, 2019

REQUEST FOR PROPOSAL

PROPOSAL NUMBER: **DH1001S**

TO BE RETURNED BY: **August 15, 2019**

Reveal Math Integrated Math 1, 2 and 3

Offeror:
Attention:
Address:

Refer Inquiries To: **Schelaine Parnell**
Purchasing Agent
Telephone Number: **(910) 455-2211 ext. 20653**
E-Mail Address: Schelaine.Parnell@onslow.k12.nc.us
Requisitioned By: **Steve Clarke**
Principal, Dixon High School

NOTICE TO OFFEROR

Proposals, subject to the conditions made a part hereof, will be received at this office until, but not later than 2 o'clock p. m., for furnishing the supplies, materials and/or services, as described herein. Refer to Instructions for Proposals, Item 8 for proper mailing instructions.

Proposals and/or addenda submitted via E-Mail or facsimile (FAX) machine in response to this Request for Proposals **will be** acceptable. Proposals are subject to rejection unless submitted on this form.

EXECUTION

In compliance with this Request for Proposals, and subject to all the conditions herein, the undersigned offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this proposal, I certify that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.

Failure to execute/sign proposal prior to submittal shall render proposal invalid. Late proposals are not acceptable.

OFFEROR:	FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

If you desire to "no proposal" this requirement, sign and return only this page, check appropriate box(es).

() NO PROPOSAL () REMOVE FROM MAILING LIST

Offer valid for 45 days from date of opening unless otherwise stated here: _____ days (See Instructions for Proposals, Item 6) Prompt Payment Discount: _____ % _____ days (See Instructions for Proposals, Item 7)

ACCEPTANCE OF PROPOSAL

If any or all parts of this proposal are accepted by Onslow County Schools, an authorized representative of the School System shall affix their signature hereto and this document and the provisions of the Instructions for Proposals, the special terms and the conditions specific to this Request for Proposal, the specifications, and the Onslow County Schools General Contract Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful offeror(s).

FOR ONSLOW COUNTY SCHOOLS USE ONLY

Offer accepted and contract awarded this _____ day of _____, 20____, as indicated on attached certification, by _____ (Authorized representative of Onslow County Schools).

INSTRUCTION FOR PROPOSALS

1. **READ, REVIEW AND COMPLY:** It shall be the offeror's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
2. **NOTICE TO OFFERORS:**
All proposals are subject to the provisions of the Instructions for Proposals, special terms and conditions specific to this Request for Proposals, the specifications, and the Onslow County Schools General Contract Terms and Conditions.

The Onslow County Schools object to and will not evaluate or consider any additional terms and conditions submitted with a proposal response. This applies to any language appearing in or attached to the document as part of the offeror's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS.**

By execution and delivery of this document, the offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.
3. **DEFINITIONS:**
OFFEROR: Company, firm, corporation, partnership, individual, etc., submitting a response to a Request for Proposals.
TERM CONTRACT: A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities only.
4. **EXECUTION:** Failure to sign under EXECUTION section will render proposal invalid.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this proposal, the order of precedence shall be (1) special terms and conditions specific to this proposal, (2) specifications, (3) Onslow County Schools General Contract Terms and Conditions, and (4) Instructions for Proposals.
6. **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, the offer shall be valid for 45 days from the date of proposal opening. Preference may be given to proposals allowing not less than 45 days for consideration and acceptance.
7. **PROMPT PAYMENT DISCOUNTS:** Offerors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
8. **MAILING INSTRUCTIONS:**
In an effort to support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort.
It is desirable that all responses meet the following requirements:
- All copies are printed **double sided**.
 - All submittals and copies are printed on **recycled paper with a minimum post-consumer content of 30%** and indicate this information accordingly on the response.
 - Unless absolutely necessary, all bids and copies should **minimize or eliminate use of non-recyclable or non re-usable materials** such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
 - Materials should be submitted in a format which allows for **easy removal and recycling** of paper materials.
- Mail only one fully executed proposal document, unless otherwise instructed, and only one proposal per envelope. Address envelope and insert proposal number as shown below. It is the responsibility of the offeror to have the proposal in this office by the specified time and date of opening.**
- | <u>DELIVERED BY US POSTAL SERVICE</u> | | <u>DELIVERED BY ANY OTHER MEANS</u> |
|--|------------------|--|
| PROPOSAL NO. <u>DH1001S</u>
ONSLow COUNTY SCHOOLS
PURCHASING DEPARTMENT
P. O. BOX 99
JACKSONVILLE, NC 28541-0099 | <u>OR</u> | PROPOSAL NO. <u>DH1001S</u>
ONSLow COUNTY SCHOOLS
PURCHASING DEPARTMENT
200 BROADHURST ROAD
JACKSONVILLE, NC 28540 |
9. **TABULATIONS:** Verbal tabulations of proposals and award information can be obtained by calling the purchaser listed on the first page of this document.

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10. SPECIFICATIONS: Any deviation from specifications indicated herein must be clearly pointed out; otherwise, it will be considered that items offered are in strict compliance with these specifications, and offeror will be held responsible therefore. Deviations shall be explained in detail. **The offeror shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.**

11. INFORMATION AND DESCRIPTIVE LITERATURE: Offeror is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each offeror must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous offer will not satisfy this provision. Proposals which do not comply with these requirements will be subject to rejection.

12. RECYCLING AND SOURCE REDUCTION: It is the policy of Onslow County Schools to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective.

We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use.

Companies are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.

13. CLARIFICATIONS/INTERPRETATIONS: Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum. The offeror is cautioned that the requirements of this proposal can be altered only by written addendum and that verbal communications from whatever source are of no effect.

14. ACCEPTANCE AND REJECTION: Onslow County Schools reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the offeror, to accept any item in the proposal. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

15. REFERENCES: Onslow County Schools reserves the right to require a list of users of the exact item offered. Onslow County Schools may contact these users to determine acceptability of the proposal. Such information may be considered in the evaluation of the proposal.

16. TAXES:

FEDERAL: All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the contractor will be executed and returned by the using agency.

OTHER: Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

17. AWARD OF CONTRACT: As directed by statute, qualified proposals will be evaluated and acceptance may be made of the lowest and best proposal most advantageous to the Onslow County Schools as determined upon consideration of such factors as: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the offerors; the substantial conformity with the specifications and other conditions set forth in the proposal; the suitability of the articles for the intended use; the related services needed; the date or dates of delivery and performance; and such other factors deemed by the Onslow County Schools to be pertinent or peculiar to the purchase in question. Unless otherwise specified by the Onslow County Schools or the offeror, the Onslow County Schools reserves the right to accept any item or group of items on a multi-item proposal.

In addition, on TERM CONTRACTS, Onslow County Schools reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by the Onslow County Schools to be pertinent or peculiar to the purchase in question.

18. HISTORICALLY UNDERUTILIZED BUSINESSES: Pursuant to General Statute 143-48 and Executive Order #150, Onslow County School invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

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19. **CONFIDENTIAL INFORMATION:** As provided by statute and rule, Onslow County Schools will consider keeping trade secrets which the offeror does not wish disclosed confidential. Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the offeror. Cost information shall not be deemed confidential. In spite of what is labeled as a trade secret, the determination whether it is or not will be determined by North Carolina law.
20. **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the offeror's expense. Request for the return of samples must be made within 10 days following date of proposal opening. Otherwise the samples will become School property. Each individual sample must be labeled with the offeror's name, proposal number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
21. **PROTEST PROCEDURES:** When a bidder wants to protest a contract awarded by the Onslow County Schools resulting from this solicitation, they must submit a written request to the Purchasing Director, Onslow County Schools, 200 Broadhurst Road, Jacksonville, NC 28540. This request must be received in the Onslow County Schools' Purchasing Department within thirty (30) consecutive calendar days from the date of the contract award. Protest letters must contain specific reasons and any supporting documentation for the protest. Note: Contract award notices are sent only to those actually awarded contracts, and not to every person or firm responding to this solicitation. Bid status and Award notices are available by contacting the Onslow County Schools' Purchasing Department at (910) 455-2211. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519.
22. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
23. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident bidders. The "Principal Place of Business" is defined as the principal place from which the trade or business of the bidder is directed or managed.

USER: Onslow County Schools

ATTENTION: E-Procurement rules **WILL** apply for Registered E-Procurement Vendors only. Reference the General Contract Terms and Conditions, paragraphs 19 and 20.

TRANSPORTATION CHARGES: FOB Destination. Freight charges must be included in the price of each item listed, not listed as a separate item.

USAGE AND DURATION: This contract is intended to cover our normal requirements for these items from **Date of Award to June 30, 2020.** This will allow the Onslow County School to procure the equipment as budgeted funds allow. No minimum or maximum quantities are implied or guaranteed herein. While it is not contemplated that any abnormal requirements will develop, however, if such should occur, Onslow County Schools reserves the right to call for separate bids.

DELIVERY & INVOICE: Delivery & Invoice is required within fifteen (15) days after receipt of order. State here whether this requirement can be met: yes/no _____. If this requirement cannot be met, delivery will be made from _____ (City & State) within _____ consecutive days after receipt of order. Onslow County Schools reserves the right to evaluate delivery offered as a factor in determining the award of the proposed contract.

NOTE: ONSLOW COUNTY SCHOOLS RESERVES THE RIGHT TO ADJUST QUANTITIES UP OR DOWN AT THE UNIT PRICE AS BUDGETED FUNDS MAY ALLOW OR REQUIRE.

ONSLOW COUNTY SCHOOLS ALSO RESERVES THE RIGHT TO AWARD CONTRACT ON A SPLIT ORDER BASIS OR LUMP SUM BASIS IF IT IS IN OUR BEST INTEREST.

ALL MATERIALS SHOULD BE NEW AND CURRENT UNLESS OTHERWISE STATED.

INFORMATION REQUIRED WITH BID: Submit complete descriptive literature and specification on all items offered. Bids which fail to comply will be subject to rejection.

FURNISH AND DELIVER THE FOLLOWING ITEMS:

Item #	Qty	Description	Unit Cost	Total Cost
1.	228 ea.	9780076902194-CUS Reveal Math 1 Integrated Student Edition Bundle 3 Year Subscription		
2.	12 ea.	9780076902194-Reveal Math Integrated 1 Student Bundle 3 Yr Subscription		
3.	4 ea.	9780077006938-CUS Reveal Math 1 Integrated Teacher Edition C2TEH		
4.	4 ea.	9780077032050-CUS Reveal Math 1 Integrated Vol 2 Teacher Edition C2TEH		
5.	4 ea.	9780076906260-Cus Reveal Math 1 Integrated Online Teacher 3 year Subscription		
6.	138 ea.	9780076902309-CUS Reveal Math II Integrated Student Edition Bundle 3 Year Subscription		
7.	12 ea.	9780076902309-Reveal Math Integrated II Student Bundle 3 Yr Subscription		
8.	3 ea.	9780077006976-CUS Reveal Math II Integrated Teacher Edition C2TEH		
9.	3 ea.	9780077032067-CUS Reveal Math II Integrated Vol 2 Teacher Edition C2TEH		
10.	3 ea.	9780076906277-Cus Reveal Math II Integrated Online Teacher 3 year Subscription		

Item #	Qty	Description	Unit Cost	Total Cost
11.	138 ea.	9780076902439-CUS Reveal Math Ili Integrated Student Edition Bundle 3 Year Subscription		
12.	12 ea	9780076902439-Reveal Math Inetgrated III Student Bundle 3 Yer Subscription		
13.	3 ea.	9780077006983-CUS Reveal Math III Integrated Teacher Edition C2TEH		
14.	3 ea.	9780077032074-CUS Reveal Math III Integrated Vol 2 Teacher Edition C2TEH		
15.	3 ea.	9780076906314-Cus Reveal Math III Integrated Online Teacher 3 year Subscription		
TOTAL COST				

GENERAL CONTRACT TERMS AND CONDITIONS

1. **DEFAULT AND PERFORMANCE BOND:** If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under this agreement, Onslow County Schools shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In case of default by the Vendor for any reason, Onslow County Schools may procure substitute goods from other sources and hold the Vendor responsible for any excess cost occasioned thereby. Onslow County Schools reserves the right to require at any time a performance bond or other acceptable alternative guarantees from a successful Vendor without expense to Onslow County Schools.

In addition, in the event of default by the Vendor under this contract, Onslow County Schools may immediately cease doing business with the Vendor, immediately terminate for cause all existing contracts Onslow County Schools has with the Vendor, and debar the Vendor from doing future business with Onslow County Schools.

Upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, Onslow County Schools may immediately terminate, for cause, this contract and all other existing contracts the Vendor has with Onslow County Schools, and debar the Vendor from doing future business with Onslow County Schools.
2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Vendor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. Onslow County Schools reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
4. **TERMINATION FOR NON-APPROPRIATION OF FUNDS:** Notwithstanding any other provision of this contract, Onslow County Schools shall not be obligated for Vendor/Contractor's performance hereunder or by any provision of this contract during any of Onslow County Schools' future fiscal years unless and until the Board of Education appropriates funds for this contract in the Onslow County Schools' budget for each such future fiscal year. In the event that funds are not appropriated for this contract, this contract shall terminate effective June 30 of the last fiscal year for which funds were appropriated. Onslow County Schools shall notify Vendor/Contractor in writing of any such non-appropriation of funds at the earliest possible date.
5. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
 - a. G.S. § 143-59.1 bars the Secretary of Administration from entering into contracts with vendors if the Vendor or its affiliates meet one of the conditions of G.S. § 105-164.8(b) and refuse to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. § 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the quote document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. All agencies participating in this contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
 - c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
6. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
7. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.
8. **INSPECTION AT CONTRACTOR'S SITE:** Onslow County Schools reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for Onslow County Schools' determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
9. **PAYMENT TERMS:** Onslow County Schools prefers payment to be made when entire purchase order is complete. Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.
10. **AFFIRMATIVE ACTION:** The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.

11. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
12. **STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization; such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

The complete product(s) offered herein, and NOT merely its component parts or subsystems, must comply with the above requirement for safety listing. Having the appropriate certification or safety label affixed to any device delivered pursuant to this solicitation, under the conditions described above, is a material condition of any contract awarded as a result of this solicitation. All costs for product and industry certifications and listings, and any other actions required to supply conforming products to Onslow County Schools as described in this RFQ, are the sole responsibility of the Vendor. The certifications or safety label shall be affixed and be visible on the OUTSIDE of all products that require a certification or safety label in order to pass the State Quality Acceptance Inspection.

13. **INTELLECTUAL PROPERTY INDEMNITY:** Vendor shall hold and save Onslow County Schools, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.
14. **ADVERTISING:** Vendor agrees not to use the existence of this contract or the name of Onslow County Schools as part of any commercial advertising or marketing of products or services. A Vendor may inquire whether Onslow County Schools is willing to act as a reference by providing factual information directly to other prospective customers.
15. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this contract to verify accounts and data affecting fees or performance under the contract, as provided in G.S. § 143-49(9).
16. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, Onslow County Schools may:

- a. Forward the Vendor's payment check directly to any person or entity designated by the Vendor, and
- b. Include any person or entity designated by Vendor as a joint payee on the Vendor's payment check.

In no event shall such approval and action obligate Onslow County Schools to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all contract obligations. Upon advance written request, Onslow County Schools may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and considered a material breach of this contract.

17. **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 contractor 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 \$500,000.00, covering all of Vendor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)
- c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the contract. The Motor Vehicle Insurance Coverage shall be in an amount not less than \$300,000 for Bodily Injury, including Accidental Death, to any one person and subject to the same limit for each person, in an amount not less than \$500,000 on account of one accident; and Property Damage Insurance Coverage in an amount not less than \$100,000/\$300,000; Uninsured/Under Insured Motorist Insurance Coverage in an amount not less than \$150,000.00 and \$2,500.00 medical payment.

REQUIREMENTS: Providing and maintaining adequate insurance coverage 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 contractor shall not be interpreted as limiting the Vendor's liability and obligations under the contract. Onslow County Schools will be required to be listed as an additional insured for general liability.

18. **GENERAL INDEMNITY:** The Vendor shall hold and save Onslow County Schools, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that Onslow County Schools has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against Onslow County Schools' agents who are involved in the delivery or processing of contractor goods to Onslow County Schools. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

19. **REGISTERED E-PROCUREMENT VENDORS:**

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.

THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE OF 1.75% (.0175) ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) OF GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the proposed contract or invoice. There are no additional fees or charges to the Vendor for the services rendered by the Supplier Manager under this contract. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

Vendor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase activity for the prior month, or purchases for which the supplier invoice has been paid. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. Pursuant to North Carolina General Statute § 147-86.23, the Service will charge interest and late payment penalties on past due balances. Interest shall be charged at the rate set by the Secretary of Revenue pursuant to N.C.G.S. § 105-241.21 as of the date the balances are past due. The late payment penalty will be ten percent (10%) of the account receivable. Within thirty (30) days of the receipt of invoice, Vendor may dispute in writing the accuracy of an invoice. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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. Onslow County Schools or State approved user, not the Supplier Manager, shall be responsible for the solicitation, quotes received, evaluation of quotes received, award of contract, and the payment for goods delivered.

Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If 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 by 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.

VENDOR IS AND SHALL REMAIN RESPONSIBLE FOR PAYING THE TRANSACTION FEE ON BEHALF OF ANY SUB-CONTRACTOR OR DEALER INVOLVED IN PERFORMANCE UNDER THIS CONTRACT IN THE EVENT THAT SUCH SUB-CONTRACTOR OR DEALER DEFAULTS ON PAYMENT.

20. **NON-REGISTERED E-PROCUREMENT VENDORS:** E-Procurement Rules **DO NOT** apply.
21. **COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this contract, including those of federal, state and local agencies having jurisdiction and/or authority.
22. **ENTIRE AGREEMENT:** This contract and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This contract, any addenda hereto, and the Vendor's quotes are incorporated herein by reference as though set forth verbatim.

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All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

23. **AMENDMENTS:** This contract may be amended only by written amendments duly executed by Onslow County Schools and the Vendor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.
24. **CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least 180 days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving thirty (30) days prior notice in writing to the other party.
25. **QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases there under.
26. **PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period must be general, either by reason of market change or on the part of the Vendor to other customers.
 - a. **Notification:** Must be given to Onslow County Schools, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
 - b. **Decreases:** Onslow County Schools shall receive full proportionate benefit immediately at any time during the contract period.
 - c. **Increases:** All prices 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 Onslow County Schools reserving the right to accept or reject the increase, or cancel the contract. Such action by Onslow County Schools shall occur not later than fifteen (15) days after the receipt by Onslow County Schools of a properly documented request for price increase. Any increases accepted shall become effective not later than thirty (30) days after the expiration of the original fifteen (15) days reserved to evaluate the request for increase.
 - a. **INVOICES:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be shown on invoice as a separate item.
27. **WARRANTY:** The Vendor warrants to Onslow County Schools that all equipment furnished under this specification will be new, of good material and workmanship, and agrees to replace promptly any part or parts which by reason of defective material or workmanship shall fail under normal use, free of negligence or accident, for a minimum period of twelve (12) months from date put in operation. Such replacement shall include all parts, labor, and transportation cost to the location where equipment is down, free of any charge to the owner or his representative.
28. **REGISTERED SEX OFFENDERS:** Vendor acknowledges that Onslow County Schools prohibits anyone registered or required to register as a sex offender from being present on any Onslow County Schools property for any reason, whether before, during or after school hours. Vendor expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from Onslow County Schools' property by Onslow County Schools and/or law enforcement officials and may also be subject to criminal prosecution. Vendor could be removed from additional opportunities that may become available with Onslow County Schools.

If Vendor, any of Vendor's employees, or any of Vendor's subcontractors or employees of subcontractors will have any direct interaction with students, then Vendor or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on Onslow County Schools property.
29. **WAIVER:** The failure to enforce or the waiver by Onslow County Schools of any right, breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.
30. **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.
31. **INDEPENDENT CONTRACTOR:** The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Agency.
32. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Contractor or its employees shall not be subcontracted without prior written approval of the Agency's Contract Administrator. Acceptance of an offeror's proposal shall include any subcontractor(s) specified therein.
33. **TERMINATION:** The Agency may terminate this agreement at any time by 30 days notice in writing from the Agency to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the

option of the Agency, become its property. If the contract is terminated by the Agency as provided herein, the Contractor shall be paid for services satisfactorily completed, less payment or compensation previously made.

34. **CONFIDENTIALITY:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency.
35. **CARE OF PROPERTY:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished it for use in connection with the performance of this contract or purchased by it for this contract and will reimburse the Onslow County Schools for loss of damage of such property.
36. **ADDENDA:** Any addenda to specifications issued during the time of bidding are to be considered covered in the proposal and in closing a contract they will become a part thereof.
- All addenda shall be acknowledged by the bidder(s) on the proposal form.
37. **RECEIPT OF BIDS:** Bids shall be received in strict accordance with requirements of the General Statutes of North Carolina. Bid security shall be required as prescribed by statute. Prior to opening of any bids on the project, the bidder will be permitted to change or withdraw his bid.
38. **BID EVALUATION:** The award of the contract will be made to the lowest responsible bidder as soon as practical. Before awarding a contract the Owner may require the apparent low bidder to qualify himself to be a responsible bidder.
39. **PROTECTION OF WORK, PROPERTY AND THE PUBLIC:** The Contractor shall be responsible for the safe and prudent use of the site and work in progress. The Contractor shall be responsible for any damage to OCS property, or of that of others on the job, and shall make good such damages.
- The Contractor shall adhere to all applicable rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry.
- The Contractor and its employees will observe the posted safety requirements of OCS and those required by law. The Contractor is responsible for the safety of its employees at all times while on OCS's premises.
40. **DRUG-FREE WORKPLACE:** The Contractor agrees to make a good faith effort to establish and maintain a drug-free workplace in connection with the performance of this contract. Consistent with the size and organization of its workforce, Contractor may wish to consider taking the following or other appropriate actions in establishing a drug-free workplace: publicizing a drug-free workplace policy; initiating an employee drug awareness program or encouraging participation in existing community programs; informing employees of the general availability of drug counseling programs; etc.
41. **QUALIFICATIONS:** Bidders shall satisfy the Owner that he has a successful record of experience in the type of work specified. Otherwise, his proposal may not be considered.
42. **E-VERIFY:** Contractor shall comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes. Further, if Contractor utilizes a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes.
43. **IRAN DIVESTMENT ACT CERTIFICATION:** Contractor hereby certifies that Contractor, and all subcontractors, are not on the Iran Final Divestment List ("List") created by the North Carolina State Treasurer pursuant to N.C.G.S. 143-6A-4. Contractor shall not utilize any subcontractor that is identified on the List.
44. **UNIFORM ADMINISTRATIVE REQUIREMENTS:** By entering into this Contract the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.

06/19/2018

ONslow COUNTY SCHOOLS – Uniform Guidance Attachment**Federal Contracting Requirements**

This **Uniform Guidance Attachment**, heretofore referenced as “**UG Attachment**” is incorporated into the Service Contract between Onslow County Schools and the Contractor. Capitalized terms not defined in this Attachment shall have the meanings assigned to such terms in the Contract. All references to the “Contractor” or “Company” or “Vendor” or “Provider” shall be deemed to mean the Contractor.

This Contract will be financed in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This **UG Attachment** identifies the federal requirements that may be applicable to this contract. The Contractor is responsible for complying with all applicable provisions.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any subagreement or subcontract executed by the Contractor pursuant to its obligations under this Contract. The Contractor and its subcontractors, if any, hereby represent and covenant that they have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

Energy Conservation

The Contractor and Subcontractors agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

Federal Water Pollution Control Act

For contracts in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The Contractor agrees to report each violation to Onslow County Schools and understands and agrees that Onslow County Schools will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.”

Clean Air Act

For contracts in excess of \$150,000, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. and the Federal Water Pollution Act as amended (33 USC § 1251-1387).

The Contractor agrees to report any violation to Onslow County Schools immediately upon discovery. The Contractor understands and agrees that Onslow County Schools will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency (EPA) Regional Office. Contractor must include this requirement in all subcontracts that exceed \$50,000.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Access to Records and Reports

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide Onslow County Schools, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives’ access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives’ access to construction or other work sites pertaining to the work being completed under the contract.

All Contractors and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff.

No Obligation by Federal Government

Onslow County Schools and the Contractor acknowledge and agree that , notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to Onslow County Schools, the Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the Federally assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. Contractor's failure to do so shall constitute a material breach of the contract.

Termination

Termination Without Cause. Onslow County Schools may terminate this Agreement at any time without cause by giving thirty (30) days written notice to the Contractor.

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:

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

The other party attempts to assign, terminate or cancel this Agreement contrary to the terms hereof; or

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 and state the party's intent to terminate this Agreement if the default is not cured within the specified period.

Additional Grounds for Default Termination by Onslow County Schools. By giving written notice to the Contractor, Onslow County Schools may also terminate this Agreement upon the occurrence of one or more of the following events (which shall each constitute grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

The Contractor makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Agreement, Contractor's Proposal, or any covenant, agreement, obligation, term or condition contained in this Agreement; or

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The Contractor takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Agreement, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Agreement, or failure to provide the proof of insurance as required by this Agreement.

Cancellation of Orders and Subcontracts. In the event this Agreement is terminated by Onslow County Schools for any reason prior to the end of the term, the Contractor shall upon termination immediately discontinue all service in connection with this Agreement and promptly cancel all existing orders and subcontracts, which are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Contractor shall submit a statement to Onslow County Schools showing in detail the services performed under this Agreement to the date of termination.

No Effect on Taxes, Fees, Charges, or Reports. Any termination of the Agreement shall not relieve the Contractor of the obligation to pay any fees, taxes or other charges then due to Onslow County Schools, nor relieve the Contractor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Contractor from any claim for damages previously accrued or then accruing against the Contractor.

Obligations upon Expiration or Termination. Upon expiration or termination of this Agreement, the Contractor shall promptly (a) return to Onslow County Schools all computer programs, files, documentation, data, media, related material and any other recording devices, information, or compact discs that are owned by Onslow County Schools; (b) deliver to Onslow County Schools all Work Product; (c) allow Onslow County Schools or a new vendor access to the systems, software, infrastructure, or processes of the Contractor that are necessary to migrate the Services to a new vendor; and (d) refund to Onslow County Schools all pre-paid sums for Products or Services that have been cancelled and will not be delivered.

No Suspension. In the event that Onslow County Schools disputes in good faith an allegation of default by the Contractor, notwithstanding anything to the contrary in this Agreement, the Contractor agrees that it will not terminate this Agreement or suspend or limit the delivery of Products or Services or any warranties or repossess, disable or render unusable any Software supplied by the Contractor, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.

Authority to Terminate. Onslow County Schools Superintendent or their designee is authorized to terminate this Agreement on behalf of Onslow County Schools.

Audit. During the term of the Agreement and for a period of one (1) year after termination or expiration of this Agreement for any reason, Onslow County Schools shall have the right to audit, either itself or through a third party, all books and records (including but not limited to the technical records) and facilities of the Contractor necessary to evaluate Contractor's compliance with the terms and conditions of the Agreement or Onslow County Schools' payment obligations. Onslow County Schools shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Contractor. However, if non-compliance is found that would have cost Onslow County Schools in excess of \$5,000 but for the audit, then the Contractor shall be required to reimburse Onslow County Schools for the cost of the audit.

Remedies

Liquidated Damages: Onslow County Schools and the Contractor acknowledge and agree that Onslow County Schools may incur costs if the Contractor fails to meet the delivery times set forth in the ITB for the Products and Services. The parties further acknowledge and agree that: (a) Onslow County Schools may be damaged by such failures, including loss of goodwill and administrative costs; but that (b) the costs that Onslow County Schools might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Contractor agrees to pay liquidated damages at the rates set forth in the ITB. The parties agree that the liquidated damages set forth in the ITB shall be Onslow County Schools' exclusive remedy for loss of goodwill and administrative costs, attributable to a failure by the Contractor to meet such delivery times, but shall not be the remedy for the cost to cover or other direct damages.

Right to Cover: If the Contractor fails to meet any completion date or resolution time set forth in this Agreement (including the Exhibits), and it fails to cure such default within one (1) business day after receiving written notice from Onslow County Schools of such failure, Onslow County Schools 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:

Employ such means as it may reasonably deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Contractor is again able to resume performance under this Agreement; and
Deduct any and all reasonable expenses incurred by Onslow County Schools in obtaining or performing the Services from any money then due or to become due the Contractor and, should Onslow County Schools' reasonable cost of obtaining or performing the services exceed the amount due the Contractor, collect the difference from the Contractor.

Right to Withhold Payment. If the Contractor materially breaches any provision of this Agreement, Onslow County Schools shall have a right to withhold all payments due to the Contractor with respect to the services that are the subject of such breach until such breach has been fully cured.

Specific Performance and Injunctive Relief. The Contractor agrees that due to the potential impact on public health, monetary damages may not be an adequate remedy for the Contractor's failure to provide the Services required by this Agreement, and monetary damages may not be the equivalent of the performance of such obligation. Accordingly, the Contractor hereby agrees that Onslow County Schools may seek an order granting specific performance of such obligations of the Contractor in a court of competent jurisdiction within the State

of North Carolina. The Contractor further consents to Onslow County Schools seeking injunctive relief (including a temporary restraining order) to assure performance in the event the Contractor breaches the Agreement in any material respect.

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 as a result of the other party's breach of this Agreement, following any applicable cure periods, and provided such party has given notice of its intention to apply a setoff prior to making the payment deduction, together with documentary evidence demonstrating that such party has actually incurred the damages and/or expenses being setoff.

Other Remedies. Except as specifically set forth in the main body of this Agreement, the remedies set forth above shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy

Debarment and Suspension

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part. 3000. As such, the Contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor is required to comply with 2 C.F.R. Part 180, Subpart C and 2 C.F.R. pt. 3000, Subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proper certifies that:

This certification in this clause is a material representation of fact relied upon by Onslow County Schools. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available by Onslow County Schools, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C and 2 C.F.R. Part 3000, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by executive Order 11375, and with the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the

administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Davis-Bacon Requirements

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-

Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. *Withholding.*

The Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. *Payrolls and Basic Records.*

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each

covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such

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action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in

full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

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All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes Concerning Labor Standards.**

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (and any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. **Certification of Eligibility.**

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

Copeland "Anti-Kickback" Act

Contractor. The Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulation 29 C.F.R. Part 3 *as may be applicable*, which are incorporated by reference into this contract.

Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may require and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12."

Contract Work Hours and Safety Standards Act (all contracts in excess of \$100,000)

1. **Overtime requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontractors.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

Rights to Inventions Made Under a Contract or Agreement***Patent and Rights in Data*****CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK.**

Rights in Data - The following requirements apply to each contract involving experimental, developmental or research work:

The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)(i) and (2)(b)(ii) of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

Any subject data developed under that contract, whether or not a copyright has been obtained; and

Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part.

When federal assistance is awarded for experimental, developmental, or research work, it is the general intention to increase knowledge available to the public rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless determined otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agree to make available to the public, either the license in the copyright to any subject data developed in the course of that contract or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance.

Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

Nothing contained in this clause regarding rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Data developed by the Purchaser or Contractor and financed entirely without the use of Federal assistance that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.

Unless determined otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

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The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Patent Rights - The following requirements apply to each contract involving experimental, developmental, or research work:

General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide those rights in that invention due the Federal Government as described in U.S. Department of

Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

Procurement of Recovered Materials

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the contractor can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>."

DHS Seal, Logo, and Flags

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without pre-approval by the specific federal agency.

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