

## NC E-Procurement Terms of Use

*NOTE: The NC E-Procurement Terms of Use were last updated on July 12, 2016*

1. **ACCEPTANCE OF TERMS** Welcome to The North Carolina E-Procurement Service (Service). This Service is provided to you, the Supplier, subject to the following Terms of Use (TOU), which may be updated from time to time without prior notice to you. The Service is operated by the Department of Administration, the Department of Information Technology, the Office of the State Controller (collectively, the Operations Agencies), and the Third Party Agent (TPA). The Operations Agencies and the TPA collectively form the Operations Group.

When presented with the TOU at vendor registration, you will be given an opportunity to click "I Accept", which means you agree to the terms set out herein. You can review the most current version of this document at any time by clicking on the TOU link on the registration type and Locations pages, and your continued use of the Service constitutes your agreement with the most current version. In addition, when using the Service, you shall be subject to any posted guidelines or rules applicable to such services. All such guidelines or rules are hereby incorporated by reference into this agreement. If you do not click "I accept", your information will be retained within the North Carolina electronic Vendor Portal (eVP); however, you are not a registered Supplier on the Service and, therefore, you will not be allowed to receive Purchase Orders through the Service.

2. **DESCRIPTION OF SERVICE** To suppliers of governmental entities within the State of North Carolina who have chosen to participate, the Service provides the ability to register as a Supplier, modify company information, receive electronic purchase orders and respond to electronic requests for quote if so indicated by the supplier during registration. Unless explicitly stated otherwise, any new features, which may augment or enhance the current Service, shall be subject to the TOU. You understand and agree that the Service is provided "AS-IS" and that the State and the Operations Group assume no responsibility for the misdelivery or failure of purchase orders or responses to requests for quotes.

You are responsible for obtaining access to the Service through the electronic Vendor Portal (eVP) and that access may involve third party fees (such as Internet service provider or airtime charges). You are responsible for those fees. In order to use the system, you must have access to necessary equipment. Registrants who do not have the equipment necessary for Internet access may contact Customer Service (1-888-211-7440, option 2) to obtain a list of available access locations.

3. **FEE** If you are a supplier who wishes to do business with the State and register for the Service, you will be required to pay a transaction fee, which currently is 1.75% (.0175) of the purchase price for the goods purchased, for each purchase order (excluding sales taxes) issued and/or processed through the Service that you fulfill. Fees will be invoiced monthly based on a) purchase activity for the prior month, and/or b) purchases for which the supplier has received payment. This transaction fee shall not be stated, included or otherwise added as a separate item on the invoice.

Payment of the transaction fee by the Supplier/Vendor is due to the account designated by the State within thirty (30) days after receipt of the invoice for the transaction fee. Payment due shall be for all portions of the invoice not timely disputed in writing in accordance with Section 8,

below. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of these terms. 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 date the balances are past due. The late-payment penalty will be ten percent (10%) of the account receivable.

4. **YOUR OBLIGATIONS** In consideration of your use of the Service, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the eVP service's registration form (such information being the "Registration Data") and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate or incomplete, or fail to maintain or update such Data, or the Operations Group has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the Operations Group has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any portion thereof. You will be responsible for all errors, miscommunications and other consequences due to inaccurate, outdated or incomplete Registration Data.

You will receive a password and account designation to use the Service upon completing the eVP service's registration process. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities associated with use of your password or account. You agree to (i) immediately notify Customer Service of any unauthorized use of your password or account, or of any other breach of security, and (ii) ensure that you exit from your account at the end of each session. You are entirely responsible for all content that is uploaded, posted, emailed, transmitted or otherwise made available to the State through the Service using your password or account. Payment by some agencies may be made by procurement card and it shall be accepted by you for payment if you accept that card (Visa, MasterCard, etc.) from other customers for similar transactions. If payment is made by procurement card, then payment may be processed immediately by you. The State and the Operations Group shall not be liable for any loss or damage arising from your failure to comply with this Section 4.

5. **CUSTOMER SUPPORT** The TPA shall provide customer service to you sufficient for questions involving use of the Service and for inquiries relating to the operation and hosting of the Service during the hours of 7:30 AM Eastern Standard Time and 5:00 PM Eastern Standard Time. The following support services will be included: (i) a customer service telephone number (1-888-211-7440, option 2); (ii) a customer service email address (vendor@nc.gov); and (iii) an online training feature to instruct you on conducting procurement through the Service (<http://eprocurement.nc.gov>).
6. **THE NORTH CAROLINA PUBLIC RECORDS ACT** Any information provided to the Service is subject to the conditions set forth in the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes. The North Carolina Public Records Act Ch. 132 of the North Carolina General Statutes may be accessed under the Statutes portion of the General Assembly Home Page at: <http://www.ncga.state.nc.us/>.
7. **E-PROCUREMENT SERVICE PRIVACY POLICY** Registration Data and certain other information about you are subject to our Privacy Policy. For more information, see our full privacy policy at the bottom of the E-Procurement website (<http://eprocurement.nc.gov>).

8. **QUESTIONS, DISPUTES AND EXTENSIONS** Pursuant to the North Carolina Electronic Procurement Terms and Conditions, which you accept as part of your registration process, questions and disputes relating to the accuracy of your transaction fee invoice or requests for an extension to the invoice due date must be submitted via email or fax or by a verbal request to a Help Desk representative of NC E-Procurement @ Your Service. Questions, disputes and/or extensions regarding your transaction fee invoice **shall be submitted within 30 days** of the date of the invoice. Your request shall include the Invoice number, PO number, dollar amount billed, and any other information needed to support your question or dispute. Once the Service has made a determination and closed a dispute, payment for all disputed fee amounts still due, if any, must be made within 30 days of the date the dispute is closed. No interest shall be charged on disputed and overdue fee amounts to the extent that the Service agrees to reduce or adjust the fees charged. Otherwise, disputed fees will bear interest from the original due date.
9. **MODIFICATIONS TO SERVICE** The Operations Group reserves the right at any time to modify the Service with or without notice. You agree that the Operations Group and its TPA shall not be liable to you or to any third party for any modification or suspension of the Service.
10. **TERM AND TERMINATION** Once you have accepted the TOU, an agreement has been created between you and the Operations Agencies for use of the Service. You are bound by the terms of the TOU which you accepted at vendor registration, until such time as you terminate your agreement with the Operations Agencies by submitting a written request via email, fax or through our on-line system and receive confirmation from the Operations Agencies. You agree that the Operations Agencies, at their sole discretion, may terminate your password, account (or any part thereof) or use of the Service, and remove and discard any content within the Service, for any reason, including, without limitation, lack of use, failure to pay overdue amounts or if the Operations Agencies reasonably believe that you have violated or acted inconsistently with the TOU. You agree that any termination of your access to the Service under any provision of this TOU may be effected without prior notice, and acknowledge and agree that the Operations Agencies may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that the Operations Agencies or its TPA shall not be liable to you or any third-party for any termination of your access to the Service.
11. **OUTAGE POLICY** The Operations Group's highest priority is to ensure that the Service is available. However, we may experience website outages where the Service cannot be accessed. The Operations Group will use reasonable efforts to make the Service available, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that you report to us.
12. **INDEMNITY** You the Supplier, at no additional cost to the State, agree to indemnify, defend, and hold the State, its officers, employees, and agents (including the TPA) involved, directly or indirectly, in the delivery and operation of the Service, harmless from any and all liabilities and expenses, including, without limitation, attorney's fees, expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to (i) Supplier's misuse or modification of the Service, the State sites or the State Developed Deliverables; (ii) the Supplier's distribution, marketing or use for the benefit of parties other than Supplier of the Service, the State sites or the State Developed Deliverables; (iii) Product information, direction, specification or materials provided by Supplier; (iv) Supplier's transactions with Buyers, including its fulfillment, or failure to fulfill Products; and (v) Supplier's breach of any of its representations, warranties, promises or obligations under this agreement. The foregoing indemnity is conditioned upon: reasonably

prompt written notice by the State of any claim, action or demand for which indemnity is claimed.

13. **DISCLAIMER OF WARRANTIES** You expressly understand and agree that:
  - a. Your use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" basis. The State expressly disclaims all warranties of any kind.
  - b. The State makes no warranty that (1) the Service will meet your requirements; or (2) the Service will be uninterrupted, timely, or error-free.
  - c. Any material downloaded or otherwise obtained through the use of the Service is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
  - d. No advice or information, whether oral or written, obtained by you from the Service shall create any warranty not expressly stated in the TOU.
  
14. **LIMITATION OF LIABILITY** You expressly understand and agree that the State, including its officers, employees, and agents (including the TPA) involved, directly or indirectly, in the delivery and operation of the Service, shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if the State has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) unauthorized access to or alteration of your transmissions or data; (iii) statements or conduct of any third party on the Service; or (iv) any other matter relating to the Service.

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15. **APPLICABLE LAW** By visiting the North Carolina E-Procurement Service website or the eVP, you agree that the laws of the State of North Carolina, without regard to principles of conflict of laws, will govern these Terms of Use and any dispute of any sort that might arise between you and the State or its third party agents. Any action to interpret, enforce or otherwise state any claim related to the Service or its use shall be brought in the court having proper venue located in the State of North Carolina.