State of New Mexico  
General Services Department  
Purchasing Division  

Amendment

Awarded Vendor  
0000084862  
22nd Century Technologies, Inc.  
220 Davidson Avenue, Suite 118  
Somerset, NJ 08873

Attn: Eva Gaddis-McNight  
Telephone No. (888) 998-7284

Price Agreement Number: 80-000-18-00001AR

Price Agreement Amendment No.: One

Term: December 31, 2017 – December 31, 2022

Ship To:  
All State of New Mexico Agencies, Commissions,  
Institutions, Political subdivisions and Local Public Bodies allowed by law.

Invoice:  
Same as Ship To

Procurement Specialist: Debra Saiz

Telephone No.: (505) 827-0521  
Email: DebraS.Saiz@state.nm.us

Title: PeopleSoft Services and Related Technologies

This Contract Amendment is to be attached to the respective Agreement and become a part thereof.

This amendment is issued to reflect the following modifications effective immediately:

- Extend the TERM through December 31, 2022 to correspond with the Term Clause in the attached Agreement.

Except as modified by this amendment, the provisions of this Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

[Signature]
New Mexico State Purchasing Agent  
Date: 10/19/2018

Purchasing Division, 1100 St. Francis Drive 87505, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472  
DS
State of New Mexico
General Services Department

Statewide Price Agreement

Awarded Contractor
0000084862
22nd Century Technologies, Inc.
220 Davidson Avenue, Suite 118
Somerset, NJ 08873

Telephone: (888) -998-7284

Price Agreement Number: **80-000-18-00001AR**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **See Contract**

Procurement Specialist: **Debra Saiz**

Telephone No.: **505-827-0521**

Ship To:
All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.

Invoice:
As Requested

Title: **PeopleSoft Services and Related Technologies**

Term: **December 31, 2017 through December 31, 2018**

This Price Agreement is made subject to the “terms and conditions” shown on the attached pages as indicated in this Price Agreement.

Accepted for the State of New Mexico

New Mexico State Purchasing Agent

Date: **12/27/2017**

Purchasing Division: 1100 St. Francis Drive, Santa Fe, NM 87505; PO Box 6850, Santa Fe, NM 87502 (505) 827-3472
State of New Mexico Statewide Price Agreement
PeopleSoft Services and Related Technologies
Information Technology Agreement

Price Agreement No. 80-000-18-00001AR

THIS Information Technology Agreement ("Agreement" or "Contract" "Price Agreement") is made by and between the State of New Mexico, Department of Information Technology, hereinafter referred to as the "Procuring Agency" and 22nd Century Technologies, Inc. hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 et. Seq; and Procurement Code Regulations, NMAC 1.4.1 et.seq; the Contractor has held itself out as expert in implementing the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the most advantageous to the State of New Mexico; and

WHEREAS, all terms and conditions of the RFP#80-000-18-00001 for PeopleSoft Services and Related Technologies and the Contractor’s response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

ARTICLE 1 – DEFINITIONS

A. "Acceptance" or "Accepted" shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the Procuring Agency.

B. "Application Deployment Package" shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.

C. "Business Days" shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.

D. "Change Request" shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.

E. "Chief Information Officer ("CIO")" shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.

F. "Confidential Information" means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the Procuring Agency or any other State agency as confidential, including all information designated as
confidential under federal or state law or regulations; (5) unless publicly disclosed by the Procuring Agency or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the Procuring Agency, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.

G. “Contract Manager” shall mean a Qualified person from the Procuring Agency responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be the General Services Department – State Purchasing Division Procurement Officer or his/her Designated Representative.

H. “Default” or “Breach” shall mean a violation of this Agreement by either failing to perform one’s own contractual obligations or by interfering with another Party’s performance of its obligations.

I. “Deliverable” shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work in this agreement or any contract issued pursuant to this Agreement.

J. “Designated Representative” shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.

K. “DIT” shall mean the Department of Information Technology.

L. “DFA” shall mean the Department of Finance and Administration; “DFA/CRB” shall mean the Department of Finance and Administration, Contracts Review Bureau.

M. “Escrow” shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the Procuring Agency receives the legal document, in this case, Source Code.

N. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.

O. “Executive Level Representative” shall mean the individual empowered with the authority to represent and make decisions on behalf of the Procuring Agency’s executives or his/her Designated Representative.

P. “GRT” shall mean New Mexico gross receipts tax.

Q. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.

R. “Independent Verification and Validation (“IV&V”)” shall mean the process of evaluating a Project and the Project’s product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the Procuring Agency.

S. “Know How” shall mean all technical information and knowledge including, but not limited to, al. documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
T. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the Procuring Agency. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

U. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.

V. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the Procuring Agency CIC to the DoIT.

W. “Project Manager” shall mean a Qualified person from the Procuring Agency responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be from the assigned authorized entity or his/her Designated Representative.

X. “Qualified” means demonstrated experience performing activities and tasks with Projects.

Y. “Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.

Z. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.

AA. “State Purchasing Agent (SPA)” shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.

BB. “State Purchasing Division (SPD)” shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.

CC. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.

DD. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.

EE. “Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly usable by a computer.

FF. “Turnover Plan” means the written plan developed by the Contractor and approved by the Procuring Agency in the event that the work described in this Agreement transfers to another vendor or the Procuring Agency.

Additional Definitions:

GG. “Authorized Entities” shall mean all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law.

HH. “Consultant Level One” shall mean a qualified team member that has greater than ten (10) years of relevant past experience per the “PeopleSoft Technologies Professional Services Categories”.
II. "Consultant Level Two" shall mean a qualified team member that has five (5) to ten (10) years of relevant past experience per the “PeopleSoft Technologies Professional Services Categories”.

JJ. “Full-time employee” means not a subcontractor.

KK. “Consultant Level Three” shall mean a qualified team member that has less than five (5) years of relevant past experience per the “PeopleSoft Technologies Professional Services Categories”.

LL. “Hourly Rate” shall mean the proposed fully loaded maximum hourly rates must include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

MM. “Relevant past experience” shall mean the accumulation of knowledge, education, or skill in a specific field or occupation as defined in PeopleSoft Technologies Professional Services Categories.

**ARTICLE 2 – SCOPE OF WORK**

A. Scope of Work. The Contractor shall perform the Services as outlined in a specific Scope of Work.

a. The Contractor shall be limited to the Services, awarded in this Price Agreement as outlined in Exhibit A, attached hereto and incorporated herein by reference. There are no volume commitments or purchase commitments as to any specific dollar amount for contracted services by the Procuring Agency or the State as a whole. Any contracted services using this Price Agreement shall be performed using the New Mexico Department of Information Technology Professional Services Contract.

b. The Authorized Entities requiring changes to the SHARE System, shall require special written approval from the Department of Information Technology prior to contracting for any services through the use of this Price Agreement. The on-site services outlined in Exhibit A will be performed within the State of New Mexico.

c. Under the terms and conditions of this Price Agreement and with the written approval from the Department of Information Technology all State of New Mexico agencies, commissions, institutions, political subdivisions and local public bodies allowed by law may issue contracts for services described herein. The terms and conditions of this Agreement shall govern and control each resulting contract hereunder. However, the State is not responsible for the transactions between contractor and non-state entities.

d. For the entities that submit their requests to DoIT for approval to utilize this Price Agreement due to impacting the SHARE system, are responsible to work with the Contractor on invoicing and work orders.

e. The Price List found in Exhibit A, attached hereto and incorporated by reference shall not exceed the maximum hourly rate(s) during the term of this agreement. The maximum hourly rate(s) may be negotiated by the procuring entity with the Contractor resulting in a lower rate for any services contracted during the term of the Agreement.
f. The cost of the Agreement shall not increase for the term of the Agreements, any reductions to the price listings may be submitted to DoIT for review and approval. Any other changes to the price agreement(s) shall be submitted to DoIT and the State Purchasing Division for review and approval. The Price List in Exhibit A does not include New Mexico Gross Receipts Tax (NMGRT). However, the purchase of the support services are subject to the NMGRT and are applicable to the current rate for the period which the services are provided.

g. The terms of the Agreement may be amended to include any federal requirements that may result from any federal funds awarded to the purchasing entity for PeopleSoft Services required by the purchasing entity. It is the responsibility of the purchasing entity to notify the Contractor of any changes to the terms and conditions prior to contracting for PeopleSoft Services. The purchasing entity is required to utilize the amendment process for any changes impacted from utilizing federal funds to their individual contracts or if it impacts the Agreement.

B. **Performance Measures.** The Contractor shall substantially perform to the satisfaction of the Procuring Agency the performance measures as set forth in a resulting contract for any of the services as outlined in Exhibit A of this Agreement. In the event the Contractor fails to obtain the results described in Exhibit A or as required by a resulting contract, the Procuring Agency may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the Procuring Agency of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the Procuring Agency from exercising its rights pursuant to Article 6 or Article 16.

C. **Schedule.** The Contractor shall meet the due dates, as set forth in Exhibit A or in a resulting contract, which due dates shall not be altered or waived by the Procuring Agency without prior written approval, through the Amendment process, as defined in Article 25.

D. **License.** Not Applicable. The Parties agree there is no License.

E. **Source Code.** The Contractor shall deliver any and all software developed as a result of maintenance releases by the Contractor. The Application Deployment Package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.

F. **The Procuring Agency’s Rights.**

1. **Rights to Software.** The Procuring Agency will own all right, title, and interest in and to the Procuring Agency’s Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include
third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the Procuring Agency, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.

2. **Proprietary Rights.** The Contractor will reproduce and include the State of New Mexico’s copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.

3. **Rights to Data.** Any and all data stored on the Contractor’s servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the Procuring Agency. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the Procuring Agency’s data in any manner, or provide to any entity or person outside of the Procuring Agency without the express written authorization of the Procuring Agency.

**ARTICLE 3 - COMPENSATION**

A. **Compensation Schedule.** The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in an associated Scope of Work, less retainage, if any, as identified in Paragraph D for any resulting contract.

B. **Payment.** The total compensation under this Agreement shall not exceed the maximum cost to be paid for services rendered, per the schedule outlined in Exhibit A excluding New Mexico gross receipts tax. This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

Contractor hereby agrees to perform work at or below the published maximum rates of the schedule outlined in Exhibit A.

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor’s designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices MUST BE received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.
C. Taxes.

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor’s sole responsibility and should be reported under the Contractor’s Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.

D. Retainage. The Procuring Agency shall retain an amount not to exceed twenty percent (20%) of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.

E. Performance Bond. The Parties agree there is no Performance Bond.

ARTICLE 4 – ACCEPTANCE

A. Submission. Upon completion of agreed upon Deliverables as set forth in Article 2 and Exhibit A, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the Procuring Agency. Each Payment Invoice shall be for the fixed Deliverable price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).

B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. In order to Accept the Deliverable, the Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable and determine, at a minimum, that the Deliverable of a resulting contract issued using this Agreement:

1. Complies with the Deliverable requirements as defined in Article 2 and Exhibit A of this Agreement or any Resulting Contract;
2. Complies with the terms and conditions of Agreement#80-000-18-00001AR PeopleSoft Services and Related Technologies;
3. Meets the performance measures for the Deliverable(s) and this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
5. Complies with all the requirements of this Agreement.

If the Deliverable is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice.

C. Rejection. Unless the Executive Level Representative gives notice of rejection within the fifteen (15) Business Day Acceptance period, the Deliverable will be deemed to have been Accepted. If the Deliverable is deemed unacceptable under Quality Assurance, fifteen (15) Business Days from the date the Executive Level Representative receives the Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have ten (10) Business Days to resubmit the Deliverable to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the Deliverable(s) is Acceptable under Quality Assurance and provide a written determination within fifteen (15) Business Days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed as in breach of this Agreement. The Procuring Agency may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the Procuring Agency may terminate this Agreement.

ARTICLE 5 – TERM

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT. This Agreement shall terminate on December 31, 2022, unless terminated pursuant to Article 6. No contract term, including extensions and renewals, shall not exceed five years, except as set forth in Section 13-1-150 NMSA 1978.
ARTICLE 6 – TERMINATION

A. **Grounds.** The Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Agency’s uncured, material breach of this Agreement.

B. **Appropriations.** By the Procuring Agency, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The Procuring Agency’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency terminates this Agreement pursuant to this subsection, the Procuring Agency shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of the termination.

C. **Notice: Agency Opportunity to Cure.**

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency’s material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Article 6(B), “Appropriations”, of this Agreement.

D. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the Agency’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.

ARTICLE 7 – TERMINATION MANAGEMENT

A. **Contractor.** In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the Procuring Agency property in which the Procuring Agency has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the Procuring Agency;
2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the Procuring Agency;
3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the Procuring Agency may direct, for orderly completion and transition;
4. Take such action as the Procuring Agency may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
5. Agree that the Procuring Agency is not liable for any costs arising out of term nation and that the Procuring Agency is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of Procuring Agency’s programs;
7. In the event that any resulting contracts are terminated due to the Contractor’s course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the Procuring Agency’s receipt of program funds from any governmental agency, the Contractor shall remit to the Procuring Agency the full amount of the reduction;
8. Should this Agreement terminate due to the Contractor’s Default, the Contractor shall reimburse the Procuring Agency for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the Procuring Agency for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor’s policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the Procuring Agency and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the Procuring Agency or created by the Contractor under this Agreement, to the Procuring Agency, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the Procuring Agency, the Contractor shall provide to the Procuring Agency a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the Procuring Agency or created by the Contractor under this Agreement.

B. Procuring Agency. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Procuring Agency shall:
1. Retain ownership of all work products and documentation created pursuant to this Agreement; and
2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

**ARTICLE 8 – INDEMNIFICATION**

A. General. The Contractor shall defend, indemnify and hold harmless theProcuring Agency, the State of New Mexico and its employees from all actions, proceedings, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, during the time when the Contractor, its officer, agent, employee, servant or subcontractor thereof has or is performing Services pursuant to this Agreement. In the event that any action, suit or proceeding related to the Services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable, but no later than two (2) Business Days after it receives notice thereof, notify, by certified mail, the legal counsel of theProcuring Agency, the Risk Management: Division of the New Mexico General Services Department, and the DoIT.

B. The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the Procuring Agency, as necessary, to satisfy any outstanding claim that the Procuring Agency may have against the Contractor.

**ARTICLE 9 – INTELLECTUAL PROPERTY**

A. Ownership. Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the Procuring Agency shall be considered the creator and owner of such Know How. The Procuring Agency shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of theProcuring Agency without the express written authorization of the Procuring Agency. Contractor shall notify the Procuring Agency, within fifteen (15) Business Days, of the creation of any Intellectual
Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the Procuring Agency and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the Procuring Agency. If, by judgment of a court of competent jurisdiction, Intellectual Property or Know How are not deemed to be created or owned by the Procuring Agency, Contractor hereby acknowledges and agrees to grant to the Procuring Agency and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.

ARTICLE 10 – INTELLECTUAL PROPERTY INDEMNIFICATION

A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the Procuring Agency, the State of New Mexico and/or any other State of New Mexico body against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney’s fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the Procuring Agency based upon Contractor’s trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the Procuring Agency for all costs, attorneys’ fees and the amount of the judgment. To qualify for such defense and/or payment, the Procuring Agency shall:
   1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
   2. Work with the Contractor to control the defense and settlement of the claim; and
   3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. Procuring Agency Rights. If any product or service becomes, or in the Contractor’s opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:
   1. Provide the Procuring Agency the right to continue using the product or service and fully indemnify the Procuring Agency against all claims that may arise out of the Procuring Agency’s use of the product or service;
   2. Replace or modify the product or service so that it becomes non-infringing; or
   3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor’s obligation will be void as to any product or service modified by the Procuring Agency to the extent such modification is the cause of the claim.
ARTICLE 11 – WARRANTIES

A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, Contractor’s official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software Services. The Contractor warrants that any software services delivered under this Agreement shall comply with the terms of this Agreement, associated Scope of Work, Contractor’s official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software services provided under this Agreement will meet the applicable specifications for 30 days after Acceptance by the Executive Level Representative and implementation by the Procuring Agency. If the software services fail to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the Procuring Agency, so that the software meets the applicable specifications.

ARTICLE 12 – CONTRACTOR PERSONNEL

A. Key Personnel. Contractor’s key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. The Contractor shall provide the resumes with the qualifications and experience for each of its key personnel that will be performing the Services for this agreement upon the request of the Department of Information Technology or any of the Authorized Entities. Key personnel shall be for Services as outlined in Exhibit A.

B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor’s personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor’s personnel if the assigned
personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency’s expectations.

**ARTICLE 13 – STATUS OF CONTRACTOR**

A. **Independent Contractor.** The Contractor and its agents and employees are independent contractors performing professional Services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

B. **Subject of Proceedings.** Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor’s ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the Procuring Agency.

**ARTICLE 14 - CHANGE MANAGEMENT**

A. **Changes.** Contractor may only make changes or revisions within the Scope of Work as defined by Article 2 after receipt of written approval by the Executive Level Representative. Such change may only be made to Tasks or Sub-Task as defined in the Deliverable(s) section of a contract’s Exhibit A, issued using this Agreement. Under no circumstance shall such change affect the:

1. Deliverable requirements, as outlined in Exhibit A of a contract;
2. Due date of any Deliverable, as outlined Exhibit A of a contract;
3. Compensation of any Deliverable, as outlined in Exhibit A of a contract;
4. Agreement compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

B. **Change Request Process.** In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:

1. The Project Manager shall draft a written Change Request for review and approval by the Executive Level Representative to include:
   (a) the name of the person requesting the change;
(b) a summary of the required change;
(c) the start date for the change;
(d) the reason and necessity for change;
(e) the elements to be altered; and
(f) the impact of the change.

2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

ARTICLE 15 – INDEPENDENT VERIFICATION AND VALIDATION

A. If IV&V professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
   1. Providing the Project documentation;
   2. Allowing the IV&V vendor to sit in on the Project meetings; and
   3. Supplying the IV&V vendor with any other material as directed by the Project Manager.

B. If this Agreement is for IV&V professional Services then the Contractor agrees to:
   1. Submit all reports directly to the Department of Information Technology, Project Oversight and Compliance Division (ivandv.reports@state.nm.us) according to the DoIT IV&V Reporting Template and Guidelines found on the DoIT website, http://www.doit.state.nm.us/project_templates.html, and copy the Procuring Agency.
   2. Use a report format consistent with the current DoIT IV&V Reporting Template and Guidelines found on the DoIT website, http://www.doit.state.nm.us/project_templates.html.

ARTICLE 16 – DEFAULT/BREACH

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.
ARTICLE 17 - EQUITABLE REMEDIES

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irreparable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency’s obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency’s rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

ARTICLE 8 - LIABILITY

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the Procuring Agency to any equipment or its installation or for losses caused by the Procuring Agency’s fault or negligence. Nothing in this Agreement shall limit the Contractor’s liability, if any, to third parties and/or employees of the Procuring Agency or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

ARTICLE 19 - ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement’s approval authorities.

ARTICLE 20 - SUBCONTRACTING

A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the Procuring Agency. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Procuring Agency.

B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the Procuring Agency or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement.
ARTICLE 21 – RELEASE

The Contractor’s Acceptance of final payment of the amount due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

ARTICLE 22 – CONFIDENTIALITY

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

ARTICLE 23 – CONFLICT OF INTEREST

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or Services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

ARTICLE 24 - RECORDS AND AUDIT

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of Services rendered during this Agreement’s term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, CIO, SPA, and DFA and the New Mexico State Auditor’s Office. The Procuring Agency shall have the right to audit billings both before and after payment. Payment for Services under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

ARTICLE 25 - AMENDMENT

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities. Amendments are required for the following:

1. Deliverable requirements, as outlined in a contract’s Exhibit A;
2. Due Date of any Deliverable, as outlined in a contract’s Exhibit A;
3. Compensation of any Deliverable, as outlined in a contract’s Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

**ARTICLE 26 – NEW MEXICO EMPLOYEES HEALTH COVERAGE**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of $250,000.

**ARTICLE 27 – NEW MEXICO EMPLOYEES PAY EQUITY REPORTING**

A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed
the size requirement for reporting, Contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.

C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

ARTICLE 28 – MERGER, SCOPE, ORDER OF PRECEDENCE

A. **Severable.** The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.

B. **Merger/Scope/Order.** This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

ARTICLE 29 – NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile
communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

**For PROCURING AGENCY**

To SPA:
State Purchasing Agent
Purchasing Division
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Phone: (505) 827-0472

With a copy to DoIT:
Phil Bachicha, Procurement Specialist
Contracts and Procurement Bureau
Department of Information Technology
Simms Building
715 Alta Vista
Santa Fe, NM 87502
Phone: (505) 476-3469

**For CONTRACTOR**

Eva Gaddis-McKnight
22nd Century Technologies, Inc.
220 Davidson Avenue, Suite 138-116
Somerset, NJ 08873
(1(888) 998-7284
govt@tscti.com

Any change to the Notice individual or the address, shall be effective only in writing.

**ARTICLE 30 – GENERAL PROVISIONS**

A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:

1. **Civil and Criminal Penalties.** The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

2. **Equal Opportunity Compliance.** The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be
excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

3. **Workers Compensation.** The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

B. **Applicable Law.** The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.

C. **Waiver.** A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

D. **Headings.** Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

**ARTICLE 31 - SURVIVAL**

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

**ARTICLE 32 - TIME**

**Calculation of Time.** Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.
ARTICLE 33 – FORCE MAJEURE

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

ARTICLE 34 – ADDITIONAL PROVISIONS

1. **Background Check.** The Contractor must complete a background check at the expense of the Contractor for any of the Contractor’s personnel contracted to work on State projects, this will be at the request of the Agency after the agreements are awarded. The results of the background check must be provided to the Agency upon request by the Agency.

2. **Work Location.** The Contractor and any of their personnel must physically perform any services contracted by the State of New Mexico in the United States, this includes any work that is performed offsite or remote.

3. **Administrative Reporting Fee.** The Contractor will provide a utilization report on all sales and/or services and fees to the agreement administrator in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Period End</th>
<th>Report Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 30</td>
<td>October 31</td>
</tr>
<tr>
<td>December 31</td>
<td>January 31</td>
</tr>
<tr>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>June 30</td>
<td>July 31</td>
</tr>
</tbody>
</table>

The periodic report shall include the gross total sales for the period subtotalled by procuring agency or local public body name. Please note that the SPD is interested in the distinction between sales to state agencies and those to local public bodies (such as cities and counties) to evaluate to whom SPD contracts are most beneficial. Such information will aid in strategically sourcing future procurements to ensure SPD is meeting the needs of its customers. The reports shall be accompanied with a check payable to the State Purchasing Division for an amount equal to the three quarters of one percent (0.75%) of the total sales for the period.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

By: Darryl M. Ackley, State CIO and Cabinet Secretary
   Department of Information Technology
   Date: 12/14/17

By: Eva Gaddis McKnight
   Administrator
   22nd Century Technologies Inc.
   Date: 11/28/2017

Approved for legal sufficiency:

By: Maria R. Sanchez
   Department of Information Technology, General Counsel
   Date: Dec 15 2017

By: Donna Sandoval
   Department of Information Technology Chief Financial Officer
   Date: __________

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes:

CRS ID Number: 03-243883-00-4

By: Alicia Velazquez
   Taxation & Revenue Department
   Date: 11/28/2017 12/11/17

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

By: Darryl M. Ackley, State CIO and Cabinet Secretary
   Department of Information Technology
   Date: 12/14/17

Taxation and Revenue is only verifying the registration and will not confirm or deny any taxability statements contained in this contract.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below.

This Agreement has been approved by the State Purchasing Agent:

By: ___________________________ Date: 12/30/17
Lawrence O. Maxwell
Purchasing Agent for the State of New Mexico
EXHIBIT A:

PRICE LIST FOR PEOPLESOFT SERVICES AND RELATED TECHNOLOGIES

1. Appendix C – PeopleSoft Rates/Price List
2. Appendix C1 - Value Added Options: Not Applicable
3. Appendix C-2 – PeopleSoft Pre-Packaged Training Course Cost
APPENDIX C – PeopleSoft Rates/Price List

1. “PeopleSoft Project Manager” means to provide project management for complex PeopleSoft and related software projects involving technical, functional, and organizational changes. Direct the work of PeopleSoft project staff in the performance of tasks needed to ensure the projects assigned are completed on time and will meet the needs and expectations of the users. Ensure management is informed of the status of projects through the use of regular project reports, updates and presentations. Provide customer assistance, training, and technical help to systems users. Provide leadership, direction, training, and aid to project staff. Set standards for PeopleSoft and related software usage. Ensure compliance with standards. Lead team of information technology and business experts working on PeopleSoft related technical projects. Serve as liaison to software vendors for problem resolution and support. Perform long-range, strategic planning, often covering multiple software and database platforms. Advise top-level management on the feasibility of planned large-scale system enhancements. Critique design proposals for soundness and best practices; provide support to management for long-range strategic systems planning.

a. “Consultant Level One” means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b. “Consultant Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

c. “Consultant Level Three” means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Service Category</th>
<th>Onsite Maximum Hourly Rate ($)</th>
<th>Offsite Maximum Hourly Rate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PeopleSoft Project Manager</td>
<td>$ 130</td>
<td>$ 125</td>
</tr>
<tr>
<td>a</td>
<td>Consultant Level One</td>
<td>$ 120</td>
<td>$ 115</td>
</tr>
<tr>
<td>b</td>
<td>Consultant Level Two</td>
<td>$ 110</td>
<td>$ 105</td>
</tr>
<tr>
<td>c</td>
<td>Consultant Level Three</td>
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</tbody>
</table>
2. "PeopleSoft Functional Analyst" means having experience with PeopleSoft ERP system implementations and support. Experience in all stages of the PeopleSoft systems development life cycle including business requirements definition, process design/re-design, module configuration, report development, change management, testing, end-user training, and documentation. Expertise in implementing, enhancing, modifying and upgrading PeopleSoft Financial and/or Human Capital Management in public sector environments. Ability to identify business process improvements, troubleshoot and analyze functional system problems. Demonstrable expertise with one or more of the PeopleSoft Financials, Human Capital Management, Enterprise Learning Management and Portal Suites or other as required by the scope of work to be performed.

a) "Consultant Level One" means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b) "Consultant Level Two" means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

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<table>
<thead>
<tr>
<th>Additional PeopleSoft and PeopleSoft Related Services Maximum Hourly Rate(s)</th>
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</thead>
<tbody>
<tr>
<td>Service Category</td>
</tr>
<tr>
<td>2 PeopleSoft Technologies Functional Analyst</td>
</tr>
<tr>
<td>a. Consultant Level One</td>
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<tr>
<td>b. Consultant Level Two</td>
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<tr>
<td>c. Consultant Level Three</td>
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</tbody>
</table>
3. "PeopleSoft Analytics, Business Intelligence and Reporting Analyst" means utilizing knowledge of OLAP, BI, and data mining to create data models, views, and extraction tools as necessary to meet requirements for quality, reliability, and performance. Develop Business Intelligence and/or Performance Management reporting solutions using reporting tools to translate business and IT requirements into process or technical solutions (i.e. forecasts/plans/metrics). Determine functional report requirements, write functional specifications based on user specifications, develop reports, customize and test reports using reporting tools; collecting requirements to use to design, build and test and develop reports, score cards and dashboards. Expertise in Analytics, BI and related tools such as Hypermion, OBIEE, Cognos, WebFOCUS with source data from systems including PeopleSoft HCM and Financials, or other as required by the scope of work to be performed.

a) "Consultant Level One" means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b) "Consultant Level Two" means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

c) "Consultant Level Three" means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

| Additional PeopleSoft and PeopleSoft Related Services Maximum Hourly Rate(s) |
|---------------------------------------------------------------|----------------|----------------|
| Service Category                                             | Onsite Maximum Hourly Rate ($) | Offsite Maximum Hourly Rate ($) |
| 4 PeopleSoft Analytics, Business Intelligence and Reporting Analyst |                             |                             |
| a Consultant Level One                                       | $135            | $130            |
| b Consultant Level Two                                       | $125            | $120            |
| c Consultant Level Three                                     | $115            | $110            |
4. "PeopleSoft Database Administrator" means to identify, analyze, and translate business requirements into logical and physical data models as related to PeopleSoft application databases and related Analytics, Business Intelligence and Reporting technologies. Apply methods, techniques & technologies that address data architecture, extraction, transformation, movement, storage, integration and governance of data. Utilize experience in database concepts, data modeling; data integration including design and architecture. Master data management, including financial and employee data strategy, and Information (data) Governance including strategy, implementation, business glossary, metadata and industry frameworks. Tasks include data mapping, detailed data analysis and metadata analysis and providing hands-on business knowledge working with database developers, DBAs, architects, data quality analysts, and other teams.

d) "Consultant Level One" means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

e) "Consultant Level Two" means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

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<tr>
<td><strong>Service Category</strong></td>
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</tbody>
</table>
5. “PeopleSoft Application Developer” means experience with PeopleSoft ERP system implementations and support. Analysis, technical configuration, and development in PeopleSoft and related applications and technologies. Ability to analyze and modify PeopleSoft and related software components to enhance accessibility, response time, system throughput, reliability, and redundancy. Ability to collaborate with business and functional experts to configure the PeopleSoft application and build interfaces, conversions, modifications & customizations to maximize business outcomes. Must have a thorough understanding of PeopleSoft technical issues and solutions as related to business functionality and process requirements. Must have thorough working knowledge of PeopleSoft and related development tools and technologies including PeopleTools; Change and Configuration Management tools including PeopleSoft Change Assistant and Phire; Weblogic; Tuxedo; PeopleCode; Cobol; App Engine; SQR; Crystal Reports; XML Publisher; Component Interfaces; Integration Broker; SOA technologies including Enterprise Service Buses, BPEL and Web Services; Portal and Enterprise Content Management technologies including HTML5, XML, CSS3, Java Script and J2EE; Analytics and BI Technologies including Hyperion, OBIEE, and WebFOCUS; big data technologies such as Hadoop or Cassandra with NoSQL data management and related programming languages, or other as required by the scope of work to be performed.

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Onsite Maximum Hourly Rate ($)</th>
<th>Offsite Maximum Hourly Rate ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PeopleSoft Application Developer</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a Consultant Level One</td>
<td>$140</td>
<td>$135</td>
</tr>
<tr>
<td>b Consultant Level Two</td>
<td>$130</td>
<td>$125</td>
</tr>
<tr>
<td>c Consultant Level Three</td>
<td>$120</td>
<td>$115</td>
</tr>
</tbody>
</table>
6. **“PeopleSoft System Administrator”** means PeopleSoft Technologies Architecture, Design, Systems Administration and Database Administration services for installation, implementation, support, configuration, modifications, upgrades, integration, and maintenance of the state’s PeopleSoft and related applications and technologies. Typical services include application & technical architecture; configuration; testing; implementation; integration & interfacing; tuning; troubleshooting; debugging; software change control; application enhancements; administration; client and project team support; and maintenance including patches, bundles and upgrades. Must have expertise in PeopleSoft and related development tools and technologies including PeopleTools; Change and Configuration Management tools including PeopleSoft Change Assistant and Phire; Weblogic; Tuxedo; PeopleCode; Cobol; App Engine; SQR; Crystal Reports; XML Publisher; Component Interfaces; Integration Broker; SOA technologies including Enterprise Service Buses, BPEL and Web Services; Portal and Enterprise Content Management; technologies including HTML5, XML, CSS3, Java Script and J2EE; Analytics and BI Technologies including Hyperion, OBIEE, and WebFOCUS; big data technologies such as Hadoop or Cassandra with NoSQL data management and related programming languages; or other as required by the scope of work to be performed to support implementation, development and migration in all technologies.

a) “Consultant Level One” means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b) “Consultant Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

c) “Consultant Level Three” means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

| Additional PeopleSoft and PeopleSoft Related Services Maximum Hourly Rate(s) |
|---------------------------------|-------------------------------|-------------------------------|
| **Service Category**                         | **Onsite Maximum Hourly Rate ($)** | **Offsite Maximum Hourly Rate ($)** |
| PeopleSoft Security Administrator                  |                                 |                                 |
| a Consultant Level One                        | $ 145                          | $ 140                          |
| b Consultant Level Two                        | $ 135                          | $ 130                          |
| c Consultant Level Three                      | $ 125                          | $ 120                          |
7. "PeopleSoft Security Administrator" means to implement PeopleSoft technologies application security to meet the needs of the user community while maintaining the integrity of regulatory checks and balances including principals such as separation of duties. Document and follow procedures for adding, modifying, and deleting user access. Maintain permission lists and roles in multiple environments and related technologies. Must have working knowledge of PeopleSoft Security & PeopleTools, Integration Broker, Single Sign-On, Portal, SOA and Web Services, LDAP & Identity Management tools and best practices as required to secure and support the PeopleSoft ERP system and related technologies.

a) “Consultant Level One” means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b) “Consultant Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

c) “Consultant Level Three” means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

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<tr>
<th>Additional PeopleSoft and PeopleSoft Related Services Maximum Hourly Rate(s)</th>
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</thead>
<tbody>
<tr>
<td>Service Category</td>
</tr>
<tr>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>PeopleSoft Security Administrator</td>
</tr>
<tr>
<td>Consultant Level One</td>
</tr>
<tr>
<td>Consultant Level Two</td>
</tr>
</tbody>
</table>

| Consultant Level Three                     | $120                          | $115                           |
8. “PeopleSoft Organization Readiness and Change Management Analyst” means an experienced Change Management professional with experience in successfully supporting enterprise-wide technological and organizational change projects/PeopleSoft ERP implementations, preferably at public sector organizations. Must have past experience in successfully providing for Change Management strategy and deployment, communications, and performing organizational readiness assessments.

a) “Consultant Level One” means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.
b) “Consultant Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.
c) “Consultant Level Three” means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

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</tr>
</thead>
<tbody>
<tr>
<td>Service Category</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>PeopleSoft Organization Readiness and Change Management Analyst</td>
</tr>
<tr>
<td>a Consultant Level One</td>
</tr>
<tr>
<td>b Consultant Level Two</td>
</tr>
<tr>
<td>c Consultant Level Three</td>
</tr>
</tbody>
</table>
9. "PeopleSoft Technologies Training Analyst" means a training professional with experience in managing, designing and delivering technology related training programs for PeopleSoft and related technologies and applications, preferably in public sector organizations. Level One must have past experience with overall responsibility for end-user training design, development, and delivery on an enterprise scale. Levels Two and Three must provide guidance on curriculum design best practices and proven development methods/tools to measure and optimize learner knowledge retention and efficacy of training. Must be familiar with PeopleSoft Enterprise Learning and Enterprise Learning Management systems to manage and administer training. Must be able to lead teams to establish and accomplish training objectives on a statewide scale. Must be familiar with industry training development tools and methods for a variety of channels including Instructor Lead, video and web, as well as job aids and other written training materials. Must have hands-on experience working with/in the technology they will be developing curriculum on, including PeopleSoft and related technologies and applications. Must be able to create and maintain training use cases in these technologies to support hands-on training in a lab environment.

a) “Consultant Level One” means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b) “Consultant Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

c) “Consultant Level Three” means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

| Additional PeopleSoft and PeopleSoft Related Services Maximum Hourly Rate(s) |
|-------------------------------------------------|------------------|------------------|
| Service Category | Onsite Maximum Hourly Rate ($) | Offsite Maximum Hourly Rate ($) |
| 13 PeopleSoft Technologies Training Analyst | | |
| a Consultant Level One | $125 | $120 |
| b Consultant Level Two | $115 | $110 |
| c Consultant Level Three | $105 | $100 |
10. "Quality Assurance Analyst" means responsible for developing and executing formal test plans to ensure the delivery of quality software applications. Involved in test planning, writing test cases/scripts, test case automation and test execution. Defines and tracks quality assurance metrics such as defects, defect counts, test results and test status. Collects and analyzes data for software process evaluation and improvements, and integrates them into business processes to address the needs of the business. Documents all problems and assists in their resolution. Delivers quality process training to technical staff and acts as an internal quality consultant to advise or influence business or technical partners.

a) “Consultant Level One” means a qualified team member that has greater than ten (10) years of relevant past experience as defined in this bid.

b) “Consultant Level Two” means a qualified team member that has five (5) to ten (10) years of relevant past experience as defined in this bid.

c) “Consultant Level Three” means a qualified team member that has less than five (5) years of relevant past experience as defined in this bid.

| Additional PeopleSoft and PeopleSoft Related Services Maximum Hourly Rate(s) |
|---------------------------------|---------------------------------|---------------------------------|
| Service Category                | Onsite Maximum Hourly Rate ($) | Offsite Maximum Hourly Rate ($) |
| 16 Quality Assurance Analyst    |                                 |                                 |
| a Consultant Level One          | $120                            | $115                            |
| b Consultant Level Two          | $110                            | $105                            |
| c Consultant Level Three        | $100                            | $95                             |
APPENDIX C-1 – Value Added Options

NOT APPLICABLE
## APPENDIX C-2–PeopleSoft Pre-Packaged Training Course Cost

<table>
<thead>
<tr>
<th>#</th>
<th>Course Name</th>
<th>Type of Course (Webinar, Onsite, Other)</th>
<th>Brief Description</th>
<th>Class duration in hours</th>
<th>Number of Days</th>
<th>Min and Max Class Size</th>
<th>Rate/Cost per person including discounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PeopleSoft Financial Management Training</td>
<td>Webinar / Onsite</td>
<td>Introduction to Financials And SCM, General Ledger Cash Management, AP/AR, Billings, expenses, Financials and SCM Delta 9.2</td>
<td>2 hours</td>
<td>4 – 5 Days</td>
<td>10 People</td>
<td>$5,000</td>
</tr>
<tr>
<td>2</td>
<td>PeopleSoft Supply Chain Management Training</td>
<td>Webinar / Onsite</td>
<td>Inventory Purchasing, eProcurement, Strategic Sourcing, Supplier Contract Management, eSupplier</td>
<td>2 hours</td>
<td>4 Days</td>
<td>10 People</td>
<td>$5,000</td>
</tr>
<tr>
<td>3</td>
<td>Oracle PeopleSoft Campus Solutions Training</td>
<td>Webinar / Onsite</td>
<td>Introduction to Campus Solutions PeopleSoft Campus Solutions – Managing Transfer Credit, Admissions, Web Services, Financial Aid Packaging, Financial Aid PeopleSoft Campus Solutions 9.0 to 9.2 Delta</td>
<td>3 hours</td>
<td>3 Days</td>
<td>10 People</td>
<td>$5,000</td>
</tr>
<tr>
<td>5</td>
<td>Technical Reporting</td>
<td>Onsite</td>
<td>SQR, PeopleSoft 8.55 PUM and FLUID FSCM Security, PeopleSoft Integration Tools Part I &amp; II, PeopleTools I/II Workflow</td>
<td>2 hours</td>
<td>3 Days</td>
<td>10 People</td>
<td>$6,000</td>
</tr>
</tbody>
</table>