

STATE OF NORTH CAROLINA	REQUEST FOR PROPOSAL NO.07-2024-IT001
AGENCY NAME Division Name	Contract Name: Death Match Audit Services
	Opening Date: Thursday, December 5, 2024, at 2:00PM ET
Refer <u>ALL</u> inquiries regarding this RFP through the Message Board in the Ariba Sourcing Tool and/or via the below: Name: Elizabeth Cass Email: Elizabeth.Cass@nctreasurer.com Phone Number: (919) 814-3895	Issue Date: Monday, November 4, 2024
	Commodity Code: 811120 Data Services
	Purchasing Agency: The North Carolina Department of State Treasurer (NCDST) Retirement Systems Division (RSD)
	Requisition No.: N/A

OFFER

The Purchasing Agency solicits offers for Services and/or goods described in this solicitation. All offers and responses received shall be treated as Offers to contract as defined in 9 NCAC 06A.0102(12).

EXECUTION

In compliance with this Request for Proposal (RFP), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein.

Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY, STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for one hundred twenty (120) days from date of offer opening unless otherwise stated here: ____ days.

ACCEPTANCE OF OFFER

If any or all parts of this offer are accepted, an authorized representative of The North Carolina Department of State Treasurer shall affix its signature hereto and any subsequent Request for Best and Final Offer (BAFO), if issued. Acceptance shall create a contract having an order of precedence as follows: Best and Final Offers, if any, Special terms and conditions specific to this RFP, Specifications of the RFP, the Department of Information Technology Terms and Conditions, and the agreed portion of the awarded Vendor's Offer. A copy of this acceptance will be forwarded to the awarded Vendor(s).

FOR PURCHASING AGENCY USE ONLY

Offer accepted and contract awarded this date _____ as indicated on attached certification, by _____ (Authorized Representative of The North Carolina Department of State Treasurer).

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1. ANTICIPATED PROCUREMENT SCHEDULE

The NCDST will make every effort to adhere to the following schedule:

Action	Responsibility	Date
RFP Issued	Agency	Monday, November 4, 2024
Written Questions Deadline	Potential Vendors	Tuesday, November 12, 2024, 2:00PM ET
Agency's Response to Written Questions/ RFP Addendum Issued	Agency	Tuesday, November 19, 2024, 5:00PM ET
Offer Opening Deadline	Vendor(s)	Thursday, December 5, 2024, at 2:00PM ET
Offer(s) Evaluation/Selection of Finalists	Agency	TBD
Oral Presentations and/or Product Demonstrations by Finalists	Selected Vendors	TBD
Negotiations with Finalists	Agency designees and selected Vendor(s)	TBD
Best and Final Offers Deadline from Finalists	Selected Vendors	TBD
Contract Award	Agency	Date of Execution
Contract Effective Date	Awarded Vendor/Agency	As provided in Notice of Award.
Protest Deadline	Responding Vendors	15 days after Award.

2. PURPOSE OF RFP

2.1. INTRODUCTION

The North Carolina Department of State Treasurer (NCDST) Retirement Systems Division (RSD) strives to exercise fiduciary oversight and provide outstanding customer service that provides value to, and instills by, the state's citizens, customers, and financial community. The core values focus on providing public leadership in finance, fiscal and health policy, enhancing accountability of department services, innovating, and modernizing operations, and maximizing talent.

RSD provides retirement, death and disability benefits created under North Carolina state law to more than 1,000,000 members who participate in at least one (1) of the seven (7) retirement pension plans that are administered by RSD, as listed below:

- a) Teachers' and State Employees' Retirement System
- b) Local Governmental Employees' Retirement System
- c) Consolidated Judicial Retirement System
- d) Legislative Retirement System
- e) Firefighters' and Rescue Squad Workers' Pension Fund
- f) National Guard Pension Fund
- g) Register of Deeds' Supplemental Pension Fund

RSD pays approximately \$620 million in benefits each month to approximately 370,000 retired employees and beneficiaries that would necessitate death match audit services to be provided to ensure proper payments are made to intended recipients.

2.2. PURPOSE

The purpose of this RFP is to solicit offers from qualified Vendors for the procurement of death match audit services for RSD. The Vendor proposed death match audit services will consist of a monthly data file of potential payees to be submitted by RSD to the awarded Vendor via a secure form of data transfer to be matched against sources including but not limited to the Social Security Death Master File (DMF) and State Vital Records (or similar office). Vendor's proposed death match audit services shall provide matches of deceased persons within RSD provided payee data that will be reported back to RSD showing any payees who are, or may be identified as, deceased, but whose deaths have otherwise not been reported to RSD.

2.3. SUMMARY OF PROBLEM STATEMENT

RSD is seeking a Vendor's proposed solution to provide robust death match audit services to help reduce RSD's risk of issuing improper payments. RSD issues payments by either check or by electronic fund transfer (EFT). When deaths are not timely reported to RSD, there is an increased risk of issuing improper payments for which the recipient is deceased but unknown to RSD. The DMF has been limited by federal regulations creating a challenge to access accurate data relating to a payee's reported death that is unbeknownst to RSD. Vendor's proposed solution must identify any payees, to RSD, who have begun to receive a monthly retirement benefit, who are deceased (or may be identified as deceased), but whose deaths have not otherwise been reported to RSD. The timely identification of these deaths allows RSD to safeguard its assets from making improper payments. This solicitation seeks to provide a safeguard to the pension fund, decrease the risk of making improper payments, reduce fraud, decrease liabilities of the pension plans, and ultimately instill public confidence in the pension plans.

2.4. CONTRACT TERM

The Contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The initial contract term shall be three (3) years with two (2) optional one-year renewal periods, to be exercised at the sole discretion of the NCDST, unless otherwise stated in the Notice of Award, or unless terminated earlier.

2.5. EFFECTIVE DATE

This Solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official, or Agency official has signed the document(s), contract, or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing the Vendor for goods provided nor Services rendered prior to the appropriate signatures and the arrival of the effective date of the Agreement. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the Agreement.

2.6. CONTRACT TYPE

Indefinite Quantity Agency Specific Contract – Pursuant to 9 NCAC 6B.0701, this solicitation will establish an indefinite quantity agency specific contract between a Vendor and the State. The quantity of Goods or Services that may be used by the State is undetermined. An estimated quantity based on history or other means may be used as a guide but shall not be a representation by the State of any anticipated purchase volume under any contract made pursuant to this solicitation.

Quantities are estimates only and RSD shall only be responsible for services rendered. Pricing will be based on unit costs as reflected in the Cost section of this solicitation. Services will be provided in accordance with the terms and conditions of this RFP.

The State reserves the right to make partial, progressive, or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated specifications as to quantity, quality, delivery, service, geographical areas; and where other factors are deemed to be necessary or proper to the purchase in question.

3. RFP REQUIREMENTS AND SPECIFICATIONS

3.1. GENERAL REQUIREMENTS AND SPECIFICATIONS

3.1.1. REQUIREMENTS

Requirement means, as used herein, a function, feature, or performance that the System must provide. If the offer cannot meet the requirements, they will not be evaluated.

3.1.2. SPECIFICATIONS

Specification means, as used herein, a detailed description that documents the function and performance of a system or system component.

The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only processes, configurations, materials and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute Services, products, goods or other Deliverables. Alternate or substitute Services, products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

3.1.3. SITE AND SYSTEM PREPARATION

Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed or implemented shall operate properly and efficiently within the site and system environment. Any alterations or modification in site preparation, which are directly attributable to incomplete or erroneous specifications provided by the Vendor, and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

3.1.4. EQUIVALENT ITEMS

Whenever a material, article or piece of equipment is identified in the specification(s) by reference to a manufacturer's or Vendor's name, trade name, catalog number or similar identifier, it is intended to establish a standard for determining substantial conformity during evaluation, unless otherwise specifically stated as a brand specific requirement (no substitute items will be allowed). Any material, article, or piece of equipment of other manufacturers or Vendors shall perform to the standard of the item named. Equivalent offers must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison.

3.1.5. ENTERPRISE LICENSING

In offering the best value to the State, Vendors are encouraged to leverage the State's existing resources and license agreements, which can be viewed here:

<https://it.nc.gov/resources/statewide-it-procurement/statewide-it-contracts>

- a) Identify components or products that are needed for your solution that may not be available with the State's existing license agreement.

- b) Identify and explain any components that are missing from the State's existing license agreement.
- c) If the Vendor can provide a more cost-effective licensing agreement, please explain in detail the agreement and how it would benefit the State.

3.2. SECURITY SPECIFICATIONS

3.2.1. SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The Death Match Audit Services Solution will be required to receive and securely manage data that is classified as *HIGH RISK*. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

For Completion by Vendor:

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls. This requirement additionally applies to all Vendor-provided, agency-managed Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted) data.

- (a) Vendors may provide a completed Vendor Readiness Assessment Report Non-State Hosted Solutions ("VRAR") upon offer submission. However, it is an absolute requirement that Vendors provide a completed VRAR prior to any potential award. Failure to provide the VRAR in a timely manner (upon offer submission or upon request from the State) shall be grounds for disqualification of the Vendor's offer. This report is located at the following website: <https://it.nc.gov/documents/vendor-readiness-assessment-report>
- (b) Upon request, Vendors shall provide a current independent 3rd party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors are encouraged to provide a current independent 3rd party assessment report in accordance with subparagraphs (i)-(iii) at the time of offer submission.
 - (i) Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, ISO 27001, or HITRUST are the preferred assessment reports for any Vendor solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted).
 - (ii) A Vendor that cannot provide a preferred independent 3rd party assessment report as described above may submit an alternative assessment, such as a SOC 2 Type 1 assessment report. The Vendor shall provide an explanation for submitting the alternative assessment report. If awarded this contract, a Vendor who submits an alternative assessment report shall submit one of the preferred assessment reports no later than 365 days of the Effective Date of the contract. Timely submission of this preferred assessment report shall be a material requirement of the contract.
 - (iii) An IaaS vendor cannot provide a certification or assessment report for a SaaS provider UNLESS permitted by the terms of a written agreement between the two vendors and the scope of the IaaS certification or assessment report clearly includes the SaaS solution.
- (c) Additional Security Documentation. Prior to contract award, the State may in its discretion require the Vendor to provide additional security documentation, including but not limited to vulnerability assessment reports and penetration test reports. The awarded Vendor shall provide such additional security documentation upon request by the State during the term of the contract.

For Completion by Vendor:

Vendor must provide a designated contact to ensure compliance with all associated favorable third-party risk assessment(s) for all Services to be provided under this Contract. **Prior to award, NCDST personnel shall contact the Vendor to provide certified evidence of all security attestations. The information obtained shall be reviewed for compliance by the NCDST Information Security Officer prior to Award.**

Vendor Contact Name: _____

Email Address: _____

Telephone No.: _____

3.2.2. SOLUTIONS HOSTED ON STATE INFRASTRUCTURE – RESERVED

3.2.3. SECURITY DATA BREACH

For Completion by Vendor:

Has your company experienced a security breach, as defined by the NC Identity Theft Protection Act (N.C.G.S. § 75-60 *et. seq.*) within the last three (3) years with any of its clients?

YES NO

If **yes**, please explain the security breach, remedy provided by your company, and the overall outcome of the security breach: _____

If **no**, please explain and include any applicable documentation regarding your process for handling a security breach: _____

3.3. ENTERPRISE SPECIFICATIONS

3.3.1 ARCHITECTURE DIAGRAMS

The two (2) diagrams are Network Architecture and Technology Stack. The State utilizes architectural diagrams to better understand the design and technologies of a proposed solution.

For Completion by Vendor:

Describe or diagram both Network Architecture and the Technology Stack for the Vendor's solution. There may be additional architectural diagrams requested of the Vendor after contract award. This will be communicated to the Vendor by the NCDST, as needed.

3.3.2 SOLUTION ROADMAP

A Solution Roadmap defines the vision and strategic elements of the solution. The Solution Roadmap is a plan of action for how a Solution will evolve over time.

The minimum content should include:

- Vision for the solution
- High-level functionality expected for each solution release into production environment.
- High-level timeline
- Description of how customer feedback is collected and incorporated into solution enhancements.

For Completion by Vendor:

Describe the solution roadmap for Vendor's product/service to include content on release strategies for functionality, roadmap for technical architecture, and how scalability of solution is planned.

3.3.3 IDENTITY AND ACCESS MANAGEMENT - RESERVED

3.3.4 INTEGRATION APPROACH

For Completion by Vendor:

Describe the proposed solution's capabilities to interoperate with other solutions. Identify the standards supported, integrations platforms, adaptors, APIs, and the like.

3.3.5 DISASTER RECOVERY AND BUSINESS CONTINUITY

For Completion by Vendor:

Describe the proposed solution's capabilities related to the following areas:

Disaster Recovery Plan (DRP) – describe how proposed solution supports Recovery Point Objectives (RPO) and Recovery Time Objectives (RTO) metrics.

System Backup – describe backup plan capabilities.

Disaster Recovery Testing – describe the frequency and test procedures for end-to-end disaster recovery testing. Business Continuity Plan (BCP) – describe capabilities proposed solution can provide in support of agency's continuity of operations and incident responses.

3.3.6 DATA MIGRATION - RESERVED

3.3.7 APPLICATION MANAGEMENT - RESERVED

3.3.8 ACCESSIBILITY

For Completion by Vendor:

Describe how the proposed solution complies with industry accessibility standards.

Describe how the proposed solution is digitally accessible, or if not fully accessible, describe the roadmap with timeline for remediation. Product documentation may be provided to supplement the response.

Standards include:

- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1:
<https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®):
<https://www.itic.org/policy/accessibility/vpat>

3.3.9 ENTERPRISE, SERVICES, AND STANDARDS

Vendors should refer to the Vendor Resources Page for information on North Carolina Department of Information Technology regarding architecture, security, strategy, data, digital, identity and access management and other general information on doing business with state IT process.

The Vendor Resources Page found at the following link: <https://it.nc.gov/vendor-engagement-resources>. This site provides vendors with statewide information and links referenced throughout the RFP document. Agencies may request additional information.

3.4. BUSINESS AND TECHNICAL REQUIREMENTS

Vendor must adhere to the Business and Technical Requirements listed below for Vendor's proposal to be considered. **Vendor shall state whether Vendor's proposal meets each requirement below in 3.4.1 through 3.4.4.**

3.4.1 VENDOR DATA TRANSFER METHOD REQUIREMENTS

The Vendor will communicate, transfer files, and conduct business with the RSD via a secure data transfer method in accordance with the security requirements of this RFP.

- a) The Vendor will perform Death Match Audit Services within the Vendor's secure computing environment without the use of a Third - Party. If Vendor offers a website for its secure data transfer method, it must be hosted and maintained by the Vendor.

3.4.2 VENDOR REPORTING REQUIREMENTS

- a) Death Match Audit Search results must be submitted to RSD within five (5) business days of receipt of the electronic data file from RSD.
- b) The Vendor must submit a monthly response report of death matches to the RSD in a secure data transfer method and use all methods of encryption and password-protection.

3.4.3 VENDOR SOURCES REQUIREMENTS

- a) Vendor must use the Death Master File (DMF) as a Death Match source.

3.4.4 VENDOR IMPLEMENTATION REQUIREMENTS

Vendor must provide implementation of Vendor's solution as outlined below:

- a) Vendor must provide a go-live date to the NCDST. The NCDST shall test functionality of the Vendor's solution. Vendor's solution shall not be approved for go-live until the NCDST ORBIT system can start transferring and retrieving files from the incumbent Vendor to the awarded Vendor.
- b) Training will be provided to the NCDST RSD Death Team analysts to be prepared for the go-live date to switch to using the awarded Vendor's solution.
- c) Training on Vendor's solution must be provided to the NCDST IT staff.
- d) The Vendor must work with the NCDST IT staff to assist with implementation/transition changes to NCDST ORBIT system to ensure that data can be sent in an acceptable and secure method between the ORBIT system and Vendor's solution.
- e) The Vendor must adapt/implement their process(es) to accept and send files in a format that the NCDST ORBIT System can utilize to ensure continuity between NCDST ORBIT system and the Vendor's proposed solution.

3.5 BUSINESS AND TECHNICAL SPECIFICATIONS

For Completion by Vendor:

Describe in detail your proposed Solution's ability to accomplish each of the following specifications, providing a narrative response, including screenshots as appropriate, detailing how the proposed Solution accomplishes each specification outlined below, including capabilities, features, or limitations of the Solution. As applicable, describe any configurations or customizations needed to the Solution to meet a particular specification.

3.5.1 SECURE DATA TRANSFER METHODS

- a) Describe how the Vendor's proposed solution provides a secure data transfer method, such as a Vendor website, or a method to receive and send password protected and encrypted e-mails and attachments.
- b) Describe how the proposed solution is secure and capable of meeting the security requirements of this RFP.

3.5.2 WEBSITE ACCESSIBILITY AND HOSTING INFORMATION

Describe Vendor's hosting environment for Vendor's website and how Vendor maintains this environment.

3.5.3 IMPLEMENTATION

Describe Vendor's proposed implementation period, the training provided, and the estimated timeline needed to implement the proposed solution.

3.5.4 VENDOR SOURCES

Describe Vendor's death match sources used to provide accurate and timely death matches. RSD prefers the Vendor use published obituaries as a source, but it is not a requirement.

3.5.5 REPORTING

Describe how Vendor will provide Death Match Audit Search results within five (5) business days of receipt of the electronic data file from RSD. Refer to Section 3.5.8 Current Business Process Explained, which outlines the RSD process.

- a) Describe how the monthly response report identifies any matches reported on a previous month's report, through a unique identifier on the report, and how any newly reported payees are differentiated from those payees matched on previous reports.
- b) Describe how the returned monthly response report details information to include how many records were searched and the accuracy of the matches, categorized by fields that match.
- c) Describe how the Vendor will provide an easily accessible and readable format, like a Microsoft Excel file or an Adobe Acrobat file, or similar format.
- d) Describe how each category of matched fields, as referenced in Business Process Explained Section 3.5.8 below, contains or shows a report that includes a comparison between the data provided by RSD and the data fields on record by the Vendor. RSD prefers that the Vendor's report show the source of the death match as well as a list of identified invalid Social Security Numbers, but it is not a requirement.
- e) Describe how Vendor's monthly response report of death matches will be submitted to RSD in a secure data transfer method, use all methods of encryption and password-protection, and include a description of the format, such as Microsoft Excel file or an Adobe Acrobat file. RSD prefers the Vendor to provide the response report in Microsoft Excel, but it is not a requirement.

- f) Describe how the proposed solution provides monthly response reporting, to include but not limited to the following:
- Level of detail in the report
 - Overall ability of the Vendor's solution to provide the monthly response report as outlined in Section 3.5.8 below.
 - Level of accuracy, quality, useability, and the proposed file type of monthly response report.
 - Access to the monthly response report, to include the Vendor's secure data transfer method for submission of the report to the RSD.
 - An example of a mock monthly response report.

3.5.6 VENDOR EXPERIENCE

For Completion by Vendor:

Vendor to provide a response to each of the listed items below. Vendor's Past Performance may be grounds for disqualification from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.

- a) Vendor to describe experience performing Death Match Audit Services with public sector entities and/or private sector clients with similar or greater size and complexity to the NCDST within the last three (3) years.
- b) Vendor to describe the qualifications and experience of and for the positions of the personnel to be assigned to this Contract, including the responsibilities for such positions, and whether the positions are presently filled, and if so, describe the personnel's experience with projects similar to the one sought in this RFP. Vendor may include resumes for such personnel currently holding such positions in lieu of descriptions.

3.5.7 VENDOR SERVICE LEVEL AGREEMENT (SLA)

For Completion by Vendor:

Describe your standard Service Level Agreement (SLA) and provide an attachment of the agreement ensuring it describes escalation, priority tiers, and response times.

3.5.8 CURRENT BUSINESS PROCESS EXPLAINED

- a) Death Match Audit Services with RSD will consist of an electronic monthly data file of potential payees to be submitted by RSD to the awarded Vendor via a secure data transfer method to be matched against sources including but not limited to the DMF and the State Vital Records (or similar office, see Section 3.6 below), in addition, RSD prefers the Vendor to use published obituaries as a source, but it is not a requirement.
 - Examples of acceptable secure data transfer methods are a vendor website, or a secure transfer method to receive and send password protected and encrypted e-mails and attachments. The RSD reserves the right to approve or reject an acceptable secure data transfer method.

- The awarded Vendor must perform Death Match Audit Services within the Vendor's secure computing environment without the use of a Third Party. If Vendor proposes a website for its secure data transfer method, it must be hosted and maintained by the Vendor.
 - If the Vendor proposes a website for its secure data transfer method, RSD estimates up to 15 users would require access to the secure website but will provide a more accurate number of needed users to the Vendor upon Contract award. RSD reserves the right to increase or decrease the number of authorized users to the Vendor proposed secure website, as applicable and needed.
- b) RSD shall provide an electronic data file monthly, to the awarded Vendor, with payee records from the last monthly payroll. Based on historical data RSD estimates approximately 370,000 payees records each month; however, this estimate will vary from month to month. RSD estimates that the number of payees will increase by 10,000 each year.
- c) The monthly electronic data file will be sent in batch files during the last week of the calendar month, unless a holiday, then the first business day after. The file shall be sent via a secure data method, such as a Vendor provided and maintained site, or by sending the data files by an encrypted e-mail attachment. The electronic data file will include the following sensitive data for the Vendor to process the Death Match Audit Services:
- Social Security Number (SSN)
 - First and Last Name
 - Date of Birth
 - State of Residence
- d) Upon receipt of Vendor verified death matches, RSD will use the death matches to assist in researching and determining proof of death, confirming payees, and identifying family members for payment.

3.6 VENDOR'S AUTHORIZED ACCESS TO OFFICE OF STATE VITAL RECORDS

Vendor should be authorized to obtain death information through the Office of State Vital Records or similar office in all 50 US States, the District of Columbia, Guam, Puerto Rico, and the US Virgin Islands.

For Completion by Vendor:

Is the Vendor authorized to obtain death information through the Office of Vital Records in all 50 US States, the District of Columbia, Guam, Puerto Rico, and the US Virgin Islands?

YES NO

If **No**, Vendor must list below each State(s), including the District of Columbia, Guam, Puerto Rico, and the US Virgin Islands, that it is **not** authorized to obtain required death information **AND** provide the alternative method/similar office utilized to obtain death match information.

Describe in detail how Vendor's alternative method of obtaining death information (as listed below) provides the same or better results as those from the Office of State Vital Records.

States/Territories Not Authorized	Alternative Method to Obtain Death Info

4.0 COST OF VENDOR'S OFFER

4.1 OFFER COSTS

This is an Agency Specific Term Contract and RSD does not guarantee any maximum or minimum usage. Vendor's costs must be firm and fixed and shall be the total cost to the NCDST for complete performance in accordance with the requirements and specifications of this RFP, any Addenda, including all applicable charges handling, administrative and other similar fees. Vendor shall complete ATTACHMENT D: Cost Form and include it in Vendor's proposal response. Failure to adhere to this instruction will result in rejection of Vendor's offer.

4.2 INVOICES & PAYMENT SCHEDULE

Vendor must not invoice for any amounts not specifically allowed for in this RFP. Upon Contract Award, the awarded Vendor must submit invoices to the NCDST in the following manner:

- a) Invoices must be e-mailed in a manner which does not require a password to open, to Charlene.Dixon@nctreasurer.com and DSTAccountsPayable@nctreasurer.com.
- b) Invoices must be itemized, bear the correct contract number, and the eProcurement purchase order number to ensure prompt payment. The Vendor's failure to include the correct eProcurement purchase order number may cause delay in payment.
- c) RSD's preferred invoice payment schedule shall be on a monthly basis, based on usage by RSD, unless otherwise agreed to by RSD and awarded Vendor. However, RSD will only be responsible for services rendered.
- d) Invoices must be submitted by unique invoice number, within 15 calendar days following the end of each month in which work was performed. Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Vendor and the original signature of the Vendor's authorized project manager.

5.0 EVALUATION

5.1 SOURCE SELECTION

A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award this RFP to the Vendor providing the Best Value and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with or traded-off against other non-price factors.

- a) Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
- b) To be eligible for consideration, Vendor's offer must substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State. Offers that do not meet the full intent of all specifications listed in this RFP may be deemed

deficient. Further, a serious deficiency in the offer to any one (1) factor may be grounds for rejection regardless of overall score.

- c) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to 3200 Atlantic Ave, Raleigh, North Carolina, 27604 to discuss technical and contractual aspects of the offer.
- d) Vendors are advised that the State is not obligated to ask for or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.

5.2 EVALUATION CRITERIA

Evaluation shall include best value, as the term is defined in N.C.G.S. § 143-135.9(a)(1), compliance with information technology project management policies as defined by N.C.G.S. §143B-1340, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation. Proposals will be evaluated by the strengths and weaknesses of each proposal against the evaluation criteria, and how well the Vendor's offer compares against other Vendor's offers.

The following Evaluation Criteria are listed in Order of Importance:

1. How well the Vendor's offer conforms to provide Death Match Audit Services (Section 3.5 Business and Technical Specifications, 3.5.1-3.5.5)
2. How each Vendor's offer compares with other Vendors' offers.
3. Total Cost of Ownership for Vendor's Offer (Attachment D)
4. Risks associated with Vendor's Offer, specifically errata and exceptions and Vendor's service level agreement, license, maintenance, support, or other standard agreements.
5. Vendor's Adherence to Enterprise Specifications (Section 3.3.1 Architecture Diagrams, Section 3.3.2 Solution Roadmap, Section 3.3.4 Integration Approach, Section 3.3.5 Disaster Recovery and Business Continuity, Section 3.3.8 Accessibility)
6. Vendor Experience and References (Section 3.5.6 and Attachment G)

5.3 BEST AND FINAL OFFERS (BAFO)

The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendor(s) within this range; e.g. "Finalist Vendor(s)". If negotiations or subsequent offers are solicited, the Vendor(s) shall provide BAFO(s) in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State will evaluate BAFO(s), oral presentations, and product demonstrations as part of the Vendors' respective offers to determine the final rankings.

5.4 POSSESSION AND REVIEW

During the evaluation period and prior to award, possession of the proposals and accompanying information is limited to personnel of RSD, and to the committee responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e. assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

After award of the Contract the complete file will be available to any interested persons with the exception of trade secrets, test information or similar proprietary information as provided by statute and rule. Any proprietary or confidential information, which conforms to exclusions from public records as provided by N.C.G.S. §132-1.2 must be clearly marked as such in the offer when submitted.

6.0 VENDOR INFORMATION AND INSTRUCTIONS

6.1 GENERAL CONDITIONS OF OFFER

A) VENDOR RESPONSIBILITY

It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all specifications, requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from NCDST's contact person.

The Vendor will be responsible for investigating and recommending the most effective and efficient solution. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of its ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products, and any software. The Vendor must provide a justification for their proposed hardware, product, and software solution(s) along with costs thereof. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying Services, maintenance, warranties, value added Services or other criteria identified herein.

B) RIGHTS RESERVED

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or NCDST RSD, to award a Contract. Upon determining that any of the following would be in its best interests, the State, NCDST RSD may:

- a) waive any formality;
- b) amend the solicitation;
- c) cancel or terminate this RFP;
- d) reject any or all offers received in response to this RFP;
- e) waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
- f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
- g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
- h) if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.

C) SOLICITATION AMENDMENTS OR REVISIONS

Any and all amendments or revisions to this document shall be made by written addendum from NCDST. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

D) ORAL EXPLANATIONS

The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than NCDST's contact person may be grounds for rejection of said Vendor's offer. Contact, beside NCDST's contact person regarding this RFP with any Vendor may be grounds for cancellation of this RFP.

E) E-PROCUREMENT

This is an E-Procurement solicitation. See ATTACHMENT B, paragraph #38 of the attached North Carolina Department of Information Technology Terms and Conditions.

The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina’s statewide E-Procurement initiative. It is the Vendor’s responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to E-Procurement.

- a) General information on the E-Procurement service can be found at <http://eprocurement.nc.gov/>
- b) Within two (2) days after notification of award of a contract, the Vendor must register in NC E-Procurement @ Your Service at the following website: <http://eprocurement.nc.gov/Vendor.html>
- c) As of the RFP submittal date, the Vendor must be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this RFP.

F) ELECTRONIC VENDOR PORTAL (EVP)

The State has implemented the electronic Vendor Portal (eVP) that allow the public to retrieve award notices and information on the Internet at <https://evp.nc.gov>. <https://www.ips.state.nc.us/ips/> Results may be found by searching by Solicitation Number or agency name. This information may not be available for several weeks depending upon the complexity of the acquisition and the length of time to complete the evaluation process.

G) PROTEST PROCEDURES

Protests of awards exceeding \$25,000.00 in value must be submitted to the NCDST at the contact information given on the first page of this document. Protests must be received by the NCDST within 15 calendar days from the date of this RFP award and provide specific reasons and any supporting documentation for the protest. **All protests are governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

6.2 GENERAL INSTRUCTIONS FOR VENDOR

6.2.1 QUESTIONS CONCERNING THE RFP

All inquiries regarding the solicitation specifications or requirements are to be addressed to Elizabeth Cass via the Ariba Sourcing Tool’s message board. Vendor(s) contact regarding this RFP with anyone other than NCDST’s contact person may be grounds for rejection of said Vendor’s offer. Contact, beside NCDST’s contact person, regarding this RFP with any Vendor may be grounds for cancellation of this RFP.

Written questions concerning this Solicitation will be received until Tuesday November 12, 2024, 2:00PM Eastern Time.

Please enter “Questions regarding RFP 07-2024-IT001 Death Match Audit Services” as the subject for the message.

REFERENCE	VENDOR QUESTION
RFP Section, Page Number	

6.2.2 ADDENDUM TO RFP

If written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State

shall become an Addendum to this RFP and provided via the State's Ariba Sourcing Tool. Vendors' questions posed orally must be reduced to writing by the Vendor and provided to Elizabeth Cass as referenced in Section 6.2.1 above. Oral answers are not binding on the State.

Critical updated information may be included in these Addenda. It is important that all Vendors responding to this RFP, periodically check the State's Ariba Sourcing Tool for any and all Addenda that may be issued prior to the offer opening date.

6.2.3 COSTS RELATED TO OFFER SUBMISSION

Costs for developing and delivering responses to this RFP and any subsequent presentations of the offer as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their offers.

All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and the Vendor resulting from this RFP process.

6.2.4 VENDOR ERRATA AND EXCEPTIONS

Any errata or exceptions to the State's requirements and specifications may be presented on a separate page labeled "Exceptions to Requirements and Specifications". Include references to the corresponding requirements and specifications of the Solicitation. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or non-equivalent goods or services may be rejected if not found substantially conforming; and if offered, must be supported by independent documentary verification that the offer substantially conforms to the specified goods or services specification.** If a vendor materially deviates from RFP requirements or specifications, its offer may be determined to be non-responsive by the State.

Offers conditioned upon acceptance of Vendor Errata or Exceptions may be determined to be non-responsive by the State.

6.2.5 ALTERNATE OFFERS

The Vendor may submit alternate offers for various levels of service(s) or products meeting specifications. Alternate offers must specifically identify the RFP specifications and advantage(s) addressed by the alternate offer. Any alternate offers must be clearly marked with the legend as shown herein. Each offer must be for a specific set of Services or products and offer at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be an offer with a different price and a separate RFP offer. Vendors may also provide multiple offers for software or systems coupled with support and maintenance options, provided, however, all offers must satisfy the specifications.

Alternate offers must be submitted in a separate document and clearly marked "Alternate Offer for 'name of Vendor'" and numbered sequentially with the first offer if separate offers are submitted.

6.2.6 MODIFICATIONS TO OFFER

An offer may not be unilaterally modified by the Vendor.

6.2.7 BASIS FOR REJECTION

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed specification is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

6.2.8 NON-RESPONSIVE OFFERS

Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

- “This offer does not constitute a binding offer”,
- “This offer will be valid only if this offer is selected as a finalist or in the competitive range”,
- “The Vendor does not commit or bind itself to any terms and conditions by this submission”,
- “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
- “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent

6.2.9 VENDOR REGISTRATION WITH THE SECRETARY OF STATE

Vendors do not have to be registered with the NC Secretary of State to submit an offer; however, in order to receive an award/contract with the State, they **MUST** be registered. Registration can be completed at the following website: https://www.sosnc.gov/Guides/launching_a_business.

6.2.10 VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM

The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available at the following website: <https://evp.nc.gov>.

This RFP is available electronically on the electronic Vendor Portal (eVP) at the following website: <https://evp.nc.gov>.

6.2.11 VENDOR POINTS OF CONTACT

CONTACTS AFTER CONTRACT AWARD:

For Completion by Vendor:

The Vendor must designate and make available to RSD a contractual and technical point of contact for after award of the Contract. The contractual point of contact must be NCDST’s point of contact related to procurement related matters. The technical point of contact must be RSD’s point of contact for contract administration or interpretation, performance issues, scheduling, project review, billing, and logistical matters related to file transfers between RSD and the Vendor. Vendor must list both a Contractual and Technical Point of Contact below.

VENDOR CONTRACTUAL POINT OF CONTACT	VENDOR TECHNICAL POINT OF CONTACT
Vendor: _____ Street Address: _____ City, State, Zip: _____ Attn: _____ Email: _____ Phone No.: _____	Vendor: _____ Street Address: _____ City, State, Zip: _____ Attn: _____ Email: _____ Phone No.: _____

6.3 INSTRUCTIONS FOR OFFER SUBMISSION

6.3.1 GENERAL INSTRUCTIONS FOR OFFER

Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the offer and subsequent evaluation process:

- a) Organize the offer in the exact order in which the specifications are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP specification and the specific page of the response in the Vendor's offer.
- b) Provide complete and comprehensive responses with a corresponding emphasis on being concise and clear. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
- c) Clearly state your understanding of the problem(s) presented by this RFP including your proposed solution's ability to meet the specifications, including capabilities, features, and limitations, as described herein, and provide a cost offer.
- d) Supply all relevant and material information relating to the Vendor's organization, personnel, and experience that substantiates its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If relevant and material information is not provided, the offer may be rejected from consideration and evaluation.
- e) Furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with its offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. Proposals that do not comply with these instructions may be rejected.
- f) Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
- g) **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.

6.3.2 OFFER ORGANIZATION

Within each section of its offer, Vendor should address the items in the order in which they appear in this RFP. Forms, attachments or exhibits, if any provided in the RFP, must be completed, and included in the appropriate section of the offer. All discussion of offered costs, rates, or expenses must be presented in Section 4.0. Cost of Vendor's Offer.

The offer should be organized and indexed in the following format and should contain, at a minimum, all listed items below.

- a) Signed Execution Page
- b) Table of Contents
- c) Completed Attachments C through H
- d) Vendor Response to Specifications and Requirements
- e) Security Vendor Readiness Assessment Report (VRAR)
- f) Errata and Exceptions, if any
- g) Vendor's License and Maintenance Agreements, if any

- h) Supporting material, if any, such as technical system documentation, training examples, etc.
- i) Vendor may attach other supporting materials that it feels may improve the quality of its response. These materials should be included as items in a separate appendix.
- j) All pages of this solicitation document in ONE (1) PDF, including all Attachments A through H.

6.3.3 OFFER SUBMITTAL

Due Date: Thursday, December 5, 2024
Time: 2:00 PM Eastern Time

The North Carolina Department of State Treasurer will be conducting the live proposal openings over Microsoft Teams. Below is the information for this procurement's proposal opening scheduled for Thursday, December 5, 2024, at 2:00PM ET. Join on your computer or mobile app. Join with a video conferencing device.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 217 139 203 530

Passcode: kyojRf

Dial in by phone

[+1 984-275-3153,,851545924#](#) United States, Raleigh

[Find a local number](#)

Phone conference ID: 851 545 924#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

IMPORTANT NOTE: It is the Vendor's sole responsibility to upload their offer to the Ariba Sourcing Module by the specified time and date of opening. Vendor shall bear the risk for late electronic submission due to unintended or unanticipated delay, including but not limited to internet issues, network issues, local power outages, or application issues. Vendor must include all the pages of this solicitation in their response.

Sealed offers, subject to the conditions made a part hereof, will be received until 2:00pm Eastern Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted via the Ariba Sourcing Module with the Execution page signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed offer shall result in disqualification.

Attempts to submit a proposal via facsimile (FAX) machine, telephone, email, email attachments, or in any hardcopy format in response to this RFP SHALL NOT be accepted and will automatically be deemed Non-Responsive.

- a) Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
- b) The Ariba Sourcing Module document number is: WS1307656668

- c) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- d) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
- e) If the vendor's proposal contains any confidential information (as defined in Attachment B, Paragraph #18), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

For Vendor training on how to use the Ariba Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>.

Questions or issues related to using the Ariba Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

7.0 OTHER REQUIREMENTS AND SPECIAL TERMS

7.1 VENDOR UTILIZATION OF WORKERS OUTSIDE OF U.S.

In accordance with N.C.G.S. §143B-1361(b), the Vendor must detail the manner in which it intends to utilize resources or workers in the RFP response. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer.

Complete ATTACHMENT F - Location of Workers Utilized by Vendor and submit with your offer.

7.2 FINANCIAL STATEMENTS

For Completion by Vendor:

The Vendor shall provide evidence of financial stability by returning with its offer 1) completed Financial Review (Attachment H), and 2) copies of Financial Statements as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements. The Vendor's failure to provide a response to any of the requested financial information or failure to submit any requested financial statements may result in the rejection of the Vendor's proposal. Vendors must provide response on any negative financial information and provide documentation supporting those explanations.

- a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than three (3) years, the Vendor must explain the reason why they are not available.
- b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.
- c) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information

sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of this RFP award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

7.3 VENDOR FINANCIAL STABILITY

For Completion by Vendor:

Vendor must certify it has the financial capacity to perform, and to continually perform, its obligations under the Contract by responding to questions and providing responses, as listed below:

1. Vendor has constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Contract.

YES NO

If **yes**, please explain the legal proceeding that could materially adversely affect performance of the contract: _____

2. Vendor has the ability to enter into this Contract and is not prohibited by any other agreement, law, or order by any court of competent jurisdiction.

YES NO

If **no**, please explain: _____

7.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS

For Completion by Vendor:

Vendor should present their license or support agreements for review and evaluation. Terms offered for licensing and support of Vendors' proprietary assets will be considered.

The terms and conditions of the Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this RFP may apply to the extent such terms and conditions do not materially change the terms and conditions of this RFP. In the event of any conflict between the terms and conditions of this RFP and the Vendor's standard agreement(s), the terms and conditions of this RFP relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the DIT Terms and Conditions herein shall apply in all cases and supersede any provisions contained in the Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, penalties, legal fees or other similar costs.

7.5 RESELLERS- RESERVED

7.6 DISCLOSURE OF LITIGATION

The Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of the Agreement.

- a) The Vendor shall notify the State in its offer, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation, or deception. The Vendor shall promptly notify the State of any criminal

litigation, investigations or proceeding involving the Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of the Agreement or any Scope Statement awarded to the Vendor.

- b) The Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to the Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
- c) All notices under subsection A and B herein shall be provided in writing to the State within 30 calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the DIT Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

7.7 CRIMINAL CONVICTION

In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of North Carolina employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor's business integrity and such vendor shall be prohibited from entering into a contract for goods or Services with any department, institution or agency of the State.

7.8 SECURITY AND BACKGROUND CHECKS

The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by the Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other similar requirements.

All State and Vendor personnel that have access to data restricted by the State Security Manual and Policies must have a security background check performed. The Vendors are responsible for performing all background checks of their workforce and subcontractors. The State reserves the right to check for non-compliance.

7.9 ASSURANCES

In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of the Agreement, causes the State to be reasonably concerned about:

- a) the ability of the Vendor or its subcontractor to continue to perform the Agreement in accordance with its terms and conditions, or
- b) whether the Vendor or its subcontractor in performing Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of the Agreement or violation of law, regulation or public policy,

then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform the Agreement in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing Services under the Agreement which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

7.10 CONFIDENTIALITY OF OFFERS

All offers and any other RFP responses shall be made public as required by the NC Public Records Act and GS 143B-1350. Vendors may mark portions of offers as confidential or proprietary, after determining that such information is excepted from the NC Public Records Act, provided that such marking is clear and unambiguous and preferably at the top and bottom of each page containing confidential information. Standard restrictive legends appearing on every page of an offer are not sufficient and shall not be binding upon the State.

Certain State information is not public under the NC Public Records Act and other laws. Any such information which the State designates as confidential and makes available to the Vendor in order to respond to the RFP or carry out the Agreement, or which becomes available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

7.11 PROJECT MANAGEMENT- RESERVED

7.12 MEETINGS

The Vendor is required to meet with Agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Agreement. Meetings will occur as problems arise and will be coordinated by the Agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face-to-face meetings are desired. However, at the Vendor's option and expense, a conference call meeting may be substituted.

7.13 RECYCLING AND SOURCE REDUCTION

It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the NCDIT Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.

7.14 SPECIAL TERMS AND CONDITIONS- RESERVED

7.15 AGENCY TERMS AND CONDITIONS- RESERVED

ATTACHMENT A: DEFINITIONS

- 1) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- 2) **AGENCY SPECIFIC TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.
- 3) **CONTRACT LEAD:** Representative of the North Carolina Department of State Treasurer who corresponds with potential Vendors in order to identify and contract with that Vendor providing the greatest benefit to the State.
- 4) **CYBERSECURITY INCIDENT (GS 143B-1320):** An occurrence that:
 - a. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or
 - b. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
- 5) **DEATH MATCH AUDIT SERVICES:** The researching, through public and proprietary databases, participant information provided by the agency to identify those participants who are deceased or suspected of being deceased.
- 6) **DELIVERABLES:** Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information, but not source and object code or software.
- 7) **DMF:** The Social Security Death Master File.
- 8) **GOODS:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
- 9) **NCDIT or DIT:** The NC Department of Information Technology.
- 10) **NCDST:** The North Carolina Department of State Treasurer, DST, Department, Agency (all used synonymously).
- 11) **OPEN MARKET CONTRACT:** A Contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- 12) **ORBIT:** ORBIT (Online Retirement Benefits through Integrated Technology) is an enterprise class pension administration system that integrates a wide variety of disparate software solutions to provide a web-based user interface and any necessary software components to administer the pension plans of all of North Carolina's public employees and volunteer firefighter and rescue squad worker members. The Line of Business component of ORBIT allows the Retirement Systems Division under the Department of State Treasurer to accept the pension contributions from state agencies through Employer Reporting, process refund of contributions, retirement processing, death and disability processing etc. There is a Self-Service component of ORBIT through which state employees, retirees and beneficiaries can view and update their accounts.
- 13) **PAYEE:** An individual that receives or is scheduled to receive a payment.

- 14) REASONABLE, NECESSARY, OR PROPER:** as used herein shall be interpreted solely by the State of North Carolina.
- 15) REQUEST FOR PROPOSAL (RFP):** The RFP is a formal, written solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services. The RFP is used when the value is over \$10,000.00. This document contains specifications of the RFP, instructions to bidders and the standard IT Terms and Conditions for Goods and Related Services. User should add Supplemental Terms and Conditions for Software and Services, when applicable.
- 16) RSD:** The Retirement Systems Division underneath the North Carolina Department of State Treasurer.
- 17) SECURITY BREACH:** As defined in N.C.G.S. §75-61.
- 18) SIGNIFICANT SECURITY INCIDENT (GS 143B-1320):** A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
- a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
 - i. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or
 - ii. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
 - b. Incidents that involve information that is not recoverable or cannot be recovered within defined timelines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
- 19) SSA:** Social Security Administration.
- 20) Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

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ATTACHMENT B: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

Section 1. General Terms and Conditions Applicable to All Purchases

1. **DEFINITIONS:** As used herein;
 - Agreement means the contract awarded pursuant to this RFP.
 - Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
 - Purchasing State Agency or Agency shall mean the Agency purchasing the goods or Services.
 - Services shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
 - State shall mean the State of North Carolina, the Department of Information Technology (DIT), or the Purchasing State Agency in its capacity as the Contracting Agency, as appropriate.
2. **STANDARDS:** Any Deliverables shall meet all applicable State and federal requirements, such as State or Federal Regulation, and NC State Chief Information Officer's (CIO) policy or regulation. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender or provide to the State only those Deliverables that have been inspected and found to conform to the RFP specifications. All Deliverables are subject to operation, certification, testing and inspection, and any accessibility specifications.
3. **WARRANTIES:** Unless otherwise expressly provided, any goods Deliverables provided by the Vendor shall be warranted for a period of 90 days after acceptance.
4. **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
5. **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.
6. **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The State

may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate the Agreement and compensate Vendor for sums then due under the Agreement.

7. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any Contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any Contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Agreement or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign the Agreement and bind the Party to the terms and conditions of this RFP. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of the Agreement; obligation or Contract for future award of compensation as an inducement or consideration for making the Agreement. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B..1206, or other provision of law.
8. **AVAILABILITY OF FUNDS:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in the Agreement. If the Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in this RFP. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under the Agreement, terminate any Services supplied to the Agency under the Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
9. **ACCEPTANCE PROCESS:**
 - a. The State shall have the obligation to notify Vendor, in writing ten calendar days following provision, performance (under a provided milestone or otherwise as agreed) or delivery of any Services or other Deliverables described in the Agreement that are not acceptable.
 - b. Acceptance testing is required for all Vendor supplied software and software or platform services unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications, and Vendor's Product Warranties and technical representations. The State shall have the obligation to notify Vendor, in writing and within thirty (30) days following installation of any software deliverable if it is not acceptable.
 - c. Acceptance of Services or other Deliverables including software or platform services may be controlled by an amendment hereto, or additional terms as agreed by the Parties consistent with IT Project management under GS §143B-1340.
 - d. The notice of non-acceptance shall specify in reasonable detail the reason(s) a Service or given Deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of any applicable inspection and testing procedures. Should a Service or Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. Services or Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors

contained in the Services or Deliverables or non-compliance with the specifications were not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Services or Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.

10. **PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 9 (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
 - a. Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - b. Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
 - c. In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
11. **EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
12. **ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
13. **LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
14. **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
15. **ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
16. **INSURANCE COVERAGE:** During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a. **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and
 - b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
 - c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
 - d. Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.
17. **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
18. **CONFIDENTIALITY:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

a. Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.

b. Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 *et seq.* The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c. Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

d. The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.

e. All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the State or are not proprietary to the Vendor are the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

19. **DEFAULT**: In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 9) herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

a. If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.

b. Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any

deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

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

d. If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 9) of the DIT Terms and Conditions is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract.

20. **WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of the Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to the Agreement pursuant to Paragraph 40) herein below.

21. **TERMINATION:** Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

a. The parties may mutually terminate the Agreement by written agreement at any time.

b. The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

i. **Termination for Cause:** In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

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

iii. **Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.**

22. **LIMITATION OF VENDOR'S LIABILITY:**

a. Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls,

operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.

b. The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.

c. The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

23. **VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

a. The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.

b. The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of the Agreement, whether tangible or intangible, arising out of the ordinary negligence, wilful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.

c. Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

24. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of the Agreement.

25. **DATE AND TIME WARRANTY:** The Vendor warrants that any Deliverable, whether Services, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs, modifies or affects any date and/or time data recognition function, calculation, or sequencing, will still enable the modified function to perform accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

26. **INDEPENDENT CONTRACTORS:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. The Agreement shall not operate as a joint venture, partnership, trust, agency or any other similar business relationship.

27. **TRANSPORTATION:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must

- be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
28. **NOTICES:** Any notices required under the Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
29. **TITLES AND HEADINGS:** Titles and Headings in the Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
30. **AMENDMENT:** The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 36) herein.
31. **TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of the Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
32. **GOVERNING LAWS, JURISDICTION, AND VENUE:**
- a. The Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
 - b. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.
33. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
34. **COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
35. **SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of the Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
36. **CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.
37. **FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

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

a. **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under the Agreement. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.

b. Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

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

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

39. **PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**

a. Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor technology"). To the extent that any Vendor technology is contained in any of the Services or Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully

paid, worldwide, perpetual, non-exclusive license to use such Vendor technology in connection with the Services or Deliverables for the State's purposes.

b. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential deliverables first originated and prepared by the Vendor for delivery to the State.

c. The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or other Deliverables supplied by the Vendor, or the operation of such pursuant to a current version of vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:

- i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.

d. Should any Services or other Deliverables supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the Services or Deliverables, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

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

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

40. **UNANTICIPATED TASKS** In the event that additional work must be performed that was wholly unanticipated, and that is not specified in the Agreement, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed. For each item of unanticipated work, the Vendor shall prepare a work authorization in accordance with the State's practices and procedures.

a. It is understood and agreed by both parties that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.

b. Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel

required, an identification of all significant material then known to be developed by the Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to the Vendor's personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.

c. All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the State prior to beginning work.

d. The State has the right to require the Vendor to stop or suspend performance under the "Stop Work" provision of the North Carolina Department of Information Technology Terms and Conditions.

e. The Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:

a. Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or

b. Terminate the work authorization, or

c. Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

d. The State will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

41) STOP WORK ORDER The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under the Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.

a. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

i. Cancel the Stop Work Order, or

ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.

b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:

i. The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of the Agreement, and

ii. The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon an offer submitted at any time before final payment under the Agreement.

c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d. The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

42) TRANSITION ASSISTANCE If the Agreement is not renewed at the end of the term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to six (6) months after the expiration or cancellation of the Agreement, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Agreement, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Agreement for Contract performance. If the State cancels the Agreement for cause, then the State will be entitled to off set the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

Section 2: Terms and Conditions Applicable to Software as a Service (SaaS)

1. DEFINITIONS:

- a. "Data" includes and means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b. "Support" includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2. ACCESS AND USE OF SAAS SERVICES:

- a. The Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq.*
- b. The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph

will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.

c. The Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). The Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to the Vendor's SaaS tenants for similar Services. The Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. The Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

d. The Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.

e. Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.

f. The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract including, but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.

g. The Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.

h. An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.

i. Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

3. **WARRANTY OF NON-INFRINGEMENT:**

a. The Vendor warrants to the best of its knowledge that:

- i. The Services do not infringe any intellectual property rights of any third party; and
- ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

4. **ACCESS AVAILABILITY; REMEDIES:**

a. The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications

agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. The Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements unless developed as Customized Services.

b. The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. The Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State. If the Services' monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to receive automatic credits as indicated immediately below, or the State may use other contractual remedies such as recovery of damages, as set forth herein in writing, e.g., in Specifications, Special Terms or in an SLA, and as such other contractual damages are limited by N.C.G.S. § 143B-1350(h1) and the Limitation of Liability paragraph below. If not otherwise provided, the automatic remedies for non-availability of the Subscription Services during a month are:

1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

If, however, Services meet the 99.9% service availability level for a month but are not available for a consecutive 120 minutes during that month, the Vendor shall grant to the State a credit of a pro-rated one-day of the monthly subscription Services fee against future Services charges. Such credit(s) shall be applied to the bill immediately following the month in which the Vendor failed to meet the performance requirements or other service levels, and the credit will continue to be deducted from the monthly invoice for each prior month that Vendor fails to meet the support response times for the remainder of the duration of the Agreement. If Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may also terminate the contract for material breach in accordance with the Default provisions hereinbelow.

c. Support Services. If the Vendor fails to meet Support Service response times as set forth herein or in an SLA for a period of three (3) consecutive months, a 10% service credit will be deducted from the invoice in the month immediately following the third month, and the 10% service credit will continue to be deducted from the monthly invoice for each month that the Vendor fails to meet the support response times for the remainder of the duration of the Agreement.

5. **EXCLUSIONS:**

- a. Except as stated above in Paragraphs 3 and 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- b. The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions or service failures substantially caused by:
 - i. Actions of non-Vendor personnel;
 - ii. Failure to follow Vendor's written instructions relating to the Services provided to the State; or
 - iii. Force Majeure conditions set forth hereinbelow.
 - iv. The State's sole misuse of, or its own inability to use, the Services.

6. **PERFORMANCE REVIEW AND ACCOUNTABILITY:** N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of ten percent (10%) of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

7. **LIMITATION OF LIABILITY: Limitation of Vendor's Contract Damages Liability:** Reserved.

8. **VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:** Reserved.

9. **MODIFICATION OF SERVICES:** If Vendor modifies or replaces the Services provided to the State and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.

10. **TRANSITION PERIOD:**

- a. For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, the Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b. The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
- c. During the Transition Period, Services access shall continue to be made available to the State without alteration.
- d. The Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
- e. Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in the Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, the Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f. The State at its option, may purchase additional Transition Services as may be agreed upon in a supplemental agreement.

11. **TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

12. **TRAVEL EXPENSES - RESERVED**

13. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - RESERVED**

14. **AVAILABILITY OF FUNDS - RESERVED**

15. **PAYMENT TERMS (Applicable to SaaS):**

- a. Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein but shall not increase more than five percent (5%) over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
- b. Upon the Vendor's written request of not less than thirty (30) days and approval by the State, the State may:
 - i. Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor or
 - ii. Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,

- iii. In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c. For any third party software licensed by the Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d. An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon the Vendor's receipt of a disputed invoice notice, the Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e. The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as the Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.
16. **ACCEPTANCE CRITERIA - RESEVERED**
17. **CONFIDENTIALITY - RESERVED**
18. **SECURITY OF STATE DATA**
- a. All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by the Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations; (ii) in response to service or technical issues; (iii) as required by the express terms of this contract; or (iv) at the State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.
- b. The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c. Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole

cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within twenty-four (24) hours of confirmation as required by N.C.G.S. § 143B-1379.

d. The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.

e. The Vendor shall certify to the State:

i. The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;

ii. That the system used to provide the Subscription Services under this Contract has and will maintain a valid third party security certification not to exceed one (1) year and is consistent with the data classification level and a security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.

iii. That the Services will comply with the following:

1. Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:

a. The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.

b. For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;

2. Privacy provisions of the Federal Privacy Act of 1974;

3. The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);

4. The North Carolina Public Records Act, N.C.G.S. Chapter 132;

5. Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA); and

6. Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.

7. Any requirements implemented by the State under N.C.G.S. §§ 20-309.2(d).

f. Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could

reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.

g. Breach Notification. In the event the Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon; (2) investigate such Security Breach; (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.

h. Notification Related Costs. The Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach including, but not limited to, (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

i. The Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.

j. In the course of normal operations, it may become necessary for the Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.

k. Remote access to Data from outside the continental United States including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.

l. In the event of temporary loss of access to Services, the Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.

m. In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, the Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:

1. The scale and quantity of the State Data loss;
2. What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
3. What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
4. If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

The Vendor shall investigate the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. The Vendor shall cooperate fully with the State, its agents and law enforcement.

n. In the event of termination of this contract, cessation of business by the Vendor or other event preventing the Vendor from continuing to provide the Services, the Vendor shall not withhold the State Data or any other State confidential information or refuse, for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of the Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), the Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.

o. Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, and paper). Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods, and certificates of destruction shall be provided to the State.

Section 3: Terms and Conditions Applicable to Personnel and Personal Services

1. **VENDOR'S REPRESENTATION**: Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Such third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for

functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

a. Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b. Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.

c. Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.

2. **SERVICES PROVIDED BY VENDOR:** Vendor shall provide the State with implementation Services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The Services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement"). (Reserve if not needed)

3. **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be noticed to the Agency's Contract Administrator in writing accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.

a. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.

b. Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

c. The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

i. Such use does not conflict with the terms, specifications or any amendments to the Agreement, or

ii. Such use does not conflict with any procurement law, regulation or policy, or

iii. Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

d. Unless otherwise provided by the Agency, the Vendor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the accomplishment of the tasks specified in the Agreement. The Vendor shall be

legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. The Vendor shall be solely responsible for acquiring any equipment, furniture, and office space not furnished by the State necessary for the Vendor to comply with the Agreement. The Vendor personnel shall comply with any applicable State facilities or other security rules and regulations.

4. **PERSONAL SERVICES:** The State shall have and retain the right to obtain personal Services of any individuals providing Services under the Agreement. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal Services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor to ensure continuity of Services provided under the Agreement. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal Services due as all or part of any performance due under the Agreement.

a. Vendor personnel shall perform any duties on the premises of the State during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

b. The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under the Agreement. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ best commercial efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.

c. Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.

d. The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:

- i. Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
- ii. Such use does not conflict with any procurement law, regulation or policy, or
- iii. Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

ATTACHMENT C: DESCRIPTION OF OFFEROR

For Completion by Vendor: Vendor shall provide the below information about the offeror.

Offeror's full name	
Offeror's address	
Offeror's telephone number	
Ownership	<input type="checkbox"/> Public <input type="checkbox"/> Partnership <input type="checkbox"/> Subsidiary <input type="checkbox"/> Other (specify)
Date established	
If incorporated, State of incorporation.	
North Carolina Secretary of State Registration Number, if currently registered	
Number of full-time employees on January 1 st for the last three years or for the duration that the Vendor has been in business, whichever is less.	
Offeror's Contact for Clarification of offer: Contact's name Title Email address and Telephone Number	
Offeror's Contact for Negotiation of offer: Contact's name Title Email address and Telephone Number	
If Contract is Awarded, Offeror's Contact for Contractual Issues: Contact's name Title Email address and Telephone Number	
If Contract is Awarded, Offeror's Contact for Technical Issues: Contact's name Title Email address and Telephone Number	

HISTORICALLY UNDERUTILIZED BUSINESSES

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included as HUBs are disabled business enterprises and non-profit work centers for the blind and severely disabled.”

Pursuant to N.C.G.S. §§ 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFP. Contact the North Carolina Office of historically Underutilized Businesses at 919-807-2330 with questions concerning NC HUB certification. <http://ncadmin.nc.gov/businesses/hub>

For Completion by Vendor:

1. Is Vendor a Historically Underutilized Business? Yes No
2. Is Vendor Certified with North Carolina as a Historically Underutilized Business? Yes No

If so, state HUB classification:

ATTACHMENT D: COST FORM

Vendor must complete the tables below, as indicated, but must not otherwise alter the appearance or content thereof. Vendor's unit cost must remain firm and fixed for term of the Contract. Failure to adhere to this instruction may result in rejection of Vendor's proposal offer. If providing an item with no charge, place "N/C" in the unit cost and extended cost column. Vendor's offer shall constitute the total cost to RSD for complete performance in accordance with the requirements and specifications herein.

The total cost of Vendor's offer will be determined on the estimated historical data listed in the QTY section of the tables below. Cost will be awarded based on the monthly unit cost, as the extended costs are an estimate of services needed and are not a guarantee. Actual monthly maximum death match audit record processing may vary. This is an Agency Specific Term Contract and RSD does not guarantee any maximum or minimum usage. Quantities are estimates only and RSD will only be responsible for services rendered. RSD reserves the right to increase or decrease the quantities, as needed, because of usage and/or budgetary restrictions. Based on historical data RSD estimates 360,000 records of payee data each month and estimates that the payees may increase by 10,000 each year.

For Completion by Vendor:

Table One: Year One, Two, and Three (Initial Contract Term)

ITEM #	QTY	UNIT (Monthly)	DESCRIPTION	UNIT COST (Monthly Cost- to be performed 1x/month)	EXTENDED COST (Annual Cost) (Unit Cost (Monthly) x 12 months)
Year One (Initial Contract Term)					
1	370,000	Records (Monthly)	Records of Payee Data provided by RSD to the Awarded Vendor for Death Match Audit Record Processing.		
Year Two (Initial Contract Term)					
2	380,000	Records (Monthly)	Records of Payee Data provided by RSD to the Awarded Vendor for Death Match Audit Record Processing.		
Year Three (Initial Contract Term)					
3	390,000	Records (Monthly)	Records of Payee Data provided by RSD to the Awarded Vendor for Death Match Audit Record Processing.		

Total Initial Contract Term (Year 1, 2, 3) Offer Cost _____

Table Two: Year Four (First optional renewal term, purchased at the sole discretion of the NCDST)

Year Four (First optional renewal term to be purchased at the sole discretion of the State)					
1	400,000	Records (Monthly)	Records of Payee Data provided by RSD to the Awarded Vendor for Death Match Audit Record Processing.		

Total Optional Year Four Offer Cost _____

Table Three: Year Five (Second optional renewal term, purchased at the sole discretion of the NCDST)

Year Five (Second optional renewal term to be purchased at the sole discretion of the State)					
1	410,000	Records (Monthly)	Records of Payee Data provided by RSD to the Awarded Vendor for Death Match Audit Record Processing.		

Total Optional Year Five Offer Cost _____

Total Five-Year Offer Cost (should both optional renewal terms be exercised) _____

ATTACHMENT E: VENDOR CERTIFICATION FORM

1) ELIGIBLE VENDOR

The Vendor certifies that in accordance with N.C.G.S. §143-59.1(b), Vendor is not an ineligible vendor as set forth in N.C.G.S. §143-59.1 (a).

The Vendor acknowledges that, to the extent the awarded contract involves the creation, research, investigation or generation of a future RFP or other solicitation; the Vendor will be precluded from bidding on the subsequent RFP or other solicitation and from serving as a subcontractor to an awarded vendor.

The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Vendor, or as a subcontractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP or other solicitation.

2) CONFLICT OF INTEREST

Applicable standards may include: N.C.G.S. §§143B-1352 and 143B-1353, 14-234, and 133-32. The Vendor shall not knowingly employ, during the period of the Agreement, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing Services involving, or similar to, the scope and nature of this solicitation or the resulting contract.

3) E-VERIFY

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Vendors claiming exceptions or exclusions under Chapter 64 must identify the legal basis for such claims and certify compliance with federal law regarding registration of aliens including 8 USC 1373 and 8 USC 1324a. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

4) CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA

As a condition of contract award, awarded Vendor shall have registered its business with the North Carolina Secretary of State and shall maintain such registration throughout the term of the Contract.

For Completion by Vendor:

Signature: _____ Date: _____

Printed Name: _____ Title: _____

ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with N.C.G.S. §143B-1361(b), Vendor must identify how it intends to utilize resources or workers located outside the U.S., and the countries or cities where such are located. The State will evaluate additional risks, costs, and other factors associated with the Vendor's utilization of resources or workers prior to making an award for any such Vendor's offer. The Vendor shall provide the following:

- a) The location of work to be performed by the Vendor's employees, subcontractors, or other persons, and whether any work will be performed outside the United States. The Vendor shall provide notice of any changes in such work locations if the changes result in performing work outside of the United States.
- b) Any Vendor or subcontractor providing support or maintenance Services for software, call or contact center Services shall disclose the location from which the call or contact center Services are being provided upon request.

For Completion by Vendor:

Will Vendor perform any work outside of the United States?

YES NO

If yes, provide where the work will be performed: _____

If yes, Vendor MUST list what countries the employees are working and in what capacity are they accessing State Data. Specifically, the State must know if the employees are Help Desk support, Technical Support and/or Coder, etc.: _____

ATTACHMENT G: REFERENCES

For Completion by Vendor:

Vendor must provide at least three (3) references, using the table below, for which it has provided Services of similar size and scope to those proposed herein, preferably with at least one other State entity, and within North Carolina communities, and preferably within the last three (3) years. The NCDST will contact one, or more, of these references to determine a quality level of the services provided; as well as, but not limited to the user satisfaction with the Vendor’s performance. The information obtained will be considered in the evaluation of the Proposal.

REFERENCE COMPANY NAME	CONTACT NAME	EMAIL ADDRESS	TELEPHONE NUMBER

For each reference, the Vendor shall provide the following information:

- a. Reference Company Name (as listed above)
- c. Contact Name of an employee at the Company most familiar with the offered solution implementation (as listed above).
- d. Current telephone number (as listed above).
- d. Customer email address (as listed above).
- e. Time period over which Death Match Audit Services were completed (Contact Term Dates).
- f. Brief summary of the Death Match Audit Services or similar services completed.

ATTACHMENT H: FINANCIAL REVIEW

For Completion by Vendor:

Vendor shall review, provide responses, and return with its response the Financial Review questions as outlined below:

1. Vendor Name: _____
2. Company structure for tax purposes (C Corp, S Corp, LLC, LLP, etc.): _____
3. Have you been in business for more than three (3) years? Yes No
4. Have you filed for bankruptcy in the past three (3) years? Yes No
5. In the past three years, has your auditor issued any notification letters addressing significant issues? If yes, provide a copy of the notification letters and explain: _____ Yes No
6. Provide with Vendor's response Vendor annual reports with financial statements and any management discussion for the past three (3) complete fiscal years