

STATE OF NORTH CAROLINA Department of Transportation	REQUEST FOR PROPOSAL NO. 54-12135608-CM	
	Contract Name: Professional Services for ODEL Grant Training Services including Purchase of Laptops for the Training Participants	
	Bid Opening Date: July 25, 2025	
Refer <u>ALL</u> inquiries regarding this RFP to: Name: Christie Murphy Email: clmurphy1@ncdot.gov Phone Number: 919.707.4848	Issue Date: June 28, 2025	
	Commodity Code: 920	
	Purchasing Agency: North Carolina Department of Transportation	
	Requisition No.: 12135608 PR8617	

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 the offer opening date.

ACCEPTANCE OF OFFER

If any or all parts of this offer are accepted, an authorized representative of Purchasing NCDOT. If issued, affix its signature and any subsequent Request for Best and Final Offer. 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).

<p><u>FOR PURCHASING AGENCY USE ONLY</u></p> <p>Offer accepted and contract awarded this date _____, as indicated on attached certification, by _____ (Authorized representative of Purchasing Error! Reference source not found.).</p>

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1.0 ANTICIPATED PROCUREMENT SCHEDULE

Action	Responsibility	Date
RFP Issued	Agency	June 28, 2025
Pre-Offer Conference <i>(Optional)</i>	Agency	July 11, 2025
Written Questions Deadline	Potential Vendors	July 15, 2025
Agency's Response to Written Questions RFP Addendum Issued	Agency	July 18, 2025
Offer Opening Deadline	Vendor(s)	July 25, 2025
Offer Evaluation	Agency	August 8, 2025
Selection of Finalists	Agency	August 22, 2025
Oral Presentations/Product Demonstrations by Finalists <i>(Optional)</i>	Selected Vendors	September 8, 2025 to September 19, 2025
Negotiations with Finalists	Agency designees and selected Vendor(s)	September 22, 2025
Best and Final Offers Deadline from Finalists	Selected Vendors	September 29, 2025
Contract Award	Agency	October 10, 2025
Protest Deadline	Responding Vendors	15 days after the award

The dates specified in this RFP are provisional and may be adjusted based on project requirements, availability of resources, or unforeseen circumstances. Bidders should be prepared to accommodate potential modifications to the schedule.

2.0 PURPOSE OF RFP

2.1 INTRODUCTION

This RFP is intended to provide digital literacy and on-the-job training courses to North Carolina's Highway Construction Trade Academy graduates and small/disadvantaged businesses. As part of this on-the-job training course and digital literacy initiative, each trainee will receive an internet-enabled laptop. The State will not own or manage the laptops, and training will not take place on State infrastructure/premises. This program is funded by the North Carolina Department of Information Technology's Office of Digital Equity and Literacy (ODEL) grant through the U.S. Treasury's State and Local Fiscal Recovery Funds (SLFRF). The recipient of the ODEL grant is the North Carolina Department of Transportation's Office of Civil Rights (OCR), specifically its On-the-Job Training (OJT) and Business Opportunity and Workforce Development (BOWD) units within the OCR. The State is seeking a vendor that will be responsible for all aspects of this training initiative.

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 requirements as to quantity, quality, delivery, service, geographical areas; and where other factors are deemed to be necessary or proper to the purchase in question.

2.2 AGENCY BACKGROUND

The N.C. Department of Transportation's Office of Civil Rights promotes and ensures equal access and equal opportunity for customers and employees participating in North Carolina transportation programs that receive federal and/or state funding.

The office enforces federal and state laws and regulations that prohibit discrimination based on race, color, national origin, disability, age, and, in certain circumstances, genetics, sex, and religion.

Through its various programs, the Office of Civil Rights:

- Investigate complaints alleging discrimination
- Conducts compliance reviews of covered entities that must comply with the law
- Provides training and technical assistance to covered entities to help them understand how they can voluntarily comply with the law
- Conducts statewide outreach to help individuals and covered entities understand rights and obligations under applicable laws
- Provides business and technical training to improve small businesses' efficiency and skills to increase their economic viability.

2.3 SUMMARY OF PROBLEM STATEMENT THINK NCDOT

This multi-faceted project will provide participants with internet-enabled devices (laptops plus hot spots) that meet their respective needs, access to related virtual and in-person digital literacy and skills training (including via mobile labs), and additional content (Heavy Equipment Operator and CDL simulation or QuickBooks software) as a means to bridge disparity gaps between small and disadvantaged business and the department's transportation innovations and emerging technologies businesses.

2.4 CONTRACT TERM

A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be one (1) year and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award or terminated earlier. The State retains the option to extend the Agreement for two (2) additional one (1) year periods at its sole discretion.

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 or Services rendered before the appropriate signatures and the arrival of the Agreement's effective date. No contract shall be binding on the State until an encumbrance of funds has been made to pay the sums due under the Agreement.

2.6 CONTRACT TYPE

Definite Quantity Contract - This request is for a closed-ended contract between the awarded Vendor and the State to furnish a pre-determined quantity of goods or services during a specified period of time.

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

3.0 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. They will not be evaluated if the offer cannot meet the requirements.

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 mean that only the best commercial practice prevails and that only

processes, configurations, materials, and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, the Vendor shall supply proof of compliance with the specifications. The 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 at the State's sole discretion. Any such alternates or substitutes must be accompanied by the Vendor's certification and evidence satisfactory to the State that the function characteristics, performance, and endurance will be equal to or superior to the original Deliverables specified.

3.1.3 SITE AND SYSTEM PREPARATION

Vendors shall provide the Purchasing State Agency with complete site specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed or implemented operate correctly and efficiently within the site and system environment. Any alterations or modifications in site preparation 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 equipment of other manufacturers or vendors shall perform according to the item's standard. Equivalent offers must be accompanied by sufficient descriptive literature and/or specifications 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 needed for your solution that may not be available under the State's license agreement.
- b) Identify and explain any components missing from the State's license agreement.
- c) If the vendor can provide a more cost-effective licensing agreement, please explain how it would benefit the state.

3.2 SECURITY SPECIFICATIONS

3.2.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE: RESERVED

3.2.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE: RESERVED

3.3 ENTERPRISE SPECIFICATIONS

3.3.1 ARCHITECTURE DIAGRAMS - RESERVED

3.3.2 SOLUTION ROADMAP - RESERVED

3.3.3 IDENTITY AND ACCESS MANAGEMENT - RESERVED

3.3.4 INTEGRATION APPROACH - RESERVED

3.3.5 DISASTER RECOVERY AND BUSINESS CONTINUITY - RESERVED

3.3.6 DATA MIGRATION - RESERVED

3.3.7 APPLICATION MANAGEMENT - RESERVED

3.3.8 ACCESSIBILITY

Describe how the proposed solution complies with industry accessibility standards.

Describe how the proposed solution is digitally accessible, or if it is not fully accessible, provide the roadmap with a timeline for remediation.

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 the 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 processes.

The Vendor Resources Page is 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

All requirements below are minimums and must be identified in a separate attachment as a YES or NO if these requirements are met. If NO, please explain why not. Any proposed solution that does not meet or exceed the minimums may not be considered and found non-responsive.

3.4.1 TRAINING SPECIFICATIONS

3.4.1.1 INSTRUCTOR QUALIFICATIONS:

Instructors should be certified by Microsoft and any certified national course training program as trainers and possess at least three years of teaching experience, preferably focusing on adult education. Evidence of ongoing professional development in the field of education must be provided. Instructors should have certifications in the relevant software and substantial real-world experience in a construction or project management setting. References or portfolios may be requested.

3.4.1.2 TRAINING SPECIFICATIONS:

- **COURSE DURATION:**
Sessions, at minimum, must be at least 2 hours long, with a total course duration of not less than 10 hours spread over multiple sessions.
- **COURSE CONTENT:**
Course content must be related to the content offered. The courses should also include practical exercises and real-world scenarios. Proposals should also consider accessibility for all delivery methods.
- **DELIVERY METHOD:**
Detailed methodologies for each training format (in-person, self-paced, and hybrid) should be provided, including technological requirements, instructional design strategies, and participant engagement techniques. Proposals should also consider accessibility for all delivery methods.

- **PARTICIPANT CAPACITY:**

Proposals must outline strategies for managing classes of varying sizes while maintaining personalized attention and high-quality interaction. This should include methods for leveraging technology to enhance learning in larger groups. There should be no more than 18 to 20 people per class and no fewer than 5 to 8 people per class.

3.4.2 HARDWARE SPECIFICATIONS

All specifications are minimums and must be met for this program's functionality and fitness. Should the Vendor propose alternatives that are more advantageous to the program requirements, please refer to Section 3.1.4 Equivalent Items.

- Software: All laptops must have the latest version of Microsoft Office pre-installed.
- Processor: Intel i5 or better, or equivalent.
- Operating System: Must be Windows 11 Pro.
- Memory: Minimum 8 GB RAM, the preferred is 16 GB RAM.
- Storage: Minimum of 256 GB SSD.
- Display: 15-inch Full HD (1080p) display.
- Camera: Integrated HD Webcam.
- Keyboard: Full-size with numeric keypad.
- Warranty: Minimum of one-year full warranty covering parts and labor.
- Antivirus Software: Pre-installed with a subscription for the duration of the grant.
- Technical Support: Dedicated technical support must be available for the duration of the grant.
- Mouse: Ergonomic USB mouse; specify if wired or wireless (must come with batteries).
- Hotspot: 4G LTE capability, service included for at least two years. It has 4G LTE capability and has been included in the service for at least two years. Ensure the hotspot device can connect via Bluetooth, Wi-Fi, or an accessory port.
- Laptop Bag: Ergonomic, water-resistant design, with multiple device and accessory storage compartments.
- Accessory Ports: minimum of two (2) USB ports, one (1) HDMI port, or a comparable port block.

3.4.3 LAPTOP SETUP

Internet ready laptops (imaged, software, and set up) to be immediately put in service as soon as the items are distributed to the intended recipients.

3.5 BUSINESS AND TECHNICAL SPECIFICATIONS

3.5.1 COURSE PROGRAM OFFERINGS

At a minimum the following courses will be offered to the program recipients. Vendors are encouraged to propose additional courses that apply to this program's efforts.

3.5.1.1 MICROSOFT OFFICE PROFICIENCY

The course should cover advanced features of Microsoft Office, including, but not limited to, collaborative tools, advanced formatting techniques, the use of macros, and integration between applications.

3.5.1.2 BASIC COMPUTER LITERACY COURSE

A) Course Duration:

A minimum of 2 hours per session, at least 8 hours, is designed to accommodate learners with little to no prior computer experience.

B) Course Content:

The curriculum should cover essential computer operations, basic software applications, internet safety, and digital literacy. The course should also address common troubleshooting issues and how to resolve them.

- C) Learning Outcomes:
By the end of the course, participants should be able to perform everyday tasks such as managing email, navigating the internet safely, and using essential office software. Assessment methods should be specified to measure these outcomes.

3.5.1.3 TRANSITIONING FROM GOOGLE WORKSPACE TO OFFICE 365 COURSE

- A) Course Content:
The course should comprehensively compare Google Workspace and Office 365, highlighting key differences and benefits. Practical exercises should include data migration, integration of services, and tips for maximizing productivity during the transition.
- B) Trainer Qualifications:
Instructors should demonstrate proven expertise in both platforms, supported by case studies or documented projects that showcase successful migrations.

3.5.1.4 SPECIALIZED SOFTWARE TRAINING FOR BOWD PARTICIPANTS

- A) Software Focus:
Training should cover specific functionalities of each software package critical for bidding and estimating construction projects, including cost estimation, project scheduling, and compliance tracking.
- B) Course Objectives:
The training should aim to equip participants with the skills to effectively utilize the software in their daily work, emphasizing accuracy, efficiency, and collaboration.
- C) Trainer Qualifications:
Instructors should have certifications in the relevant software and substantial real-world experience in a construction or project management setting. References or portfolios may be requested.

3.5.2 DEPLOYMENT AND DISTRIBUTION SCHEDULE

3.5.2.1 DETAILED TIMELINE:

Include milestones for procurement, training, and deployment phases, with specific dates and responsible parties.

3.5.2.2 LOCATION SPECIFICS:

Each location should have tailored plans considering local infrastructure, security, and logistical challenges.

3.5.2.3 PARTICIPANT TRACKING:

Proposals should include using technology to track attendance and progress, with data privacy and security measures clearly outlined.

3.5.3 COMPLIANCE AND MONITORING

3.5.3.1 REGULATORY ADHERENCE:

Provide a detailed compliance and regulatory adherence plan describing how your solution will monitor and report compliance.

3.5.3.2 PERFORMANCE METRICS:

Specific metrics such as user satisfaction ratings, dropout rates, and post-training employment rates should be defined.

3.5.3.3 QUALITY ASSURANCE:

Proposals should detail periodic review processes, feedback mechanisms, and corrective actions to maintain and improve quality over time.

3.5.4 REPORTING REQUIREMENTS.

The administrative partner must provide the State with quarterly reports detailing the program's progress, impact, and financial compliance (due quarterly from the date of contract execution).

3.5.4.1 REPORTS & METRICS

- Participant Enrollment & Training Metrics
- Total number of residents enrolled.
- Breakdown of populations served as outlined in section 3.2.1.
- Hours of training completed per participant (6-16 hours).
- Topics covered (e.g., computer basics, cybersecurity, financial literacy).

3.5.4.2 DEVICE DISTRIBUTION & USAGE

- Number and type of devices distributed, including any associated software or peripherals necessary to meet the training objectives.
- Verify participant eligibility and training completion.
- Digital adoption metrics (continued use of devices for education, employment, or business).

3.5.4.3 RELEVANT ECONOMIC MOBILITY OUTCOMES

- Workforce development organizations: job placements post-training.
- Housing stability organizations: housing placement statistics.
- Small business support programs: new businesses established, revenue growth.

3.5.4.4 FINANCIAL COMPLIANCE & FUND DISTRIBUTION

- Breakdown of grant funds allocated to nonprofit recipients.
- Receipts of payment.

3.5.4.5 PROGRAM EVALUATION & IMPACT STORIES

- Resident testimonials on digital literacy improvements.
- Lessons learned, challenges, and future recommendations.

4.0 COST OF VENDOR'S OFFER

4.1 OFFER COSTS

The Vendor must list, itemize, and describe any applicable offer costs in **ATTACHMENT D: COST FORM.**

4.2 PAYMENT SCHEDULE

The Vendor shall propose its itemized payment schedule based on the content of its offer. All payments must be based upon acceptance of one or more Deliverables.

5.0 EVALUATION

5.1 BEST VALUE:

"Best Value" procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including the total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the

evaluated technical merit of the Respondent's offer; the Respondent's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Respondents to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired procurement outcome. The evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions outlined in the solicitation.

5.2 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 the Best Value may result in an award other than the lowest price or highest technically qualified offer. 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 noted in the reference.
- b) To be eligible for consideration, the Vendor's offer must substantially conform to the intent of all specifications. The State will determine compliance with the intent of all specifications. Offers not meeting the full intent of all specifications listed in this RFP may be deemed deficient. Further, a severe deficiency in the offer to anyone (1) factor may be grounds for rejection, regardless of the overall score.
- c) The evaluation committee may request clarifications, an interview with or a presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in whole 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 *Raleigh*, North Carolina, to discuss technical and contractual aspects of the offer.
- d) Vendors are advised that the State is not obligated to ask for or accept data after the closing date for receipt of the offer, which is essential for a complete and thorough evaluation of the offer.
- e) The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed have 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.

5.3 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.

Offers will be evaluated on the following criteria listed in order of importance:

1. How well the Offer conforms with the Specifications
2. Total Cost of Ownership
3. Project Timeline

4. Strength of References relevant or material to technology area(s) or Specifications and Vendor Past Performance
5. Risks associated with the Offer

5.4 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 the BAFOs, oral presentations, and product demonstrations as part of the Vendors' respective offers to determine the final rankings.

5.5 POSSESSION AND REVIEW

During the evaluation period and prior to the award, access to the bids and accompanying information is restricted to personnel from the issuing agency and the committee responsible for the evaluation. Vendors who attempt to obtain this privileged information or influence the evaluation process (i.e., assist in evaluation) will violate purchasing rules, and their proposals will not be further evaluated or considered.

After the contract is awarded, the complete bid 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 that 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

6.1.1 VENDOR RESPONSIBILITY

The Vendor shall 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 the State's contact person.

The Vendor will investigate and recommend 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 software. The Vendor must justify their proposed hardware, product, and software solution(s) along with the costs thereof. Vendors are encouraged to present explanations of the benefits and merits of their proposed solutions together with any accompanying Services, maintenance, warranties, value-added Services, or other criteria identified herein.

6.1.2 RIGHTS RESERVED

While the State intends 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 the procuring Agency to award a contract. Upon determining that any of the following would be in its best interests, the State 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 demonstrates 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.

6.1.3 SOLICITATION AMENDMENTS OR REVISIONS

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

6.1.4 ORAL EXPLANATIONS

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

6.1.5 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 in this solicitation contain language necessary for implementing North Carolina's statewide E-Procurement initiative. The vendor must carefully consider these terms and conditions when preparing the offer. By signing, 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 days after notification of the award of a contract, the Vendor must register in NC E-Procurement at 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.

6.1.6 ELECTRONIC VENDOR PORTAL (EVP)

The State has implemented the electronic Vendor Portal (eVP) that allows 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.

6.1.7 PROTEST PROCEDURES

Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address on this document's first page. Protests must be received in the purchasing agency's office within fifteen (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 PRE-OFFER CONFERENCE

Urged and Cautioned

Date: July 11, 2025

Time: 11:00 AM Eastern Time

Contact Email: clmurphy1@ncdot.gov

Meeting Platform: Microsoft Teams
Meeting Link: [Join the meeting now](#)

Meeting ID: 241 457 843 085 4

Passcode: qK2p5XR7

Dial in by phone

[+1 984-204-1487,,259626759#](#) United States, Raleigh

[Find a local number](#)

Phone conference ID: 259 626 759#

Instructions:

Vendor representatives are URGED and CAUTIONED to attend the pre-conference meeting and apprise themselves of the conditions and specifications that will affect the performance of the work called for by this Request for Proposal. A non-mandatory meeting is scheduled for 11:00 AM Eastern Time online via Zoom. Submission of a proposal shall constitute sufficient evidence of this compliance. No allowance will be made for unreported conditions that a prudent Vendor would recognize as affecting the performance of the work called for in this proposal.

The vendor is cautioned that any information released to attendees during the site visit other than that involving the physical aspects of the facility referenced above and which conflicts with, supersedes, or adds to requirements in this Request for Proposal must be confirmed by a written addendum before it can be considered part of this proposal.

6.2.2 QUESTIONS CONCERNING THE RFP

All inquiries regarding the solicitation specifications or requirements are to be addressed to the contact person listed on Page One of this solicitation via the Ariba Sourcing Tool's message board. Vendor contact regarding this Solicitation with anyone other than the contact person listed on Page One of this Solicitation may be grounds for rejection of said Vendor's offer.

Written questions concerning this Solicitation will be received **until** July 15, 2025 at 2:00 pm Eastern Time.

They must be submitted to the contact person on Page One of this Solicitation via the Ariba Sourcing Tool's message board. Please enter "Questions Solicitation 54-12135608-CM" as the subject of the message.

REFERENCE	VENDOR QUESTION
RFP Section, Page Number	

6.2.3 ADDENDUM TO RFP

If a pre-offer conference is held or written questions are received before 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 be provided via the State's Ariba Sourcing Tool. Vendors' questions posed orally at any pre-offer conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer. Oral answers are not binding on the State.

Critical updated information may be included in this Addenda. It is crucial that all Vendors bidding on this RFP periodically check the State's Sourcing Tool for all Addenda that may be issued before the offer opening date. **COSTS RELATED TO OFFER SUBMISSION**

The cost of 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 preparing and presenting 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 that further defines or expands 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 that meet specifications. Alternate offers must specifically identify the RFP specifications and advantage(s) addressed by the alternate offer. Any alternative offers must be clearly marked with the legend as shown herein. Each offer must be for a specific set of services or products and offered 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. However, all offers must satisfy the specifications.

Alternate offers must be submitted in a separate document 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, they must be registered to receive an award/contract with the State. 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>.

6.3 INSTRUCTIONS FOR OFFER SUBMISSION

6.3.1 GENERAL INSTRUCTIONS FOR OFFER

Vendors are strongly encouraged to adhere to the following general instructions 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 response page 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.
- g) **Only information 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, the Vendor should address the items in the order in which they appear in this RFP. Forms, attachments, or exhibits 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 contain, at minimum, all the items listed below.

- a) Signed Execution Page AND all pages of this solicitation document in ONE (1) PDF. This includes:
 - Attachments A and B
 - Completed Description of Vendor Submitting Offer Form (Attachment C)
 - Completed Cost Form of Vendor's Offer (Attachment D)
 - Completed and Signed Vendor Certification Form (Attachment E)
 - Completed Location of Workers Utilized by Vendor Form (Attachment F)
 - Completed References (Attachment G)
 - Completed Financial Statements (Attachment H)
- b) Vendor Response to Specifications and Requirements
- c) Architecture Diagrams
- d) Detailed Project Timeline
- e) Errata and Exceptions, if any
- f) Vendor's License and Maintenance Agreements if any
- g) The 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.

6.3.3 OFFER SUBMITTAL

Due Date: July 25, 2025

Time: 2:00 PM Eastern Time

IMPORTANT NOTE: The Vendor is responsible for uploading their offer to the Ariba Sourcing Module by the specified time and date of opening. The 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. The Vendor must include all the pages of this solicitation in their response.

Subject to the conditions made a part hereof; Sealed offers will be received until 2:00 PM Eastern Time on the day of opening and then opened for furnishing and delivering the commodity 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 Bid SHALL NOT be accepted and will automatically be deemed Non-Responsive.

- a) Submit **one (1) signed, original electronic offer** through the electronic vendor portal (eVP)..
- b) The eVP document number is **54-12135608-CM**.
- c) All File names should start with the Vendor name first to quickly 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. The inability of 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, Section 2, Paragraph #17), 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 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 THE U.S.

Per N.C.G.S. §143B-1361(b), the Vendor must detail how 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 before awarding any such Vendor's offer.

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

7.2 FINANCIAL STATEMENTS

The Vendor shall provide evidence of financial stability by returning with its offer 1) a completed Financial Review Form (Attachment I) and two (2) copies of Financial Statements as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements.

- a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including, at a minimum, income statements, balance sheets, and statements of changes in financial position or cash flows. If three (3) years of financial statements are unavailable, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, the Vendor must explain why they are unavailable.
- 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, the 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, at its sole discretion, accept evidence of financial stability other than Financial Statements to evaluate 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 the performance of this RFP award. Scope Statements issued may require the submission of financial statements specifying the years to be provided, the information to be provided, and the most recent date required.

7.3 FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY

- a) Contract Performance Security. The State reserves the right to require performance guarantees from the vendor pursuant to N.C.G.S. §143B-1340(f) and 09 NCAC 06B.1207 without expense to the State.
- b) Project Assurance, Performance, and Reliability Evaluation—Pursuant to N.C.G.S. §143B-1340, the State CIO may require project quality assurance reviews as necessary.

7.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS

The 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

If the Offer is made by a Reseller that purchased the offered items for resale or license to the Agency or offered based upon an agreement between the Offeror and a third party, and that the proprietary and intellectual property rights associated with the items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that, except for the payment to the Reseller for the Third-Party items, all of its rights and obligations flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third-Party items provided to the Reseller. The Reseller shall assign all applicable third-party warranties for Deliverables to the Agency. The State reserves all rights to utilize existing agreements with such Third Parties or to negotiate agreements with such Third Parties as the State deems necessary or proper to achieve the intent of this RFP.

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, 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 subsections A and B herein shall be provided in writing to the State within thirty (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 prevented from being disclosed by the settlement terms shall be annotated as such. The 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 who 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 on their workforce and subcontractors. The State reserves the right to check for non-compliance.

7.9 ASSURANCES

If 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, cause the State to be reasonably concerned about:

- a) the ability of the Vendor or its subcontractor to continue to perform the Agreement per 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 per 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 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 offer page are insufficient 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 that the State designates as confidential and makes available to the Vendor 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

All project management and coordination on behalf of the Agency shall be designated through a single point of contact as the Agency Project Manager. The Vendor shall designate a Vendor Project Manager who will provide a single point of contact for managing and coordinating the Vendor's work. All work performed pursuant to the Agreement shall be coordinated between the Agency Project Manager and the Vendor Project Manager.

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, a conference call meeting may be substituted at the vendor's option and expense.

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 that 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 recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in the 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 that 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) **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.
- 3) **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 the 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.
- 4) **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).
- 5) **NCDIT or DIT:** The NC Department of Information Technology.
- 6) **Open Market Contract:** A contract for purchasing goods or Services not covered by a term, technical, or convenience contract.
- 7) **Reasonable, Necessary, or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- 8) **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. This document contains specifications of the RFP, instructions to bidders, and the standard IT Terms and Conditions for Goods and Related Services. The User should add Supplemental Terms and Conditions for Software and Services, when applicable.
- 9) **Security Breach:** As defined in N.C.G.S. §75-61.
- 10) **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 the Statewide Data Classification and Handling Policy; or
 - ii. That involves the exfiltration, modification, deletion, unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of the 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 have a high or medium functional impact on an agency's mission.

11) Vendor: Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

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 in Section 2, Paragraph 2 of these Terms and Conditions, unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.

Purchasing a State Agency or Agency shall mean the Agency purchasing the goods or Services.

Services shall mean the duties and obligations undertaken by the Vendor under, and to fulfill, the specifications, requirements, terms, and conditions of the Agreement.

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 delivered by the Vendor are warranted for 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 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. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.
- 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 (2) 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, requirements, 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 non-infringing 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 the 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.

41) 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 offset 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 Information Technology Goods and Services

- 1) **SOFTWARE LICENSE FOR HARDWARE, EMBEDDED SOFTWARE AND FIRMWARE:** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as a CD-ROM or other media, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however, that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of all equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 2) **LICENSE GRANT FOR APPLICATION SOFTWARE, (COTS):** This paragraph recites the scope of license granted, if not superseded by a mutually agreed and separate licensing agreement, as follows:
 - a) Vendor grants to the State, its Agencies and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the State, its Agencies and lawful customers. This license shall be perpetual or for the term of the contract (pick one, delete the other), unless terminated as provided herein. The State agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, a State Entity shall be defined as any department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.
 - b) Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
 - c) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.
 - d) The State may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 3), and applicable terms in the solicitation documents or statements of work.
- 3) **WARRANTY TERMS:** Notwithstanding anything in the Agreement or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the State.
 - a) a) Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the State) for a period of ninety (90) days from the date of

acceptance ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.

- b) Vendor warrants to the best of its knowledge that:
 - i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
 - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
 - iv) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.
- c) UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

4) RESTRICTIONS: State's use of the Software is restricted as follows:

- a) The license granted herein is granted to the State and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Department of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
- b) No right is granted hereunder to use the Software to perform Services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State is permitted.
- c) The State may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and State will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.
- d) State shall not remove, obscure or alter Vendor's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

5) SUPPORT OR MAINTENANCE SERVICES: This paragraph recites the scope of maintenance Services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be stated in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the State, Vendor agrees to provide the following support Services ("Support Services") for the current version and one previous version of the Software commencing upon delivery of the Software:

- a) **Error Correction:** If the error conditions reported by the State pursuant to the General Terms and Conditions are not corrected in a timely manner, the State may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the State's request at no added expense to the State.

- b) **Other Agreement:** This Paragraph 5 may be superseded by written mutual agreement provided that: Support and maintenance Services shall be fully described in such a separate agreement annexed hereto and incorporated herein
 - c) **Temporary Extension of License:** If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the State and continue until the earlier of:
 - i) Return of the inoperative CPU to full operation, or
 - ii) Termination of the license.
 - d) **Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The State will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the State within twenty-four (24) hours; unless otherwise agreed.
 - e) **Updates:** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of the Agreement.
 - f) **Telephone Assistance:** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four (4) hours or eight (8) hours or next business day, etc. (*edit this time to what you want your response time to be*), for calls made at any time
- 6) **STATE PROPERTY AND INTANGIBLES RIGHTS:** The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the State (the "Deliverables"). To the extent that any Vendor Technology is contained in any of the Deliverables, 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 Deliverables for the State's internal business purposes. 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 to non-confidential Deliverables first originated and prepared by the Vendor for delivery 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. The vendor agrees that it will not enter into any agreement with a third party that might abridge any rights of the State under the Agreement. The 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. The 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 workdays 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: RESERVED

ATTACHMENT C: DESCRIPTION OF OFFEROR

Provide the 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>

Respond to the questions below.

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

This table serves as a summary of the costs addressed in Section 4.1 – Offer Costs.

Vendors must fill in the table(s) below and provide on a separate sheet a detailed itemization of all costs in accordance with Section 4.1.

Travel expenses must be included where appropriate in accordance with paragraph 12) Travel Expenses in Attachment B. Also, shipping fees cannot be a stand alone cost line item per the NCDIT Terms and Conditions. Shipping is to be FOB Destination. See Clause 27 of Attachment B for further details.

ITEM	DESCRIPTION	COST
1	Training (Includes setup, location, and instruction)	
2	Hardware (Includes laptops and all peripherals)	
3	Hardware Implementation (Includes laptop imaging, internet readiness, set-up, and technical support)	
4	Hardware Deployment and Distribution	
5	Reporting	
6	Other Relevant Costs: must be defined in detail	

TOTAL OFFER COST \$ _____

*Vendor to provide a breakdown of all shipping and inventory costs.

OPTIONAL SERVICES OR FUNCTIONALITIES – may or may not be purchased by the State

ITEM	DESCRIPTION	COST
7	Optional Value-Added Services or Functionalities not critical to the Training performance and not included in the table above. These costs must be itemized in detail.	

OPTIONAL RENEWALS – may or may not be purchased by the State

ITEM	DESCRIPTION	YEAR 2 COST	YEAR 3 COST
8	Training (Includes setup, location, and instruction)		
9	Hardware (Includes laptops and all peripherals)		
10	Hardware Implementation (Includes laptop imaging, internet readiness, set-up, and technical support)		
11	Reporting		
12	Other Relevant Costs: must be defined in detail		

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.

Signature: _____

Date:

Printed Name: _____

Title:

ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with N.C.G.S. §143B-1361(b), the 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.

Will the Vendor perform any work outside of the United States?

YES NO

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

ATTACHMENT G: REFERENCES

The Vendor shall provide three (3) references of customers utilizing the proposed solution fully implemented in a setting similar to this solicitation's scope of work. References that are communities/industries similar to North Carolina are encouraged.

The Vendor should have implemented the respective proposed service within the last three (3) years. Customer references whose business processes and data needs are similar to those performed by the Agency needing this solution in terms of functionality, complexity, and transaction volume are encouraged.

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

- a. Customer name.
- b. Customer address.
- c. Current telephone number of a customer employee most familiar with the offered solution implementation.
- d. Customer email address
- e. The time period over which each offered solution implementation was completed.
- f. Brief summary of the offered solution implementation.
- g. List of offered solution products installed and operational.
- h. Number of vendor or technical staff supporting, maintaining and managing the offered solution
- i. Number of end users supported by the offered solution.
- j. Number of sites supported by the offered solution.

ATTACHMENT H: FINANCIAL REVIEW FORM

The vendor shall review the Financial Review Form, provide responses in the gray-shaded boxes, and submit the completed Form as an Excel file with its offer. The vendor shall not add or delete rows or columns in the Form or change the order of the rows or columns in the file.

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 years? Yes No
4. Have you filed for bankruptcy in the past three years? Yes No
5. In the past three years, has your auditor issued any notification letters addressing significant issues? If yes, please explain and provide a copy of the notification letters. Yes No
6. Are the financial figures below based on audited financial statements? Yes No
7. Start Date of financial statements: _____
End Date of financial statements: _____
8. Provide a link to annual reports with financial statements and management discussion for the past three complete fiscal years: _____
9. Provide the following information for the past three complete fiscal years:

	Latest complete fiscal year minus two years	Latest complete fiscal year minus one year	Latest complete fiscal year
BALANCE SHEET DATA			
a. Cash and Temporary Investments			
b. Accounts Receivable (beginning of year)			
c. Accounts Receivable (end of year)			
d. Average Account Receivable for the Year (calculated)			
e. Inventory (beginning of year)			
f. Inventory (end of year)			
g. Average Inventory for the Year (calculated)			
h. Current Assets			
i. Current Liabilities			
j. Total Liabilities			
k. Total Stockholders' Equity (beginning of year)			
l. Total Stockholders' Equity (end of year)			
m. Average Stockholders' Equity during the year (calculated)			
INCOME STATEMENT DATA			
a. Net Sales			
b. Cost of Goods Sold (COGS)			
c. Gross Profit (Net Sales minus COGS) (calculated)			
d. Interest Expense for the Year			
e. Net Income after Tax			
f. Earnings for the Year before Interest & Income Tax Expenses			
STATEMENT OF CASH FLOWS			
a. Cash Flow provided by Operating Activities			
b. Capital Expenditures (property, plant, equipment)			