

STATE OF NORTH CAROLINA Department of Administration Office of Fiscal Management	REQUEST FOR PROPOSAL NO. 13-DOA1677390536	
	Contract Name: Operation and Management of North Carolina State Veterans Homes	
	Bid Opening Date: March 16, 2026 @ 2:00PM	
Refer <u>ALL</u> inquiries regarding this RFP to: Name: Meredith Swartz Email: Meredith.swartz@doa.nc.gov Phone Number: 984-236-0083	Issue Date: January 28, 2026	
	Commodity Code: 851017 Health administration services	
	Purchasing Agency: Department of Military and Veteran Affairs	
	Requisition No.: 1677390536	

OFFER

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

EXECUTION

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

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

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

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

ACCEPTANCE OF OFFER

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

<u>FOR AGENCY USE ONLY</u>	
Offer accepted and contract awarded this date _____,	as indicated on attached certification,
by _____	(Authorized representative of Department of Military and Veteran Affairs).

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1.0 ANTICIPATED PROCUREMENT SCHEDULE

The Agency Procurement Agent will make every effort to adhere to the following schedule:

Action	Responsibility	Date
RFP Issued	Agency	1/28/26
Written Questions Deadline	Potential Vendors	2/13/26 @ 2:00PM
Agency's Response to Written Questions/ RFP Addendum Issued	Agency	2/19/26
Offer Opening Deadline	Vendor(s)	3/16/2026@ 2:00PM ET
Offer Evaluation	Agency	3/17/2026 – 5/11/2026
Selection of Finalists	Agency	5/11/2026
Negotiations with Finalists	Agency designees and selected Vendor(s)	5/11/2026 - 7/1/2026
Best and Final Offers Deadline from Finalists	Selected Vendors	7/1/2026
Contract Award	Agency	7/1/2026
Transition Period: Contract Close out of current contract, Kickoff and Set up of new	Agency and Awarded Vendor	7/1/26 – 11/30/2026
Contract Effective Date	Awarded Vendor	12/1/2026
Protest Deadline	Responding Vendors	15 days after award

2.0 PURPOSE OF RFP

2.1 INTRODUCTION

The North Carolina Department of Administration (NCDOA), on behalf of the North Carolina Department of Military and Veterans Affairs (NCDMVA), is seeking proposals from experienced and qualified entities desiring to manage, administer, and operate the North Carolina State Veterans Homes (NCSVHs). North Carolina currently operates five (5) state veterans homes. NCSVH facilities are certified by Medicare, Medicaid, and the United States Department of Veterans Affairs (VA). These facilities provide skilled nursing care based on the eligibility and priorities established under the North Carolina General Statutes (N.C. Gen. Stat.), specifically N.C. Gen. Stat. § 143B-1298. The terms of this contract and the contents of this RFP will require the successful Vendor to operate each NCSVH facility as a highly qualified Licensed Skilled Nursing Facility. The NCSVHs are located in Black Mountain, Fayetteville, Kernersville, Kinston, and Salisbury, North Carolina. Additionally, the state has approved a future NCSVH to be located in Raleigh, North Carolina; however, construction has not commenced and no timeline has been established.

The State reserves the right to amend this contract to add any additional facilities or solicit for these services for any additional facilities at the time of need. Contracts for the procurement of services to manage, administer, and operate any NCSVH shall be awarded on a competitive basis through the solicitation of proposals and through the procedures established by statute and the Division of Purchase and Contract pursuant to N.C. Gen. Stat. § 143B-1295.

2.2 BACKGROUND

The United States Department of Veterans Affairs (VA), under authority of 38 U.S.C. § § 8131-8137 and 38 C.F.R. Part 59, provides grants to States for the construction and acquisition of State home facilities. In 2015, the North Carolina General Assembly enacted N.C. Gen. Stat. § 143B-1291, authorizing NCDMVA to construct, maintain, and operate veterans homes for the aged and inform residents of North Carolina.

Pursuant to N.C. Gen. Stat. § 143B-1295, the Veterans' Affairs Commission (VAC) of NCDMVA is authorized to select and recommend for award a contract with a Vendor whose proposal it deems most advantageous to the State, taking into consideration cost, program suitability, management plan, excellence of program design, key personnel, corporate or company resources, financial condition of the vendor, experience, past performance, and any other qualities it deems necessary. The VAC operates under the supervision and direction of the Secretary of NCDMVA. The VAC and NCDMVA will monitor performance of the successful Vendor through the Contract Manager.

Below is information on each of the five (5) current NCSVHs. The information is provided for informational purposes only.

- I. The NCSVH in Black Mountain, NC (Black Mountain Facility) has been in operation since October 2012. The facility is located at 62 Lake Eden Road, Black Mountain, NC, 28711 and is a one-story building (111,000 sq ft) with 100 private rooms. It is comprised of four (4) residential buildings and one administrative building.
- II. The NCSVH in Fayetteville, NC (Fayetteville Facility) officially opened in March 1999. However, as of February 2024, the Fayetteville Facility is currently closed to residents, but remains administratively open. The Fayetteville Facility is located at 214 Cochran Ave., Fayetteville, NC 28301, adjacent to the Fayetteville Veterans Affairs Medical Center. It is a one-story building (82,000 sq ft) comprised of 150 beds with ancillary support and mechanical space. There are three (3) wings with fifty (50) beds in each unit.
- III. The NCSVH in Kernersville, NC (Kernersville Facility) has been in operation since October 2023. The Kernersville Facility is located at 1795 Kernersville Medical Pkwy, Kernersville, NC 27284, adjacent to the Kernersville Veterans Health Care Center. It is a one-story building (120,000 sq ft) comprised of 120 beds with ancillary support and mechanical space. There are four (4) wings composed of one 24-bed wing for memory care, three (3) 32-bed wings for the normal skilled nursing facility residents, and a central administrative area that is the hub for the facility.
- IV. The NCSVH in Kinston, NC (Kinston Facility) has been in operation since March 2013. This facility is located at 2150 Hull Road, Kinston, NC, 28504 and is a one-story building (111,000 sq ft) with 100 private rooms. It is comprised of four (4) residential buildings and one administrative building.
- V. The NCSVH in Salisbury, NC (Salisbury Facility) has been in operation since November 1998. The facility is located at 1601 Brenner Ave., Building #10, Salisbury, NC 28144. It is a three-story building (63,826 sq ft) containing four (4) units of 22-30 beds each, with ancillary support and mechanical space. The residents occupy the first and second floors. The ground floor is used for dining, laundry, staff locker rooms, storage, physical therapy, and several offices.

A NCSVH in Raleigh, NC (Raleigh Facility) is planned for future development, but a timeline has yet to be determined. The future Raleigh Facility is planned to be located on Edwards Mill Road in Raleigh, NC, approximately 2 miles from Rex Hospital, and approximately 30 miles from the Durham Veterans Administration Medical Center. The design is anticipated to be a 120-bed (100,000+ sq ft) facility with ancillary support, mechanical space and a memory care wing.

2.3 CONTRACT TERM

The initial term of this Agreement shall be for a period of three (3) years and five (5) months, commencing on July 1, 2026 and ending on November 30, 2029. The intention of this term is to include a five (5) month transition period. The transition period shall run from July 1, 2026 through November 30, 2026. The awarded vendor shall begin providing full services on December 1, 2026, at which time the Agreement shall be deemed fully operational.

At the conclusion of the Contract's initial term, the State shall have the option, in its sole discretion, to renew this Agreement on the same terms and conditions for up to two (2) additional one-year terms. The State will give the Vendor written notice of its intent to exercise each option no later than thirty (30) days before the end of the Contract's then-current term. In addition to any optional renewal terms, and with the Vendor's concurrence, the State reserves the right to extend the Contract after the last active term.

2.4 EFFECTIVE DATE

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

2.5 CONTRACT TYPE

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

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 solution must provide. If the offer cannot meet the requirements, they will not be evaluated.

3.1.2 SPECIFICATIONS

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

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

3.1.3 SITE AND SYSTEM PREPARATION

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

3.1.4 EQUIVALENT ITEMS

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

3.2 SECURITY SPECIFICATIONS

3.2.1 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The software solution used for operation and management of the North Carolina State Veterans Homes will be required to receive and securely manage data that is classified as *High Risk*. Refer to the North Carolina Statewide Data Classification and Handling Policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

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

(a) Vendors shall provide a completed Vendor Readiness Assessment Report Non-State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website: <https://it.nc.gov/documents/vendor-readiness-assessment-report>

(b) Upon request, Vendors shall provide a current independent 3rd party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors

are encouraged to provide a current independent 3rd party assessment report in accordance with subparagraphs (i)-(iii) at the time of offer submission.

(i) Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, ISO 27001, or HITRUST are the preferred assessment reports for any Vendor solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted).

(ii) A Vendor that cannot provide a preferred independent 3rd party assessment report as described above may submit an alternative assessment, such as a SOC 2 Type 1 assessment report. The Vendor shall provide an explanation for submitting the alternative assessment report. If awarded this contract, a Vendor who submits an alternative assessment report shall submit one of the preferred assessment reports no later than 365 days of the Effective Date of the contract. Timely submission of this preferred assessment report shall be a material requirement of the contract.

(iii) An IaaS vendor cannot provide a certification or assessment report for a SaaS provider UNLESS permitted by the terms of a written agreement between the two vendors and the scope of the IaaS certification or assessment report clearly includes the SaaS solution.

(c) Additional Security Documentation. Prior to contract award, the State may in its discretion require the Vendor to provide additional security documentation, including but not limited to vulnerability assessment reports and penetration test reports. The awarded Vendor shall provide such additional security documentation upon request by the State during the term of the contract.

3.3 ENTERPRISE SPECIFICATIONS

3.3.1 ARCHITECTURE DIAGRAMS

The two diagrams are Network Architecture and Technology Stack. The State utilizes architectural diagrams to better understand the design and technologies of a proposed solution. Details on these diagrams can be found at the following link: <https://it.nc.gov/resources/statewide-it-procurement/vendor-engagement-resources#Tab-Architecture-1192>

The provision of these two diagrams is a requirement at offer submission. If they are not supplied at that time, the Vendor's offer will be considered non-responsive and will not be evaluated.

There may be additional architectural diagrams requested of the vendor after contract award. This will be communicated to the vendor by the agency as needed during the project.

3.3.2 SOLUTION ROADMAP

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

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

Describe the solution roadmap for your product. Include content on release strategies for functionality, roadmap for technical architecture, how scalability of solution is planned.

3.3.3 IDENTITY AND ACCESS MANAGEMENT

The proposed solution must externalize identity and access management. The protocols describing the State's Identity and Access Management can be found at the following link: <https://it.nc.gov/services/vendor-engagement-resources#Tab-IdentityAccessManagement-1241>

Describe how your solution supports the above protocols, as well as making them available for application integration/consumption.

3.3.4 INTEGRATION APPROACH

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

3.3.5 DISASTER RECOVERY AND BUSINESS CONTINUITY

Describe the proposed solution capabilities related to the following areas:

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

System Backup – describe backup plan capabilities.

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

3.3.6 DATA MIGRATION

Describe approaches available for data conversion and/or data migration to load current data into proposed solution.

3.3.7 APPLICATION MANAGEMENT

Describe how the proposed solution monitors and reports the metrics on system performance.

Describe how the proposed solution manages user administration.

Describe the audit capabilities of proposed solution related to management of the application.

3.3.8 ACCESSIBILITY

Describe how the proposed solution complies with industry accessibility standards.

Provide product documentation that demonstrates how the proposed solution is digitally accessible or if not fully accessible, provide the roadmap with 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 North Carolina Department of Information Technology regarding architecture, security, strategy, data, digital, identity and access management and other general information on doing business with state IT process.

The Vendor Resources Page found at the following link: <http://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 PROPOSAL REQUIREMENTS AND SPECIFICATIONS

3.4.1 General Information:

Vendor shall respond to each of the sections below and upload its response in the Sourcing Tool. Vendors must reference and tab relevant RFP Sections below in their response. Vendor responses should include information sufficient to demonstrate how the proposed solution, resources, experience, and approach are intended to address the Scope of Work in Section 4 of this RFP. Vendors are requested to keep responses clear and concise and should not include generic marketing materials. Responses will be reviewed as part of the evaluation process per section 3 of this RFP. All proposals must be complete and convey all the information requested in order to be considered responsive.

3.4.2 Business and Technical Requirements

The procurement process shall be limited to Healthcare Management entities that meet the minimum requirements below. Vendor shall submit with its proposal a response to each of the requirements including any documentation necessary to show compliance. A Vendor's proposal shall be rejected if it fails to comply, demonstrate, and/or satisfy any of these requirements.

- A. Minimum of five (5) years of continuous experience managing or operating a licensed skilled nursing facility, assisted living facility, or state veterans home with at least 100 beds.
- B. Certification that Vendor has successfully managed or operated facilities that are licensed by a state regulatory authority and certified for participation in Medicare and Medicaid.
- C. Certification that Vendor has no history of license revocation, facility closure, or suspension attributable to Vendor's management within the past five (5) years.
- D. Certification that Vendor has no pattern of substandard quality of care findings, sanctions, or civil monetary penalties imposed by Centers for Medicare and Medicaid Services (CMS), U.S. Department of Veterans Affairs (VA), or a state regulatory agency within the past five (5) years.
- E. Submission of Vendor's audited financial statements for the past three (3) fiscal years (see section 8.2 Financial Stability and Attachment H).
- F. Proof that Vendor can obtain the required \$5 million dollar (\$5,000,000.00) Performance Bond, \$1 million dollar (\$1,000,000.00) Fidelity Bond, and liability insurance (see section 8.14).
- G. Certification that Vendor has an integrated Computer/Accounting and Resident Tracking System in place prior to submission of the proposal. The systems in NCSVHs currently use MatrixCare (Smart Charting). Vendor shall Describe the security requirements of proposed system to be used per Sections 3.3 and 3.4

3.4.3 Vendor Experience

In the Proposal, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina's Veterans Homes. Description of Vendor's experience must include the following:

- A. A description of the Vendor's philosophy and approach to resident healthcare services, personnel management, and fiscal management. Include the length of time the organization has been in business, relevant experience, and applicable service capabilities.
- B. A description of the Vendor's knowledge and understanding of nursing home care, and the Vendor's knowledge and experience of State Nursing Home facilities or similar projects, and the VA Standards for Nursing Home Care.
- C. A description of the Vendor's knowledge and experience with operating facilities under North Carolina law, regulations, and guidelines.
- D. A description of the Vendor's knowledge and experience of VA Disability, Medicaid, Medicare, and Private Insurance filings.
- E. A list of all skilled care nursing facilities, assisted living facilities, personal care facilities, or other health care facilities, providing services primarily to elderly individuals that the Vendor or Vendor's organization has operated within the last five (5) years. For each facility, include name, address, phone number, Facility Administrator, the number of beds in the facility, the number of times receiving CMS Star Ratings, the number of awards from the American Health Care Association and National Center for Assisted Living (AHCA/NCAL), if applicable.
- F. A list of all subcontractors the Vendor utilizes to provide goods and services related to the management or operation of skilled nursing homes.
- G. Disclosure of any survey deficiencies of "G level" or higher, within the past three (3) years, received by facilities while under the management or operation of the Vendor, to include corrective actions taken and outcomes.
- H. Disclosure of any admission holds, within the past three (3) years, imposed on facilities while under the management or operation of the Vendor, to include corrective actions taken and outcomes.
- I. Disclosure of any facilities that were closed due to survey issues while under the management or operation of the Vendor.

3.4.4 Vendor Profile

In the Proposal, Vendor shall provide a comprehensive description of Vendor's profile, that includes at a minimum, the following:

- A. Certification that the Vendor is a corporation or other legal entity that operates other skilled nursing facilities licensed either by the State of North Carolina or another state.
- B. A description of the Vendor's management capabilities to successfully operate the NCSVHs in accordance with all applicable Federal, State, and local laws, regulations, and policies in accordance with this RFP.
- C. A description of the Vendor's ability to operate a State Veterans Home, including a response to these comments:
 - 1. Explain the difference between NCSVH and other nursing homes.

2. Explain how medical services are provided to residents with a VA disability rating of 70% or higher.
 3. Should there be a limitation for admitting residents to NCSVH with a VA disability rating of 70% or higher as referenced in item 2 above? Vendor should respond as yes no and explain why.
- D. A description of how the Vendor will provide clinical services in each of the facilities, including physician, nursing, physical therapy, occupational therapy, speech therapy, and pharmacy.
 - E. A description of how the Vendor will provide administrative and operational services in each of the facilities, including oversight and accountability for the timely submission of required Medicare, Medicaid, and Private Insurance claims.
 - F. A description of the Vendor's knowledge and experience with compliance of Medicare and Medicaid Payroll Based Journal (PBJ) reporting. Describe vendor's experience with quality reporting.
 - G. A description of the Vendor's ability to achieve and maintain JCAHO accreditation.
 - H. A description of how the Vendor will provide dietary services in each of the facilities, including preparation of meals, quality of meal components, menu decisions, and kitchen cleanliness.
 - I. A description of how the Vendor will provide facility maintenance and landscaping services in each of the facilities, including shrubbery, mulch, grass cutting, major equipment maintenance, and management of the Capital Expenditure Report process.
 - J. A description of the Vendor's capability to design a contingency plan for facility operations during a period of nontypical operations (e.g., response to COVID-19 outbreak or infectious disease, etc.). This description should address any special staffing requirements that become necessary during the event, any special equipment packages required to supplement standard equipment, any special procedures for preparing and serving meals to residents, and/or any other activities affected by the period of "non-typical" operations."

3.4.5 Staffing Plan

The Vendor shall describe its staffing plan for each facility, including an organizational chart, classification of employees, minimum qualifications for each classification, and the number and classification of staff on each shift for each facility. Vendor shall provide with its bid response, information as to the key personnel assigned, including the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to NCSVHs, including their resumes citing relevant experience and the responsibilities to be assigned to each person. Additionally, describe the structure the Vendor would use while operating the five (5) current NCSVHs in Black Mountain, Fayetteville, Kernersville, Kinston, and Salisbury.

3.4.6 Statement of Legal Action

The Vendor shall provide a statement with its bid response disclosing any past or pending legal actions against the Vendor, its principals, employees, or subcontractors within the last ten (10) years, and any other legal or regulatory actions that may be relevant to the Vendor's ability to manage or operate a licensed skilled nursing facility, assisted living facility, or state veterans home.

4.0 SCOPE OF SERVICES

4.1 VENDOR OBLIGATIONS

4.1.1 General Obligations of the Vendor. The Vendor shall:

- A. Provide clinical services 24 hours per day, seven (7) days per week to each NCSVH. The mix and number of staff shall meet resident needs as set forth by North Carolina nursing home regulations, CMS, and VA, with the more stringent requirement controlling. While the Fayetteville NCSVH is not currently open to residents, the Vendor shall provide an administrator of that home. The VA requires a registered nurse (RN) to be on duty in each facility at all hours of the day, every day. NCDMVA requires a minimum average of at least 4.25 hours of nursing services per resident per day to meet the needs of the residents.
- B. Assign one Regional Support Team to all NCSVHs. The Vendor's assigned Regional Support Team shall be limited to the oversight of only NCSVHs.
- C. Provide a primary care physician licensed by the State of North Carolina to be the Medical Director for each facility. The Medical Director shall perform administrative duties and provide medical supervision at each facility, which shall comply with all State, CMS, and VA requirements, with the more stringent requirement controlling.
- D. Maintain written transfer agreements with local civilian and nearby Veteran Affairs Medical Center (VAMC) and with NCDMVA for acute care situations. Vendor shall arrange transportation in such events and maintain contact with the receiving facility to ensure the return of the residents to the NCSVH or any additional State Veterans Homes that are opened and managed under this contract at the earliest possible date. The Vendor shall obtain contract with outside physicians, ambulance, radiology, labs, and others for 70% disabled residents.
- E. Provide complete mortuary policies and procedures that ensure the sensitivity and expediency of death notification, documentation, and disposition of the remains for each NCSVH.
- F. Take all measures to pursue Medicare, Medicaid and any other third-party payment plan pursuant to the requirements of this RFP, Federal and State Law, rules, and regulations for collecting and accounting for third-party payments. In the event the resident is a beneficiary of Medicare or any other third-party payment plan, all deductibles, co-insurance, or charges and fees for non-covered items and services shall be the responsibility of the resident. The liability for lack of billing and collection efforts will be the responsibility of the Vendor and reimbursement will be made to Contracting Agency.
- G. Be responsible for the timely preparation, submission, and resubmission of all Medicare, Medicaid, and other third-party reimbursement claims in accordance with applicable federal and state laws, rules, and regulations, including deadlines established by the Centers for Medicare and Medicaid Services (CMS) and the North Carolina Medicaid Program. The Vendor shall provide NCDMVA with quarterly billing compliance reports that include, at a minimum: Total outstanding claim balances and aging, the number and percentage of claims denied, rejected or resubmitted, the average days from service to initial claim submission, and claim submission volumes by payor source. Failure to comply with this provision, resulting in loss of reimbursement, excessive claim denials, or accumulation of bad debt, shall constitute a material breach of this Agreement and may subject the Vendor to corrective action, withholding of payment, or termination, in addition to other remedies available to the state.

- H. Be responsible for collections of all past due receivables according to the Collections Policy in the NCSVH Handbook. Collections shall be addressed immediately after discovery, and every effort should be made to collect the debts. Vendor is responsible for keeping the non-payments to a minimum and closed out within 90 days.
- I. Completion and submission of NCSVH Medicare and Medicaid Cost Reports are not a part of this contract.
- J. Submit all new types or categories of expenses to be incurred by the homes to the Contract Manager for approval. This information must be approved prior to expense being included on the monthly invoice.
- K. Submit an annual budget to NCDMVA for approval, which shall include the number of positions to be staffed in each facility. Any increases or decreases in staffing shall be approved by the Contract Manager and, *if applicable*, State Procurement officials, prior to implementation.
- L. Implement a Volunteer Program that maximizes utilization of community resources to enhance the quality of life for all residents. The Vendor shall provide an Activity Director who will also serve as the Volunteer Services Coordinator to ensure integration with volunteer service programs within the community.
- M. Protect and hold all confidential materials and information to meet State and Federal regulations, requirements and law. The Vendor shall comply with the provisions of the Federal Privacy Act, Freedom of Information Act, HIPAA, State requirements and other pertinent guidelines for safeguarding the confidentiality of such data.
- N. The Contracting Agency owns all passenger vehicles including vans, minivans, buses with wheelchair lifts capabilities, and pick-up trucks. All state vehicles are licensed by the State with State license plates and insurance. The two 20-passenger vehicles require a CDL driver's license. A request shall be submitted by the Vendor to the Contracting Agency: ATTN: Contract Manager, for any driver to be permitted to drive the State vehicles. This request should include the following information and shall not be limited to: Current North Carolina driver's license, social security card, drug test results, and the Transportation Training Forms must be dated and signed. In order for the Vendor's employees to operate State-owned passenger/non-passenger vehicles, the Vendor must have the minimum automobile insurance coverage set forth in Insurance, Automobile Insurance. Such coverage must provide liability coverage for the Vendor's employees operating the subject vehicles and Vendor's insurance shall provide primary coverage if a Vendor's employee is involved in an accident while operating a State-owned passenger/non-passenger vehicle. (Vendor may have to obtain a rider or other document reflecting its insurer's acknowledgement that its policy will be primary in the event of the specified accident.)
- O. Submit all non-routine, additional, or special service requests that fall outside the scope of this Agreement to the Contract Manager.
- P. Provide a daily recap of residence and partner health status to the Contract Manager, as required, during periods of non-typical operations (ie: while in the midst of an infectious disease outbreak, natural disaster, etc).
- Q. Provide a weekly Census recap for residence at each facility to the Contract Manager.

- R. Participate in a weekly call with the Contracting Agency to review operational status of facilities, and coordinate future requirements as required.
- S. Coordinate with the Contracting Agency on any media requests or responses to media inquiries.
- T. Provide physical, occupational, and speech therapy at each facility, as required.
- U. Provide consumable medical supplies for residents, as required.
- V. Provide resident transportation to and from medical appointments at other medical facilities, as required.
- W. Develop contingency plans for continuous clinical operations during non-typical operational environments.
- X. Provide appropriate dietary staff, including a dietician and dining facility manager, at each facility.
- Y. Provide all food supplies for the facility. Meals prepared at the facility will be based on residence choices and physicians' orders.
- Z. Establish appropriate meals times for residents, as required.
- AA. Develop contingency plans to address meal distribution during non-typical operations environments.

4.1.2 Maintenance Obligations of the Vendor. The Vendor shall:

- A. Keep each of the facilities in good repair, excepting normal wear and tear. The Vendor shall maintain the facilities in the same condition, as noted at the inception of the contract and shall return the facilities to the Contracting Agency in the same condition at contract termination.
- B. Utilize properly trained and/or certified in-house personnel or third-party personnel to maintain each of the facility's equipment, systems, and the facility's grounds including, but not limited to, landscaping, lawns, planted beds, gardens, and parking areas.
- C. Provide appropriate maintenance staffing, including a facility maintenance manager, subject matter experts on facility equipment and maintenance requirements, and landscaping professionals.
- D. Identify any capital equipment purchases, complete a Capital Expenditure Request (CER) with necessary supporting documentation and forward to the Contracting Agency for approval. This step must be taken prior to actual contract for purchase.
- E. Maintain adequate supply of landscaping consumables as required.
- F. Maintain maintenance records on all equipment assigned to the facility.
- G. Coordinate quotes for maintenance-oriented capital purchases, as identified by a maintenance inspection.
- H. Coordinate with contractors for repairs and renovations.
- I. Turn in any unserviceable equipment or furnishings to the Contracting Agency Representative (Veteran Service Officer) at the facility so that proper accountability can be executed.

4.1.3 Staffing Obligations of the Vendor (for Each Facility). The Vendor shall:

- A. Designate a licensed nursing home Administrator for each facility, who shall operate the facility and its program, a Director of Health Services, and a Medical Director for each facility. The Contract Manager shall have final approval for the hiring or firing of these positions for the NCSVH.
- B. Ensure that all physicians practicing within each of the facilities are credentialed according to VA requirements and that each physician maintains said credentials.
- C. Warrant and represent that all persons assigned to perform work under this contract shall be employees of the Vendor or an authorized subcontractor. The Vendor shall ensure that licensure and certification requirements of both full-time and part-time personnel meet both Federal and State specifications both in-kind and in number.
- D. The Contract Manager or any State or Federal governing agency with the approval to do so may require the Vendor to conduct more extensive investigations on key personnel. Personnel files will be open to inspection by Contract Manager during the hours of 8:00 a.m. to 5:00 p.m. if required and requested.
- E. The Vendor shall not, as part of its agreement with employees or subcontractor, prevent any employees or subcontractor from working at the NCSVH in the event of cancellation or termination of the contract for any reason.
- F. Ensure continued operation and staff coverage in the event of a labor dispute or strike.
- G. All contracts established by the Vendor, above \$10,000.00, must be maintained at the homes; and records must be available for immediate review by Contracting Agency at time of request.

4.1.4 Administrative Obligations of the Vendor: The Vendor shall:

- A. Assign or provide a Regional Support Team (Regional Director of Nursing, Regional Finance Director, Regional Vice President, Regional Admissions Coordinator, Regional Environmental Consultant, and Regional Clinical Reimbursement Consultant) that shall exclusively oversee the operations of NCSVHs covered by this Agreement. Members of the Regional Support team shall not provide services to, or divide their responsibilities with, any non-NCSVH facility, client, or operation during the term of this Agreement. The Vendor shall submit an annual written certification to NCDMVA certifying compliance of this provision.
- B. Develop, implement, and maintain all standard policies and procedures necessary for maintenance of resident care in accordance with Federal and State standards. The Contract Manager shall review and approve all policies and procedures proposed and in use at the NCSVH that are not healthcare related. All policies and procedures shall be maintained in each facility and will become the property of the Contracting Agency. The Vendor shall submit the policies and procedures to Contracting Agency, within ninety (90) days after contract award. for approval before implementation.
- C. The systems in NCSVHs are currently MatrixCare (Smart Charting). Vendor will have an operational, integrated Computer/Accounting and Resident Tracking System. Electronic Charting Systems must be compatible with current resident information systems above.
- D. Develop and maintain an admission policy to admit new residents to each facility. Routinely brief current residents on the services and benefits available to veterans at each facility. Vendor's programs shall be subject to Contract Manager's approval; in addition, shall have final approval of

public information, media releases, and informational materials- disseminated. The Vendor shall submit the policies and procedures to Contracting Agency, within ninety (90) days after contract award, for approval before implementation.

- E. Verbally notify Contract Manager immediately when a facility is notified of any abuse or suspected abuse of a resident, any unexpected or unexplained injury or death of a resident, or any immediate threat to the health or safety of a resident, and any other notifications as required by all Federal and State entities. Finalized notification shall be promptly submitted in writing within 24 hours of any such incident.
- F. Provide mandatory reporting to NCDMVA following all regulatory or accrediting body surveys, including but not limited to surveys conducted by the Centers for Medicare and Medicaid Services (CMS), the U.S. Department of Veterans Affairs (VA), The Joint Commission on Accreditation of Healthcare Organizations (formerly JCAHO), and the Department of Health and Human Services. The Vendor shall provide NCDMVA with a copy of the survey report, along with any associated findings, corrective action plans, or responses, within ten (10) business days of receipt by the Vendor.
- G. Provide copies of any inspections and/or VA surveys conducted on the facility once the inspection is completed.
- H. Keep records of work provided and be available to discuss, either hard copy or electronic version as dictated by best business practices and/or regulatory guidance.
- I. Provide all records and documentation related to the management and operation of NCSVHs for review and audit as required by the Contracting Agency or State of North Carolina.
- J. Provide a monthly invoice documenting staffing costs, capital equipment purchases, capital improvement costs, routine maintenance costs, capital maintenance purchases, dietary purchases, and consumable supply purchases. Invoices will be due to the Contracting Agency not later than the 15th day of the month (25th day of the month at quarter end) for the previous month's service.

4.1.5 Safety Obligations of the Vendor: The Vendor shall:

Comply with all Federal, State, and local fire, safety, and health regulations to either meet or exceed requirements.

4.1.6 Equipment Obligations of the Vendor: The Vendor shall:

- A. Provide the computers and software necessary for maintaining Vendor's accounting system and Medical Records to Vendor's corporate office or such other location that Vendor uses to maintain its accounting system(s). The Contracting Agency does not PAY FOR TRAINING on the accounting system.
- B. Be responsible for maintaining and performing preventive maintenance for all equipment under warranty and notify Contract Manager immediately of all warranty service issues for follow-up.
- C. Be responsible for routine maintenance on all equipment at the facility.

4.1.7 Vendor's Point of Contact: The Vendor will designate individuals within the management company for the State to contact and they will be limited to 2 (two) contacts.

4.2 VENDOR DELIVERABLES

- A. Assume full responsibility for management and supervision of the daily operations for the NCSVH.
- B. Provide all services associated with operational and management of a licensed nursing facility as required by all applicable laws, rules, regulations, standards and policies, of Federal, State and local governments, and any other entity that has relevant jurisdiction.
- C. Establish and implement policies and procedures to provide 24-hour a day licensed nursing facility care that meets or exceeds licensure and certification standards of the most current versions of the following standards:
 - 1. US Department of Veterans Affairs Standards for Nursing Home Care
 - 2. Title 38 Code of Federal Regulations, Part 17
 - 3. Centers for Medicare and Medicaid Services (CMS)
 - 4. Rules of Governing for Licensing of Nursing Home 10 NCAC 13D
 - 5. 42 CFR (Code of Federal Regulations)
 - 6. Health Insurance Portability and Accountability Act (HIPAA)
 - 7. Affordable Care Act (ACA)
- D. Prepare all materials and employment procedures necessary to maintain State licensing, VA Certification and Medicare/Medicaid Certification for the provision of comprehensive, licensed nursing facility, always deferring to the highest standard applicable. Failure to maintain the proper license or to meet the criteria of any accrediting agency is a material breach of this RFP and contract.
- E. Manage and operate the facilities in a manner that respects the rights and dignity of the residents, the residents' rights to nursing care services, and the survey requirements.
- F. Develop, implement, and operate all necessary administrative systems including, but not limited to, accounting (billing, collections, tracking of resident's income, and personal funds), personnel, reporting administrative records, medical records, purchasing, etc.
 - 1. All resident records shall remain with each respective facility.
 - 2. All resident and Vendor records for each facility shall be available for review as allowed under law, for a period of 10 years after death of a resident.
- G. Prepare and provide to the Contract Manager routine reports and any reasonable information, which may, from time to time, be specifically requested. Such reports and information shall include but not be limited to:
 - 1. Monthly Revenue and Expense Report with Fiscal Year ending June 30.
 - 2. Complaints and grievances
 - 3. Incident Reports
 - 4. Nursing Hours per resident per day by employee type on the Census Report
 - 5. Quality Assurance
 - 6. Infection Control

7. Family survey/satisfactory/not in compliance
 8. Annual Budget - must be approved by the Contractor Administrator in advance of implementation.
 9. Daily Summarized Census Report – provided weekly, and on the last day of each month.
 10. Monthly Accounts Receivable Aging Report; submitted with monthly invoice
 11. Actual operation costs compared to budget
 12. Month and year to date operating statements
 13. Copies of any contracts established by the Vendor in the management of the facilities. The Contractor Administrator reserves the right to be consulted before any contracts are signed, especially in the event a contract would exceed the life term of this contract.
 14. Review and approval of invoices prior to submission to the Contract Manager. Any offset in the Medicare or Medicaid Cost Reports by Federal and/or State agencies due to improper activities or lack of documentation will be paid back by the Vendor in full.
 15. Prior to execution of this contract, the Vendor shall give the Contract Manager employee job descriptions for each position.
- H. Request for Cost Report Stats - due August 15th (Cost Report Information)
 - I. Cost Report - First draft of Home Office Allocations - due September 15th
 - J. Cost Report - All Information - due October 15th
 - K. Attend quarterly meetings at the discretion of the Contract Manager. These meetings shall be held either in-person, by teleconference, or by video teleconference, as circumstances dictate, and the scheduled date/time shall be mutually agreed upon between Contract Manager and the Vendor.
 - L. Collect all receivables in a timely manner as dictated by policy. Failure to adapt to these policies would be the responsibility of the Vendor and not the Contracting Agency.
 - M. The Contracting Agency will coordinate for any third-party records reviews.
 - N. Calculate the management fee based on guidance in section 4.2.
 - O. Assume responsibility for and accountability of State property under Vendor's control. The Contracting Agency will provide an inventory list for the facility within 30 days.

4.3 ADDITIONAL PROVISIONS

4.3.1 General Provisions:

- A. Vendor shall submit to the Contracting Agency no later than the 15th of the month (or the 25th of the last month of the quarter) following the close of books for each month an invoice for monthly services provided. The monthly invoice shall be accompanied with documentation substantiating services, and any other amounts specifically reimbursable under this contract, as established by the Contracting Agency. The invoice will incorporate expenses and management fees. (See APPENDIX A). Prior payments will be removed to leave a management fee for the month under review.
- B. The activity of any related party shall be identified before each invoice is submitted each month and the lower of actual cost or market value will be substituted for operational expenses to the Contracting Agency. Related party is defined as ownership (individuals or legal entities with individual ownership)

of at least 5% of the entity doing business with Vendor and/or business activity of greater than 20% of monthly revenues of the related party. If determined to be related by control for Medicare or Medicaid, then a Home Office Cost Report must be prepared by the Vendor and filed with the Contracting Agency Cost Reports.

Residents that are included as census for the facilities are to be included as doing business with the related party. Related party is also defined as identified by any State and or Federal Agency. Any adjustments, penalties, or payback to the State or Federal agencies will require Vendor to reimburse each NCSVH that same amount.

Related Party will also consider any determination by State and/or Federal Agency that a relationship exists. In the event a related party has been established, all transactions to the Facility and or Agency will revert to cost. Any excess payment of cost will be paid back to the Contracting Agency.

- C. In the event that payments from Medicare, Medicaid, VA, or other government programs are denied as a result of the Vendor's failure to comply with applicable laws, regulation, or contract requirements, the Vendor shall be responsible for such loss and shall reimburse the Contracting Agency accordingly.
- D. All funds collected from State and Federal entities will be deposited into a State Account established by the NC State Treasurer's Office. Therefore, there will not be consideration for interest accrued to the Vendor.
- E. Any capital expenditure request appropriately submitted to the Contracting Agency for approval, that receives subsequent approval and then the request is filled, will be submitted as an approved expense for reimbursement on the monthly invoice.
- F. No interest expense from Nursing Home Management Company (NHMC) shall be charged to NCSVH. Interest expense on cash flow must be a part of the bid process included as part of revenue.
- G. Vendor must have systems in place to produce financial reports/medical reports and other required reporting requirements.

4.3.2 Incentives:

The Contracting Agency places a high value on facility surveys conducted by the State and Federal government. Each deficiency free survey will be eligible for an "incentive disbursement" equal to .05% of net revenue as defined above. The survey period is always January 1 – December 31. The incentive disbursement will be requested on the next submitted monthly invoice, with a copy of the deficiency free survey attached as supporting documentation. The incentive disbursement will not be considered in the computation of the monthly management fee.

4.3.3 Penalties:

If a facility receives a Level J finding on resident(s) care from a survey (either scheduled or unscheduled), a "penalty reimbursement" equal to .05% of Net Revenue will be granted by the Vendor to the Contracting Agency on the next monthly invoice. If more than one Level J finding on resident(s) care from a survey (either scheduled or unscheduled) is received, an additional "penalty reimbursement" equal to .05% of Net Revenue per Level J finding will be granted. Legal fees and expenses incurred by the Vendor to remove fines and penalties are the Vendor's sole responsibility.

4.3.4 Star Ratings:

A Star Rating of 5.0 is the desired goal for each NCSVH, minimum of 3 Star is acceptable. Facilities that receive this 5.0 star rating will receive special recognition by the Contracting Agency. Any facility that receives below a 3-star rating, the Vendor shall develop and implement a corrective action plan within thirty (30) days. The plan shall identify deficiencies, outline specific steps for improvement, and provide timelines for improvement.

4.3.5 Inspection of Facility:

Facilities will always be prepared for any facility inspection, whether periodic, scheduled, or unscheduled, regardless of inspection agency.

4.4 APPENDIX

All appendixes to this RFP are found within the Ariba Sourcing Tool and are incorporated herein. Vendor shall review the documents for reference in submitting a proposal to this RFP. Documents included are Sample of monthly invoice and Income statements.

5.0 COST OF VENDOR'S OFFER

5.1 OFFER COSTS

Proposal price shall constitute the total cost of ownership to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges for handling transportation, administrative and other similar fees. Complete ATTACHMENT D: COST FORM and upload it in the Sourcing Tool. The pricing provided in ATTACHMENT D: COST FORM, or resulting from any negotiations, is incorporated herein and shall become part of any resulting Contract.

- A. The Nursing Home Management Services contract will support 100% reimbursement of qualified expenses for operation of the skilled nursing facility. Every expense recommended for reimbursement by the Vendor must be approved by the Contract Manager prior to inclusion in the qualified expense category. Examples of qualified expenses may be, but are not limited to, expendable supplies that require regular replenishment, salary and fringe costs for any employee not specifically identified as part of the "Management Team", routine maintenance of any equipment in the facility, routine life cycle replacement of any equipment in the facility, and any capital equipment purchases approved by the Contract Manager for the facility. The vendor will submit a monthly invoice for each facility documenting all requested reimbursements. A third-party accounting service will review the invoice and recommend approval prior to the Contract Manager approving the invoice for payment.
- B. The Nursing Home Management Services contract will support payment of a "management fee." The management fee will be documented separately on the monthly invoice. Calculation of the management fee will be in accordance with the information included below:
 - The management fee will be provided as a percentage payment for services. The percentage quoted by the Vendor will be applied to a revenue calculation unique to each facility. The revenue calculation will be the Net Revenue of the facility, less any federal per diem paid by the VA to the Contracting Agency on behalf of any residents authorized this payment, less any bad debt currently carried by the Vendor on their accounting records, and less any Medicare and/or Medicaid billing denials. Cost report settlements related to prior years will also be excluded from the computation.

- The Net Revenue will be the Gross Revenue less the difference between the standard room charge and the amount paid by a payor.
- The salary and related expenses for the following personnel will not be included as claimed expenses: Each Facility Administrator, the Regional Vice President (or like position), the Regional Finance Manager, the Regional Director of Nursing, the Regional Admissions Coordinator, the Regional Environmental Consultant, and the Regional Clinical Reimbursement Consultant.
- The following position salaries and related expenses shall be part of the management fees: Each Facility Administrator, the Regional Vice President (or like position), the Regional Finance Manager, the Regional Director of Nursing, and the Regional Admissions Coordinator, the Regional Environmental Consultant, and the Regional Clinical Reimbursement Consultant.
- Current Financial Statements do not represent all Charges at Net

	SAMPLE PAY SOURCES (RATE CHARGED)					
FACILITY	PRIVATE	MEDICARE	MEDICAID	HOSPICE	OTHER VA	INSURANCE
Black Mountain	295.00	474.71	538.60	538.60	505.60	499.68
Fayetteville*	252.00	509.62	452.97	452.97	497.69	509.62
Kinston	295.00	384.53	469.26	469.26	497.69	471.89
Salisbury	252.00	502.80	452.97	452.97	558.12	541.47
Kernersville	245.00	473.73	452.97	452.97	497.69	473.73

*Fayetteville Facility: Is currently closed to residents and is not admitting residents.

The information in the sample pay source rate chart is provided solely to assist in calculating the estimated revenue to determine the percentage of management fee. The information above is an example for calculation purposes only. These rates are not guaranteed or binding. Please note that the Fayetteville Facility is currently closed to residents and not admitting any residents.

Actual revenue information shall be provided based on the past year. Use a disclaimer on Information based on history.

Information above is given to help Vendor's proposal and determine NCDMVA estimates for census and room rates. Census will change from month to month based on operations. Vendor must not deviate from the rates above. It is not acceptable to make changes from this information to assure all management fees computations are equal.

Assume the following resident distribution based on previously quoted bed spaces for each facility for calculation purposes: 30% Medicaid, 30% Medicare, 20% Private Insurance, 10% Private Pay, 5% Hospice, 5% Other VA.

- C. Management Fees shall be the percentage offered in this RFP. No additional fees will be permitted. Management Fees, along with facility expenses, shall be billed monthly on the form presented in APPENDIX A. Monthly Invoices shall be submitted along with all financial information after the month has closed. The invoices shall be emailed to the Contract Manager or designated Contracting Agency email.

5.2 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.

6.0 EVALUATION

6.1 SOURCE SELECTION

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

- a) Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
- b) To be eligible for consideration, Vendor's offer must substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State. Offers that do not meet the full intent of all specifications listed in this RFP may be deemed deficient. Further, a serious deficiency in the offer to any one (1) factor may be grounds for rejection regardless of overall score.
- c) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to 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 after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.

6.2 EVALUATION CRITERIA

Evaluation shall include best value, as the term is defined in N.C.G.S. § 143-135.9(a)(1), compliance with information technology project management policies as defined by N.C.G.S. §143B-1340, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation. The following Evaluation Criteria are listed in Order of Importance.

- 1) How well the Vendor's offer demonstrates overall quality and credibility in relation to the specifications and scope of work
- 2) How each Vendor's offer compares with other Vendors' offers per N.C. Gen. Stat. § 143B-1295 for this project
- 3) Total Cost of Ownership (Attachment D: Cost Form)
- 4) Relevance and strength of references consistent with work of similar scope and complexity
- 5) Risks associated with Vendor's offer which include Vendor errata and exceptions

6.3 BEST AND FINAL OFFERS (BAFO)

The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendor(s) within this range; e.g. "Finalist Vendor(s)". If negotiations or subsequent offers are

solicited, the Vendor(s) shall provide BAFO(s) in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State will evaluate BAFO(s), oral presentations, and product demonstrations as part of the Vendors' respective offers to determine the final rankings.

6.4 POSSESSION AND REVIEW

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

After award of contract 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, which conforms to exclusions from public records as provided by N.C.G.S. §132-1.2 must be clearly marked as such in the offer when submitted.

7.0 VENDOR INFORMATION AND INSTRUCTIONS

7.1 GENERAL CONDITIONS OF OFFER

7.1.1 VENDOR RESPONSIBILITY

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

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

7.1.2 RIGHTS RESERVED

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or 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 demonstrate a lack of competition, negotiate directly with one or more Vendors;
- g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or

- h) if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.

7.1.3 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 either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

7.1.4 ORAL EXPLANATIONS

The State will not be bound by oral explanations or instructions given at any time during the bidding process or after 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.

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

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

7.1.6 ELECTRONIC VENDOR PORTAL (EVP)

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

7.1.7 PROTEST PROCEDURES

Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. 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.**

7.2 GENERAL INSTRUCTIONS FOR VENDOR

7.2.1 PRE-OFFER CONFERENCE. RESERVED.

7.2.2 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 February 13, 2026. at 2:00PM Eastern Time.

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

7.2.3 ADDENDUM TO RFP

If a pre-offer conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State shall become an Addendum to this RFP and provided via the State's Ariba Sourcing Tool. Vendors' questions posed orally 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 these Addenda. It is important that all Vendors bidding on this RFP periodically check the State's Sourcing Tool for all Addenda that may be issued prior to the offer opening date.

7.2.4 COSTS RELATED TO OFFER SUBMISSION

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

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

7.2.5 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.

7.2.6 ALTERNATE OFFERS

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

software or systems coupled with support and maintenance options, provided, however, all offers must satisfy the specifications.

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

7.2.7 MODIFICATIONS TO OFFER

An offer may not be unilaterally modified by the Vendor.

7.2.8 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.

7.2.9 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

7.2.10 VENDOR REGISTRATION WITH THE SECRETARY OF STATE

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

7.2.11 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>.

7.3 INSTRUCTIONS FOR OFFER SUBMISSION

7.3.1 GENERAL INSTRUCTIONS FOR OFFER

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

- a) Organize the offer in the exact order in which the specifications are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP specification and the specific page of the response in the Vendor's offer.

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

7.3.2 OFFER ORGANIZATION

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

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

- a) Signed Execution Page AND all pages of this solicitation document in ONE (1) PDF. This includes:
 - Definitions (Attachment A) and NCDIT Terms and Conditions (Attachment 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 and 8.2)
- b) Vendor Response to Specifications and Requirements
- c) Security Vendor Readiness Assessment Report (VRAR)
- d) Architecture Diagrams
- e) Detailed Project Timeline
- f) Errata and Exceptions, if any

- g) 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.

7.3.3 OFFER SUBMITTAL

Due Date: March 16, 2026
Time: 2:00PM Eastern Time

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

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

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

- a) Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
- b) The Ariba Sourcing Module document number is: WS1865680393
- c) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- d) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
- e) If the vendor's proposal contains any confidential information (as defined in Attachment B, 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 itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST

The Department of Administration will be conducting live bid openings over Microsoft Teams conference call. Below is the call-in information for this procurement's bid opening scheduled for March 16, 2026 @ 2:00PM

Microsoft Teams meeting

Join: <https://teams.microsoft.com/meet/26940785258425?p=U0cBvAlcQebCDJrTgx>

Meeting ID: 269 407 852 584 25

Passcode: P9uJ2gP3

[Need help?](#) | [System reference](#)

Dial in by phone

[+1 984-204-1487, 929951558#](#) United States, Raleigh

[Find a local number](#)

Phone conference ID: 929 951 558#

8.0 OTHER REQUIREMENTS AND SPECIAL TERMS

8.1 VENDOR UTILIZATION OF WORKERS OUTSIDE OF U.S.

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

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

8.2 FINANCIAL STATEMENTS

The projected cost per month on five (5) NCSVH facilities is \$6 million dollars (\$6,000,000.00). Based on history after receipt of the invoice on the 15th of the following month, the Contracting Agency has 30 days for review and approval for payment. It generally takes up to 30 days for the payment process. Thus, at least \$18 million dollars (\$18,000,000.00) in cash flow may need to be available by the Vendor. NOTE: The addition of another NCSVH may increase the cash flow requirements by at least \$3.6 million (\$3,600,000.00) that must also be available by the Vendor, if required.

Each Vendor shall submit the following financial documentation as an attachment to its Proposal:

- A. Provide financial statements audited by an independent certified public accountant (CPA), as well as consolidated statements for holding companies and affiliates with opinions, if applicable, for the last three (3) years of the business entity that would have fiduciary responsibility for this proposed contract. Include a full disclosure of all events, liabilities, tax obligations, financing arrangements/relationships, or contingent liabilities that could affect your organization's financial ability to perform this contract. The financial statements shall include balance sheets, income statement/profit loss statement, cash flow statement, and statement of retained earnings and auditors notes regarding those statements. If audited financial statements have not been prepared for the current fiscal year or have not been prepared in the six months preceding the issuance date of this RFP, Vendor shall provide its internally prepared financial statements from the most recent audited financial statements through June 2025. Vendor must indicate the ability to maintain \$18 million dollars (\$18,000,000.00) excess cash flow for the NCSVHs, if required.
- B. Demonstrate the Vendor's financial status with information such as balance sheets, income statement of changes in financial position, annual reports, and any other statement or documents that attest to your organization's strength and ability to continually fulfill the contractual obligations as managers. Include financial statements, including notes, auditor's report, and summary of significant accounting policies prepared by an independent CPA.

Financial information, statements and/or documents submitted with a Proposal shall be evaluated to determine: whether the Vendor has sufficient ability to perform the Contract; whether the Vendor is able to meet its short term obligations, debts, liabilities, payroll, and expenses; whether Vendor has provided complete, reliable and accurate financial information regarding its business operation; whether the Vendor is financially solvent; and whether Vendor has sufficient cash flow and/or available financing from a financial institution to perform the proposed contract for 60 days without receiving payment from the State. Financial information of non-public entities may be marked as confidential in accordance with the Paragraph of the Instructions to Vendors entitled Confidential Information.

8.3 FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY

- a) Contract Performance Security. The State reserves the right to require performance guaranties pursuant to N.C.G.S. §143B-1340(f) and 09 NCAC 06B.1207 from the Vendor 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 quality assurance reviews of Projects as necessary.

8.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS

Reserved

8.5 RESELLERS

Reserved

8.6 DISCLOSURE OF LITIGATION

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

- a) The Vendor shall notify the State in its offer, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. The Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving the Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of the Agreement or any Scope Statement awarded to the Vendor.
- b) The Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to the Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
- c) All notices under subsection A and B herein shall be provided in writing to the State within 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 which are prevented from disclosure by the terms of the settlement shall be annotated as such.

Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

8.7 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.

8.8 SECURITY AND BACKGROUND CHECKS

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

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

8.9 ASSURANCES

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

- a) the ability of the Vendor or its subcontractor to continue to perform the Agreement in accordance with its terms and conditions, or
- b) whether the Vendor or its subcontractor in performing Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of the Agreement or violation of law, regulation or public policy, then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform the Agreement in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing Services under the Agreement which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

8.10 CONFIDENTIALITY OF OFFERS

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

Certain State information is not public under the NC Public Records Act and other laws. Any such information which the State designates as confidential and makes available to the Vendor in order to respond to the RFP or carry out the Agreement, or which becomes available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure. The Vendor

shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

8.11 PROJECT MANAGEMENT

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

8.12 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 Agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at the Vendor's option and expense, a conference call meeting may be substituted.

8.13 RECYCLING AND SOURCE REDUCTION

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

8.14 SPECIAL TERMS AND CONDITIONS

8.14.1 AGENCY INSURANCE REQUIREMENTS MODIFICATION

A. **INSURANCE:** This section provides minimum insurance coverage rates that are applicable to most moderate risk solicitations. Agency Risk Analysis will determine if higher insurance coverage amounts are needed based on the likelihood and severity of exposure to the State. The analysis is documented in writing in the official file and considers the following non-exclusive factors: 1. Potential for damage to State property or property of a third party, 2. Potential for bodily injury to State employees or third parties, 3. Whether Vendor will transport State property, clients, or employees, 4. Use of a vehicle to accomplish the work or to travel to or from State locations, 5. Anticipated physical contacts of the Vendor with the State, 6. Anticipated number and activity of Vendor personnel within the State, and 7. Any other unique considerations that could result in harm, bodily injury, or property damage. The Purchasing Agency has specified elsewhere in this Contract any increase in the minimum insurance coverage requirements below if the risk from the above factors is high.

a) **REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide

such coverage and that are authorized by the NC 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 Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations or the indemnification requirements under the Contract. As provided above, a State agency is authorized, upon written evaluation and substantiation in the official file of the significant risk of bodily injury and/or property or other damage in the contract, to require and enforce higher coverage limits to mitigate the potential risk of liability to the State.

b) **COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Vendor shall provide and maintain the following coverage and limits, subject to higher requirements by an agency after the risk analysis indicated above:

The Purchasing Agency has conducted a risk assessment and determined that certain default coverage provisions in the North Carolina General Terms and Conditions, must be increased from the minimums stated. Increased or additional insurance coverage amounts for this Solicitation are as follows.

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:

1. Property:

- a. **Commercial General Liability:** Commercial General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of three million dollars (\$3,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate. Defense cost shall be in excess of the limit of liability. In addition, there shall be sub-limits of five thousand dollars (\$5,000.00) premises medical payment per person; ten thousand dollars (\$10,000.00) premises medical payment per accident; and one hundred thousand dollars (\$100,000.00) care, custody and control per occurrence.
- b. **Commercial Automobile:** The Vendor shall provide Commercial Automobile Insurance with a combined single limit of not less than two million dollars (\$2,000,000.00) combined single limit and three million dollars (\$3,000,000.00) per each accident for bodily injury and property damage, including uninsured, hired and non-owned auto liability.

2. Liability:

- a. **Professional Liability:** The Vendor shall provide Professional Liability Insurance with a combined single limit of not less than three million dollars (\$3,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate limit. This is to cover damages caused by error or negligent acts related to professional services provided by this contract.
- b. **Medical Liability:** The Vendor shall provide Medical Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amounts of three million dollars (\$3,000,000.00) per occurrence and five million dollars (\$5,000,000.00) aggregate. Defense cost shall be in excess of the limits of liability.
- c. **Workers Compensation and Employers Liability:** The Vendor shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$1,000,000.00, covering all of Vendor's employees who are engaged in any work under the contract in North Carolina. If

any work is subcontracted, the Vendor shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under the contract within the State.

3. Bonds

- a. **Performance Bond:** The Vendor shall submit a Performance Bond in the amount of five million dollars (\$5,000,000.00) as a guarantee of its performance under the terms and conditions of the contract. The Bond shall be submitted and acceptable to Contracting Agency. Breach of Contract by the Vendor will result in forfeiture of the Bond. The Bond shall be for the entire contract period and shall be renewable for any subsequent extension of the contract. The Bond must be in the force for a minimum of six (6) months following the termination of the contract. A certification by an appropriate financial institution of Vendor's ability to secure this bond is required with the RFP submission. This shall be submitted within fifteen (15) days after notice of award during the transition period before start of work.
- b. **Fidelity Bond:** The Vendor shall submit a Fidelity Bond in the amount of one million dollars (\$1,000,000.00) as a guarantee against employee dishonesty and acts of others. Such policy shall ensure for comprehensive perils including, but not limited to dishonesty, theft, and burglary by principals and employees of the Vendor as well as third parties. The Bond shall be submitted and acceptable to Contracting Agency. Breach of Contract by the Vendor will result in forfeiture of the Bond. The Bond shall be for the entire contract period and shall be renewable for any subsequent extension of the contract. The Bond must be in the force for a minimum of six (6) months following the termination of the contract. A certification by an appropriate financial institution of Vendor's ability to secure this bond is required with the RFP submission. This shall be submitted within fifteen (15) days after notice of award during the transition period before start of work.

9.0 CONTRACT ADMINISTRATION

All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for the Vendor's planning purposes.

9.1 GENERAL RESPONSIBILITIES OF CONTRACTING AGENCY

A. The Contracting Agency shall:

1. Contract with a third-party entity to review records and perform audits.
2. Have the right to attend any committee meeting relating to the management operations of the facilities or meetings to discuss health care.
3. Have the right to schedule meetings in the conference rooms and shall ensure no conflict with utilization of meeting space with the Vendor. All scheduled requests shall be made by the Contract Manager, via email or phone call, to the Vendor.
4. Assist the Vendor in resolving resident care complaints and other issues related to the facility, when requested.
5. Be the liaison between the Vendor and the VAMC designated by the VA to have jurisdiction over the particular facility.
6. Schedule four (4) management meetings yearly and additional if needed. Meetings will be conducted either in person, via teleconference, or via video teleconference, on a schedule mutually agreed upon between Contracting Agency and the Vendor.
7. Provide all installed equipment (building), computers, software, supplies for the daily operations of the home (except for accounting computers and software); and will retain ownership for the

computers, software and any information stored on the computers as it pertains to the daily operation of the home.

8. Purchase all equipment, except in areas where the parties agree that it is advantageous for the Vendor to supply the equipment to the Contracting Agency. In such cases, upon receipt of a copy of the invoice for such equipment, the Contract Manager must approve such purchases, and the Contracting Agency will reimburse the Vendor the actual cost of the equipment. NOTE: This is the CER process.

B. NCDMVA Veteran Service Officer:

1. Provide appropriate assistance to veterans seeking admission to NCSVHs. Work closely with the Vendor (Admission Director) in soliciting applicants with the goal of achieving and maintaining full occupancy.
2. Prepare and execute resident claims for all VA benefits or entitlements from the VA.
3. Provide military service verification for the Admission Director.
4. Prepares all reports required to be submitted to the VA for the Federal per diem.
5. Schedules the quarterly meetings with the VAMC and notify the Contract Manager and Facility Administrator of the meeting.
6. Installs all fixed Asset Tags from State on all capital equipment.

9.2 CONTRACT MANAGER AND CUSTOMER SERVICE

The State has designated the following roles and responsibilities to the individuals listed below for this contract once awarded:

PROCUREMENT LEAD: Representative of the agency identified on the first page of the Solicitation document who will correspond with potential Vendors concerning Solicitation issues, will contract with the Vendor providing the best offer to the State, and is the individual who will administer the Contract for the State.

- Meredith Swartz, DOA Purchasing Officer, Meredith.swartz@doa.nc.gov 984-236-0083

CONTRACT MANAGER: Representatives of the agency or awarded vendor who ensures compliance with the contract terms and conditions while giving attention to the achievement of the stated output and outcome of the contract.

- NCDMVA State Veterans Homes Administrative Director - 984-204-8366
- NCDMVA State Veterans Homes Operations Director - 984-204-8366

CONTRACT ADMINISTRATOR: A representative of the Agency who is responsible for the functions that are performed after all parties have signed a contract, including any modifications to the contract.

- Department of Administration Fiscal Management Purchasing Office – 984-236-0070

9.3 INVOICES

- A. Invoices must be submitted to the following address: NC DMVA, ATTN: Business Officer for Receipts, 413 N. Salisbury Street, Raleigh, NC 27603.
- B. Invoices must be submitted to the Contract Agency in electronic or hard copy on the Contractor's official letterhead stationery and must be identified by a unique invoice number. All invoice backup reports and spreadsheets must be provided in electronic format.
- C. Invoices must bear the correct contract number and purchase order number to ensure prompt payment. The Vendor's failure to include the correct purchase order number may cause delay in payment.
- D. Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Vendor and the original signature of the Vendor's project manager.

9.4 POST AWARD BUSINESS REVIEW MEETINGS

The Vendor, at the request of the State, shall be required to meet periodically with the State for Business Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

9.5 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost of ownership to the State. A continuous improvement effort consists of various ways to enhance business efficiencies as performance progresses.

9.6 ACCEPTANCE OF WORK

Performance of the work and/or delivery of Goods shall be conducted and completed at least in accordance with the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Manager.

The State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or delivery of a deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any specifications, acceptance criteria or otherwise fail to conform to the Contract, the State may exercise any and all rights hereunder, including, for Goods deliverables, such rights provided by the Uniform Commercial Code, as adopted in North Carolina.

9.7 TRANSITION ASSISTANCE

If a Contract results from this solicitation, and the Contract is not renewed at the end of the last active term, or is canceled prior to its expiration, for any reason, Vendor shall provide transition assistance to the State, at the option of the State, for up to six months 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. If the State exercises this option, the Parties agree that such transition assistance shall be governed by the terms and conditions of the Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall agree to pay Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for performance of the Services or other resources utilized.

Contract Closeout

In no event shall Vendor terminate this contract until the Contract Administrator has designated a replacement Vendor. The Contracting Agency has at least 180 days after this date for the replacement Vendor to start operations.

In the event the Contracting Agency chooses to terminate:

- A. Upon delivery by certified mail to the Vendor of a Notice of Termination, the Vendor shall:
 1. Prepare a complete inventory of all assets and submit to the Contract Administrator within thirty (30) days of termination.
 2. Stop work under the contract on the date and to the extent specified in the Notice of Termination.
 3. Cooperate with Contract Manager, Administrator and any replacement Vendor for a smooth transition in operations.
 4. Permit access to the premises for any replacement Vendor and allow any replacement Vendor to communicate with Vendor's employees, Subcontractor's and Subcontractor's employees without any threat, legal action, or liability.

9.8 DISPUTE RESOLUTION

During the performance of the Contract, the parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the State's Contract Manager for resolution. Any claims by the State shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall agree to 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 this Contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either party to mediate or arbitrate any dispute. Below is the link to the Department of Administration Vendor Complaint Policy and Procedures. www.ncadmin.nc.gov/businesses/fiscal-management

9.9 CONTRACT CHANGES

Contract changes, if any, over the life of the Contract shall be implemented by contract amendments agreed to in writing by the State and Vendor. Amendments to the contract can only be through the contract administrator.

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 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 the purchase of 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. 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 Statewide Data Classification and Handling Policy; or
 - ii. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
 - b. Incidents that involve information that is not recoverable or cannot be recovered within defined time lines required to meet operational commitments defined jointly by the State agency and the

Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.

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 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 Deliverables provided by the Vendor shall be warranted for a period of 90 days after acceptance.

4) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

5) **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.

6) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation,

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

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

reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Services or Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.

- 10) PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 9 (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
- Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
 - In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
- 11) EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 12) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 13) LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
- 14) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation. 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** Reserved.
- b) **Commercial General Liability** Reserved.
- 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, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 36) CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.

37) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

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

a) Reserved.

b) Reserved.

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 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 off set the

cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

Section 2: Terms and Conditions Applicable to 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. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Such third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- a) Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
 - b) Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.
 - c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.
- 2) **SERVICES PROVIDED BY VENDOR:** Vendor shall provide the State with implementation Services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The Services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement"). (Reserve if not needed)
- 3) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be noticed to the Agency's Contract Administrator in writing accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.
- a) Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
 - b) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
 - c) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
 - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
 - ii) Such use does not conflict with any procurement law, regulation or policy, or
 - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.
 - d) Unless otherwise provided by the Agency, the Vendor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the accomplishment of the tasks specified in the Agreement. The Vendor shall be legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. The Vendor shall be solely responsible for acquiring

any equipment, furniture, and office space not furnished by the State necessary for the Vendor to comply with the Agreement. The Vendor personnel shall comply with any applicable State facilities or other security rules and regulations.

- 4) **PERSONAL SERVICES:** The State shall have and retain the right to obtain personal Services of any individuals providing Services under the Agreement. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal Services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor to ensure continuity of Services provided under the Agreement. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal Services due as all or part of any performance due under the Agreement.
- a) Vendor personnel shall perform any duties on the premises of the State during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
 - b) The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under the Agreement. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ best commercial efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.
 - c) Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.
 - d) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
 - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
 - ii) Such use does not conflict with any procurement law, regulation or policy, or Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

ATTACHMENT C: DESCRIPTION OF OFFEROR

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

Vendor is to propose the cost to manage the NC State Veterans Homes at a percentage (%) of net revenues (gross revenues less contractual) for management fees, excluding performance bond.

_____ %

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 - DISCLOSURE STATEMENT

In accordance with the Statewide Information Security Manual (SISM), the State restricts the location of information systems that receive, process, store, or transmit State and Federal data to the United States which includes the following areas: US States, US Territories, US Embassies, and US Military installations (stateside or overseas). This restriction applies to the Vendor and to any subcontractors engaged to provide Services under this Agreement or with access to State Data. The Vendor must ensure that its subcontractor agreements contain the same restrictions and will be responsible for monitoring and enforcing subcontractor compliance at all times.

Pursuant to N.C.G.S. §143B-1361(b), the Vendor must complete and return this Disclosure Statement Attachment F with its solicitation response. The Vendor may attach additional pages to its response if needed. The State of North Carolina will evaluate Disclosure Statement Attachments for additional risks, costs, and other factors associated with its service prior to making an award for any such Vendor's offer. The Vendor must provide the following information in its bid response:

- a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.

Click here to enter text.

- b. The corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other subcontractors.

Click here to enter text.

- c. Vendor agrees to provide notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States in the event such relocation occurs during the contract term.

Click here to enter text.

- d. Vendor agrees that any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Click here to enter text.

- e. Will any work under this contract be performed outside the United States?

YES NO

The use of resources or workers located outside the United States is a critical security exception that must be escalated to the State Chief Information Officer for review pursuant to N.C.G.S. §143B-1376(c) and §143B-1320(c). These critical security exceptions are approved only in rare and extenuating circumstances. Vendor should account for this when preparing its response.

ATTACHMENT G: REFERENCES

Vendor shall submit at least three (3) references for which it has provided Services of similar size and scope to those proposed herein. If the Vendor does not manage any facilities, three (3) references must be from entities qualified to judge the Vendor's operating capabilities. References shall not be from the same company or from the soliciting State entity. The State may contact these users to determine whether the Services provided are substantially similar in scope to those proposed herein and whether Vendor's performance has been satisfactory. The information obtained will be considered in the evaluation of the Proposal.

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 services provided.
- d. Customer email address.
- e. Time period over which each offered solution implementation was completed.
- f. Brief summary of the services offered.

ATTACHMENT H: FINANCIAL REVIEW FORM

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. Vendor shall not add or delete rows or columns in the Form, or change the order of the rows or column in the file. Vendor shall also submit certified statements in accordance with section 8.2 of the RFP.

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 Services Sold (COSS)			
c. Gross Profit (Net Sales minus COSS) (calculated)			
d. Interest Expense for the Year			
e. Net Income after Tax			
f. Earnings for the Year before Interest & Income Tax Expense			
STATEMENT OF CASH FLOWS			
a. Cash Flow provided by Operating Activities			
b. Capital Expenditures (property, plant, equipment)			