

STATE OF NORTH CAROLINA

University of North Carolina at Wilmington (UNCW)

Request for Proposal #: 72-PRAB24040

Course Evaluations software solution

Date of Issue: 02/27/24

Proposal Opening: 3/21/24 virtually via Zoom

At 2:00 PM ET

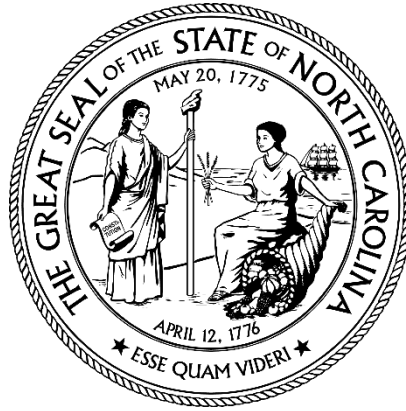
Direct all inquiries concerning this RFP to:

Robert Bisanar

Purchasing Specialist

Email: bisanarr@uncw.edu (PREFERRED)

Phone: 910/962-4069



STATE OF NORTH CAROLINA
University of North Carolina at Wilmington

Request for Proposal

72-PRAB24040

For internal State agency processing, including tabulation of proposals in the eVP, please provide your company's Federal Employer Identification Number or alternate identification number (e.g. Social Security Number). Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page is to be filled out and returned with your proposal.
 Failure to do so may subject your proposal to rejection.**

ID Number:

 Federal ID Number or Social Security Number

 Vendor Name

**Only electronic responses via NC electronic Vendor Portal (eVP) will be
 accepted for this solicitation**

EXECUTION: In compliance with this Request for Proposals (RFP), and subject to all the conditions herein, the undersigned Vendor

STATE OF NORTH CAROLINA	
University of North Carolina at Wilmington (UNCW)	
Refer <u>ALL</u> Inquiries regarding this RFP to: Contract Lead: Robert Bisanar, CPPB, NCCM Email bisanarr@uncw.edu (PREFERRED) or Phone (910) 962-4069	Request for Proposal # 72-PRAB24040 Proposals will be publicly opened: Thursday, March 21, 2024 @ 2:00 PM EST
Contract Type: Open Market	Opening Location: Virtual via Zoom
Commodity No. 43230000 and Description: Course Evaluations software solution	Requisition No.: 177358127

offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this proposal, the undersigned Vendor certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Vendor's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this response to the RFP, the undersigned certifies, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Failure to execute/sign proposal prior to submittal shall render proposal invalid and it WILL BE REJECTED. Late proposals cannot be accepted.

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #12):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FAX NUMBER:
VENDOR'S AUTHORIZED SIGNATURE*	DATE:	EMAIL:
*If submitting an electronic response Vendor has two options: 1) Vendor may apply a wet signature, scan, and then upload this attestation page as an attachment for submission through NC BIDS; or 2) Vendor may apply a digital/electronic signature in the designated box, scan, and then upload as an attachment along with its proposal.		

Offer valid for at least 120 days from date of proposal opening, unless otherwise stated here: _____ days.

ACCEPTANCE OF PROPOSAL If any or all parts of this proposal are accepted by the University of North Carolina at Wilmington, an authorized representative of UNCW shall affix his/her signature hereto and this document and all provisions of this Request for Proposal along with the Vendor proposal response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

<p>FOR STATE USE ONLY: Offer accept and Contract awarded this _____ day of _____, 20____, as indicated on the attached certification, by _____</p> <p>(Authorized Representative of University of North Carolina at Wilmington)</p>
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1.0 PURPOSE AND BACKGROUND

The University of North Carolina (UNCW) seeks to procure a cloud-based course evaluation system as a replacement for UNCW's current solution, which was implemented in 2013. (See additional background in Section 5.1). The driving factor for this initiative is UNCW's desire to increase the collection of meaningful student feedback that will allow our faculty to improve their teaching effectiveness, quality of course delivery, and overall student learning.

UNCW extends an invitation to vendors with demonstrated expertise in delivering premier course evaluation solutions offering the most recent and innovative enhancements and providing an intuitive and user-friendly system for students, faculty, and administrators. Specifically, the university is looking for a comprehensive course evaluation system with a communications portal, valid and reliable evaluation questions, and a robust reporting portal that can be integrated with university systems.

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

2.0 GENERAL INFORMATION

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

E-PROCUREMENT SOLICITATION

ATTENTION: This is NOT an E-Procurement solicitation. Section 16 of Attachment C: North Carolina General Contract Terms and Conditions, paragraphs (b) and (c), do not apply to this solicitation.

2.1 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions, the State's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 2.5 PROPOSAL QUESTIONS. If the State determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. The State may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal, or thereafter. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

Contact with anyone working for or with the State regarding this RFP other than the State Contract Lead named on the face page of this RFP in the manner specified by this RFP shall constitute grounds for rejection of said Vendor's offer, at the State's election.

2.2 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	State	2/27/24
Submit Written Questions	Vendor	3/6/24
Provide Response to Questions	State	by 3/8/24
Submit Proposals	Vendor	Before 2:00 PM EST, 3/21/24
Anticipated Finalists presentations	State/Vendors	4/18/24 - 4/24/24
Anticipated Contract Award	State	5/10/24

2.3 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the above due date.

Written questions shall be emailed to the Contract Lead by the date and time specified above. Vendors should enter “RFP # 72-PRAB24040 Questions” as the subject for the email. Questions submittals should include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Vendor Question
RFP Section, Page Number	Vendor question ...?

Questions received prior to the submission deadline date, the State’s response, and any additional terms deemed necessary by the State will be posted in the form of an addendum to the eVP, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any State personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in an Addendum to this RFP.

2.4 PROPOSAL SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Vendor shall bear the risk for late submission due to unintended or unanticipated delay. It is the Vendor’s sole responsibility to ensure its proposal has been fully submitted before the specified time and date of opening. The time and date of submission will be marked on each proposal when received. Any proposal-submitted after the proposal deadline will not be accepted.

All proposal responses shall be submitted electronically via the eVP. For additional information, see <https://evp.nc.gov/>.

Failure to submit a proposal in strict accordance with these instructions shall constitute sufficient cause to reject a vendor’s proposal(s).

Critical updated information may be included in Addenda to this RFP. It is important that all Vendors proposing on this RFP periodically check the State’s eVP website for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in this RFP and all Addenda thereto.

Contact with anyone working for or with the State regarding this RFP other than the State Contract Lead named on the face page of this RFP in the manner specified by this RFP shall constitute grounds for rejection of said Vendor’s offer, at the State’s election.

2.5 PROPOSAL CONTENTS

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Vendor RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Completed and signed version of EXECUTION PAGES, along with the body of the RFP and signed receipt pages of any addenda released in conjunction with this RFP (if required to be returned).
- d) Completed version of ATTACHMENT A: PRICING
- e) ATTACHMENT B: INSTRUCTIONS TO VENDORS
- f) ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS
- g) Completed and signed version of ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR
- h) Completed and signed version of ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION
- i) Completed and signed version of ATTACHMENT F: SUPPLEMENTAL VENDOR INFORMATION
- j) ATTACHMENT G: IT SERVICES & SYSTEMS ADDENDUM

2.6 ALTERNATE PROPOSALS

Vendor may submit alternate proposals for various methods or levels of service(s) or that propose different options. Alternate proposals must specifically identify the RFP requirements and advantage(s) addressed by the alternate proposal. Any alternate proposal, in addition to the marking described above, must be clearly marked with the legend: "Alternate Proposal # ___ [for 'name of Vendor']". Each proposal must be for a specific set of Services and must include specific pricing. If a Vendor chooses to respond with various service offerings, each must be offered with a separate price and be contained in a separate proposal document. Each proposal must be complete and independent of other proposals offered.

2.7 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- a) **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial offer, made in response to a request by the issuing agency.
- b) **CONTRACT LEAD / PURCHASING SPECIALIST:** Representative of UNCW identified on the first page of this RFP who will correspond with potential Vendors concerning solicitation issues and will contract with the Vendor providing the best offer to the State, and is the individual who will administer The Contract for the State.
- c) **E-PROCUREMENT SERVICE(S):** Not applicable to this RFP. The fee based program, system, and associated Services through which the State conducts electronic procurement. UNC System schools do not use the State's E-Procurement system.
- d) **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request Vendors to separately identify freight charges in their proposal, but no amount or charge not included as part of the total proposal price will be paid.
- e) **eVP :** The electronic Vendor Portal, a free, electronic system for Vendors to view and search for bids opportunities.
- f) **MUST:** A term indicating a mandatory requirement.
- g) **NC BIDS:** The North Carolina Business Invitation Delivery System provides vendors the opportunity to submit bid responses electronically. <https://ncadmin.nc.gov/ncbids>
- h) **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
- i) **QUALIFIED PROPOSAL:** A responsive proposal submitted by a responsible Vendor.

- j) **RESPONSIVE PROPOSAL:** A bid proposal that meets all criteria of a bid such as, but not limited to, bid execution, and submittal of all required data within the required timeframe.
- k) **RESPONSIBLE PROPOSER:** Proposer has 1) the skill, judgment, and integrity necessary to faithfully perform the Contract and 2) has sufficient financial resources and 3) has the ability to perform the Contract.
- l) **RFP:** Request for Proposal.
- m) **SERVICES or SERVICE DELIVERABLES:** The tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this solicitation.
- n) **SHALL:** A term indicating a mandatory requirement or action.
- o) **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- p) **THE CONTRACT:** Specifically, a contract between **UNCW** and a successful **VENDOR** which is executed based on an award made pursuant this RFP.
- q) **UNIVERSITY:** The University of North Carolina at Wilmington, UNCW, UNC-Wilmington, UNC-W, etc.
- r) **VENDOR:** Contractor, offeror, supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Proposal.

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

Contracts will be awarded in accordance with G.S. 143-52 and the evaluation criteria set out in this solicitation. Prospective Vendors shall not be discriminated against on the basis of any prohibited grounds as defined by Federal and State law.

All qualified proposals will be evaluated, and awards will be made to the Vendor(s) meeting the RFP requirements and achieving the highest and best final evaluation, based on the criteria described below.

While the intent of this RFP is to award a Contract(s) to single Vendor, the State reserves the right to make separate awards to different Vendors for one or more line items, to not award one or more line items or to cancel this RFP in its entirety without awarding a Contract, if it is considered to be most advantageous to the State to do so.

The State reserves the right to waive any minor informality or technicality in proposals received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

During the evaluation period—from the date proposals are opened through the date the contract is awarded—each Vendor submitting a proposal (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named above, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers to the content of Vendor's proposal or qualifications, the contents of another Vendor's proposal, another Vendor's qualifications or ability to perform the contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals and/or the award of the contract. A Vendor not in compliance with this provision shall be disqualified from contract award, unless it is determined in the State's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the State would not be served by the disqualification. A Vendor's proposal may be disqualified if its sub-contractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of contract award). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFP or general inquiries directed to the purchaser regarding requirements of the RFP (prior to proposal submission) or the status of the contract award (after submission) are excepted from this provision.

3.3 PROPOSAL EVALUATION PROCESS

The State shall review all Vendor responses to this RFP to confirm that they meet the specifications and requirements of the RFP.

The State will conduct a One-Step evaluation of Proposals:

Proposals will be received from each responsive Vendor according to the method of submission specified in Section 2.6 of this RFP.

All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP, or as modified by a RFP addendum.

At that date and time, the proposal from each responding firm will be opened publicly and the name of each Vendor will be announced. Interested parties are cautioned that the proposals are subject to further evaluation for completeness and correctness.

At its option, the State may request clarifications, oral presentations or discussions with any or all Vendors in order to clarify or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the State is not required to request presentations or other clarification—and often does not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Vendor and its staff, and cost. Specific evaluation criteria are listed in 3.4 EVALUATION CRITERIA, below.

Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the State reserves the unqualified right to reject any and all proposals at any time if such rejection is deemed to be in the best interest of the State.

The State reserves the right to reject all original offers and request one or more of the Vendors submitting proposals within a competitive range to submit a best and final offer (BAFO), based on discussions and negotiations with the State, if the initial responses to the RFP have been evaluated and determined to be unsatisfactory.

Upon completion of the evaluation process, the State will make Award(s) based on the evaluation and post the award(s) to eVP under the RFP number for this solicitation. Award of a Contract to one Vendor does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous and represented the best value to the State.

3.4 EVALUATION CRITERIA

All qualified proposals will be evaluated and award made based on considering the following criteria, to result in an award most advantageous to the State:

Technical (70 Maximum Points)

1. Comprehensive Course Evaluation System (Total= 30%)
 - Vendor Experience, 5%
 - Management of the Evaluation System, 15%
 - Integration and Compatibility, 5%
 - Technical Support, 5%
2. Evaluation Instrument (Total = 30%)
 - Question Bank and Survey Design Options, 15%
 - Customization, 5%
 - User Interface and Ease of Use, 5%
 - Accessibility and Inclusivity, 5%
3. Reporting and Analytics (Total =15%)

Vendor willingness to accept North Carolina terms and conditions as presented, and not require additional terms be accepted, before or after award (10 points)

Cost (15 Maximum Points)

3.5 PERFORMANCE OUTSIDE THE UNITED STATES

Vendor shall complete ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this RFP, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a) Total cost to the State
- b) Level of quality provided by the Vendor
- c) Process and performance capability across multiple jurisdictions
- d) Protection of the State's information and intellectual property
- e) Availability of pertinent skills
- f) Ability to understand the State's business requirements and internal operational culture
- g) Particular risk factors such as the security of the State's information technology
- h) Relations with citizens and employees
- i) Contract enforcement jurisdictional issues

3.6 INTERPRETATION OF TERMS AND PHRASES

This Request for Proposal serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the Department; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. As such, all terms in the Request for Proposal shall be enforceable as contract terms in accordance with the General Contract Terms and Conditions. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the Department will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the Department's needs as described in the Request for Proposal. Except as specifically stated in the Request for Proposal, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the Department exercising its discretion to reject a proposal in its entirety.

4.0 REQUIREMENTS

This Section lists the requirements related to this RFP. By submitting a proposal, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. Vendors should affirm and respond to each requirement, below. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better proposal, the Vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 2.5. The proposed solution:

1. provides the ability to schedule multiple course evaluation administrations within a term.
2. provides custom administration options that offer enrollment minimums and allows for options to remove a course from an administration.
3. provides custom administration options that allow multiple courses to receive one evaluation and evaluate of multiple instructors in one course.
4. provides a communications portal for faculty and staff that allows for communicating with faculty during the evaluation build and with students regarding access to filling out the evaluation.
5. provides a reporting portal that offers a variety of reporting options, (e.g., individual reports for faculty, statistical results over time, results by organizational levels (course, department, program), customized

reports to support faculty reappointment, tenure, and promotion) and the ability to export evaluation results.

6. offers the capability for the solution to integrate with Ellucian Banner and Canvas Learning Management System for the building and implementation of course evaluations.

In addition, different from the above requirements, but should also be with the vendor's proposal response, the vendor should also address the following expectations with any offered solution, and as applicable, the vendor's approach to each:

- technical support and training resources that are provided.
- a detailed implementation plan that offers training to faculty across the university.
- flexible pricing model, such as per-user licenses or institution-wide subscriptions

4.1 CONTRACT TERM

The Contract shall have an initial term of three (3) years, beginning on the date of an installed, implemented, integrated, completed, fully-usable, working solution (the "Effective Date"), different from the Award Date. The Vendor shall begin work under the Contract within 30 business days of the Award Date.

At the end of the Contract's current term, the State shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of two (2) additional one-year terms. The State will give the Vendor written notice of its intent whether to exercise each option no later than 90 days before the end of the Contract's then-current term, with vendor's notice to the State no later than 120 days of the then current term's ending date. In addition, the State reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments.

4.2 PRICING

Proposal price shall constitute the total cost to the State for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this RFP. Complete ATTACHMENT A: PRICING FORM and include in Proposal.

4.3 INVOICES

- A) Invoices must be submitted to the following address: Accounts Payable, 601 S College Rd., Wilmington, NC 28403
- B) 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.
- C) 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.

4.4 FINANCIAL STABILITY

Each Vendor shall certify it is financially stable by completing the ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from Contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

4.5 REFERENCES

Vendors shall provide *at least* three (3) references for which your company has provided Services of similar size and scope to that proposed herein. The State may contact these users to determine the Services provided are substantially similar in scope to those proposed herein and Vendor's performance has been satisfactory. The information obtained may be considered in the evaluation of the proposal.

INSTITUTION/COMPANY NAME	CONTACT NAME	EMAIL/TELEPHONE NUMBER

4.6 BACKGROUND CHECKS

Any personnel or agent of the Vendor performing Services under any contract arising from this RFP may be required to undergo a background check at the expense of the Vendor, if so requested by the State.

4.7 PERSONNEL

Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Lead. Vendor shall notify the Contract Lead of any desired substitution, including the name(s) and references of Vendor’s recommended substitute personnel. The State will approve or disapprove the requested substitution in a timely manner. The State may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4.8 VENDOR’S REPRESENTATIONS

- a) Vendor warrants that qualified personnel shall provide Services under this Contract 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 industry. Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the State under this Contract. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all sub-contractor(s) that may be approved by the State. Names of any third party Vendors or sub-contractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor’s obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party sub-contractor(s).
- b) If any Services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor’s proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, 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. Unless otherwise expressly provided herein, 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 Deliverables.
- c) Vendor warrants that it has the financial capacity to perform and to continue 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 this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

5.0 SCOPE OF WORK

5.1 ADDITIONAL BACKGROUND AND GENERAL

UNC System Board of Governors policy requires student evaluations to be used as part of faculty performance assessments. As stated within policy, the quality of teaching is a matter of genuine commitment and concern for all UNC campuses, and should be evident in the institutional mission statements, faculty handbooks and institutional assessment reports. Student course evaluations are one recommended technique, to offer feedback on their learning experience. Since teaching embraces activities and responsibilities broader than classroom instruction, appropriate evaluation of teaching must assess more than classroom instructor performance and consider the instructor's contributions to instructional effectiveness, course development, curriculum design, and to teaching and instructional innovations. This information should be one evidence of good teaching and rewarded through decisions related to reappointment, tenure, and promotion (RTP).

Since Fall 2013, the university has used Anthology IDEA Student Ratings of Instruction (SRI) System (formerly Campus Labs), now called Anthology Evaluate, as its solution to administer course evaluations. The Faculty Senate Evaluation Committee monitors the course evaluation process at the university and Faculty Senate approval was gained to seek a new course evaluation solution. Summative course evaluation scores on overall results, teaching effectiveness, and course effectiveness are part of the faculty reappointment, tenure and promotion processes. The driving purpose for this RFP is a desire to increase student response rates and gain meaningful student feedback for continuous improvement.

As the university grows its student enrollment and educational program offerings, the volume of course evaluation activity continues to grow. This growth places an importance on integration with university systems. The course evaluation platform will need to integrate with the following University technologies: Ellucian Banner (i.e., student information system), Canvas (i.e., learning management system), and Watermark Faculty Success (i.e., faculty activity reporting solution).

5.2 ACCEPTANCE OF WORK

In the event acceptance criteria for any work or deliverables is not described in contract documents or work orders hereunder, the State shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or 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 of 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 requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

5.3 QUESTIONS TO VENDOR

Vendor shall respond to each of the following questions. Vendors are requested to keep responses straightforward and to the point and should not include generic marketing materials. Responses will be reviewed as part of the evaluation process.

Vendor Experience, 5%

1. Describe the background and history of the company including but not limited to how long the company has been in business, and any current/past customers that may be of comparable size and scale for this RFP's scope. Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size, scope, and complexity to the State of North Carolina. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person. (5 points)

Management of the Evaluation System, 15%

2. From a Campus Solution Administrator and faculty perspective, describe the core management functionality of the proposed solution as it relates to survey administration. (5 points)
3. Describe how the campus administrator manages communications within the proposed solution to communicate with students (accessing the course evaluation) and to communicate with faculty (survey development, accessing the results). (5 points)
4. Describe how the proposed solution administrator manages the reporting portal (user permissions & access, tracking and monitoring of completion rates). (5 points)

Integration & Compatibility, 5%

5. Canvas uses UNCW's LMS (Learning Management System) and Banner as our Student Information System. Describe how the proposed solution can integrate with these systems. (3 points)
6. Does the proposed solution offer Single Sign-On? Is this a separate cost? (2 points)

Technical Support, 5%

7. Describe the support provided to end-users and the university in managing the proposed solution. (3 points)
8. What resource documents and training videos are offered to help faculty navigate set-up of their course evaluation(s)? (2 points)

Survey Design and Question Options, 15%

9. Does the proposed solution offer evaluation questions related to teaching effectiveness or course effectiveness that have been tested for reliability and validity? If yes, please describe how this option is offered. (5 points)
10. Describe question format options (i.e., multi-select, multi-choice, open ended). (5 points)
11. Describe your survey design options (i.e., survey templates, branching options, custom questions align to course materials/assessments, questions that address course modality). (5 points)

Options to Customize the Evaluation Instrument, 5%

12. Describe the evaluation instrument's customization options (cross-list courses, aligned to course materials or student attributes, rate multiple faculty members for one-course) (5 points)

User Interface and Ease of Use, 5%

13. Describe the ease of use of navigating the proposed solution for students taking an evaluation. (3 points)
14. Describe how a student take a survey with your proposed solution across many different devices (iPad, mobile phone, etc.)? (2 points)

Accessibility and Inclusivity, 5%

15. Describe the accessibility of the proposed solution for individuals with disabilities and students from other countries, (5 points)

Reporting and Analytics, 15%

16. In the reporting portal, describe the end-user experience for faculty and administrators accessing their results. (5 points)
17. How does the proposed solution handle campuses requests for customized reports? (5 points)
18. Does the proposed solution provide an analysis tool that provides options to filter on student attributes (e.g., undergraduate, graduate, senior, first year, academic program) and demographics (e.g., gender, age) and course attributes (e.g., modality, capstone). (5 points)

5.4 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, Vendor shall provide, at the option of the State, up to six (6) months after such end date all such 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. If the State exercises this option, the Parties agree that such transition assistance shall be deemed to be governed by the terms and conditions

of this 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 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.

6.0 CONTRACT ADMINISTRATION

6.1 PROJECT MANAGER AND CUSTOMER SERVICE

The Vendor shall designate and make available to the State a project manager. The project manager shall be the State's point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

6.2 POST AWARD MANAGEMENT REVIEW MEETINGS

The Vendor, at the request of the State, shall meet periodically, weekly, or otherwise accepted as recommended by the awarded vendor and accepted by the State, for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State progress, performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

6.3 CONTINUOUS IMPROVEMENT

The State encourages the Vendor to identify opportunities to reduce the total cost the State. A continuous improvement effort consisting of various ideas to enhance business efficiencies will be discussed at the periodic Business Review Meetings.

6.4 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 State's Contract Lead for resolution. A claim by the State shall be submitted in writing to the Vendor's Project Manager for resolution. 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 this Contract. 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 this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

6.5 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.

THE BELOW SECTION ON THIS PAGE IS INTENTIONALLY LEFT BLANK

ATTACHMENT A: PRICING

Vendors should provide a total, first year's (annual) cost for the provided solution here: \$ _____

Vendors should provide costs for the second of the three-year term here: \$ _____

Vendors should provide costs for the third of the three-year term here: \$ _____

TOTAL FOR FIRST THREE YEAR'S COST, INCLUSIVE OF ASSOCIATED COSTS WITHIN THE SCOPE OF THIS PROJECT, AND NOT INCLUDING OPTIONAL (ADD-ONS) OUTSIDE OF THE SCOPE OF THIS PROJECT

\$ _____

Vendors should provide costs for the fourth, and optional extension, of an additional one-year term here:

\$ _____

Vendors should provide costs for the fifth, and optional extension, of an additional one-year term here:

\$ _____

In addition to providing annual costs on ATTACHMENT A, here, vendors may also attach a separate document, specifically to break out the associated costs that may occur, if not lump sum annual costs, particularly for the first year. This may include, although would not be limited to milestones, if not invoiced in full, upon the completion of the proposed solution's use, as described in Section 4.1 CONTRACT TERM. Vendors may also provide in this separate section (or attachment), associated costs for additional options, that are outside of the scope of this RFP.

ATTACHMENT B: INSTRUCTIONS TO VENDORS

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure the timely submission of proposals at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.
4. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, 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 requirements 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 any other determination that the proposed requirement 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.
5. **EXECUTION:** Failure to execute page 3 of the RFP (Execution Page) in the designated space shall render the proposal non-responsive, and it will be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP, including any negotiated terms; (2) requirements and specifications and administration provisions in Sections 4, 5 and 6 of this RFP; (3) North Carolina General Contract Terms and Conditions in ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; ATTACHMENT G: IT SERVICES & SYSTEMS ADDENDUM; (4) Instructions in ATTACHMENT B: INSTRUCTIONS TO VENDORS; (5) ATTACHMENT A: PRICING, and (6) Vendor's proposal.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested in the spaces provided in this document. Further, if required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the 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 commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
9. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of The Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.
10. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all print responses submitted meet the following:
 - All copies of the proposal are printed double sided.
 - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.

- Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

- 11. HISTORICALLY UNDERUTILIZED BUSINESSES:** The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as sub-contractors on State contracts.
- 12. RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any proposal from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the proposal of a vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.
- 13. INELIGIBLE VENDORS:** As provided in G.S. 147-86.60 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.
- 14. CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
- 15. PROTEST PROCEDURES:** When a Vendor wishes to protest the award of contract awarded by UNCW valued in an awarded amount of at least \$25,000, but less than \$500,000, the Vendor shall submit a written request addressed to the UNCW Director of Purchasing Services within thirty (30) consecutive calendar days from the date of the Contract award. The Director of Purchasing Services shall furnish a copy of this letter to the Vice Chancellor for Business Affairs (VCBA) within 5 consecutive calendar days of receipt. The Vendor's letter shall contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. If the protest meeting is granted, the Director of Purchasing Services shall attempt to schedule the meeting within fifteen (15) consecutive calendar days after receipt of the letter, or as soon as possible thereafter. Within 5 consecutive calendar days from the date of the protest meeting, the Director of Purchasing Services shall respond to the Vendor in writing with his decision. A copy of the letter shall be forwarded to the Vice Chancellor for Business Affairs. The University shall notify the State Purchasing Officer, in writing, of any further administrative or judicial review of the contract award. **Note:** Contract award notices are sent only to the Vendor actually awarded the Contract, and not to every person or firm responding to a solicitation. Proposal status and Award notices are posted on the Internet at <https://evp.nc.gov/> All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.
- 16. MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
- 17. COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Vendor agrees not to discuss or otherwise

reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this RFP. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.

18. **TABULATIONS:** Bid tabulations can be electronically retrieved at the eVP (<https://evp.nc.gov/>). Lengthy or complex tabulations may be summarized, with other details not made available on eVP, and requests for additional details or information concerning such tabulations cannot be honored.
19. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register for free with the State to receive electronic notification of current procurement opportunities for goods and Services of potential interests to them available on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website: <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.
20. **WITHDRAWAL OF PROPOSAL:** Proposals submitted electronically may be withdrawn at any time prior to the date for opening proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). Proposals that have been delivered by hand, U.S. Postal Service, courier or other delivery service may be withdrawn **only** in writing and if receipt is acknowledged by the office issuing the RFP prior to the time for opening proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of proposals shall be allowed only for good cause shown and in the sole discretion of the State.
21. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this RFP and in formal Addenda issued through eVP.
22. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the State of North Carolina will not reimburse any Vendor for any costs incurred or associated with the preparation of proposals.
23. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.

ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS

- 1) **PERFORMANCE AND DEFAULT:** It is anticipated that the tasks and duties undertaken by the Vendor shall include services or the manufacturing, furnishing, or development of goods and other tangible features or components as deliverables that are directly correlated and/or ancillary to the services performed. Except as provided immediately below, and unless otherwise mutually agreed in writing prior to award, any service deliverables or ancillary services provided by Vendor in performance of the contract shall remain property of the State. During performance, Vendor may provide proprietary components as part of the service deliverables that are identified in the solicitation response. Vendor grants the State a personal, permanent, non-transferable license to use such proprietary components of the service deliverables and other functionalities, as provided under this Agreement. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform its services under the contract in the same or similar manner provided to comparable users. The State shall notify the Vendor of any defects or deficiencies in performance of its services or failure of service deliverables to conform to the standards and specifications provided in this solicitation. Vendor agrees to remedy defective performance or any nonconforming deliverables upon timely notice provided by the State.

Vendor has a limited, non-exclusive license to access and use State Data provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as may be further provided herein. Vendor or its suppliers shall at a minimum, and except as otherwise specified and agreed herein, provide assistance to the State related to all services performed or deliverables procured hereunder during the State's normal business hours. Vendor warrants that its support, customer service, and assistance will be performed in accordance with generally accepted and applicable industry standards.

If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under The Contract, the State shall have the right to terminate The Contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables under The Contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of The Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State may require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to the State.

In the event of default by the Vendor, the State may procure the goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under The Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, immediately terminate The Contract for cause, and may take action to debar the Vendor from doing future business with the State.

- 2) **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship or performance of the Services offered prior to acceptance, it shall be the responsibility of the Vendor to notify the Contract Lead at once, in writing, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
- 3) **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in The Contract.
- 4) **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b) The agency(ies) participating in The Contract are exempt from Federal Taxes, such as excise and

transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.

- c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

5. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.

7. **NON-DISCRIMINATION:**

The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.

The vendor will take necessary action to ensure its internal employee policies and procedures are consistent with Executive Order #82 (December 6, 2018), which extends workplace protections and accommodations to pregnant employees.

8. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

9. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with The Contract.

- a. Vendor warrants to the best of its knowledge that:
 - i. Performance under The Contract does not infringe upon any intellectual property rights of any third party; and
 - ii. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b. Should any deliverables supplied by Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected deliverables and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute deliverables. If, in the sole opinion of the State, the cessation of use by the State of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services or Deliverables.
- 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 deliverables supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. 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. 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 results from the State's material alteration of any Vendor-branded deliverables or services, or from the continued use of the deliverable(s) or Services after receiving notice of infringement on a trade secret of a third party.

- 10. TERMINATION FOR CONVENIENCE:** If this contract contemplates deliveries or performance over a period of time, the State may terminate this contract at any time by providing sixty [60] days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this contract shall, at the option of the State, become its property. If the contract is terminated by the State as provided in this section, the State shall pay for those items for which such option is exercised, less any payment or compensation previously made.
- 11. ADVERTISING:** Vendor agrees not to use the existence of The Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
- 12. ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to The Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).
- 13. ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the State may:

- a) Forward the Vendor's payment check directly to any person or entity designated by the Vendor, and
- b) Include any person or entity designated by Vendor as a joint payee on the Vendor's payment check.

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. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of The Contract.

14. INSURANCE:

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. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

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 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 under the Contract.

- 15. GENERAL INDEMNITY:** The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses 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 Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of The Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor deliverables or Services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of The Contract.
- 16. ELECTRONIC PROCUREMENT [RESERVED]:** This is NOT an E-Procurement solicitation
- 17. SUBCONTRACTING:** Performance under The Contract by the Vendor shall not be subcontracted without prior written approval of the State's assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the sub-contractor(s) that have been specified therein.
- 18. CONFIDENTIALITY:** Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under The Contract shall be kept as confidential, used only for the purpose(s) required to perform The Contract and not divulged or made available to any individual or organization without the prior written approval of the State.
- 19. CARE OF STATE DATA AND PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any data owned and furnished to the Vendor by the State (State Data), or other State property in the hands of the Vendor, for use in connection with the performance of The Contract or purchased by or for the State for The Contract. Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.

The State's Data in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or other eventuality. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement. The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B-1379. See G.S. 75-60 *et seq.*

- 20. OUTSOURCING:** Any Vendor or sub-contractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a sub-contractor for any such performance, which sub-contractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, sub-contractors of the Vendor, or other persons providing performance under a State contract to a location outside of the United States.

- 21. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with The Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

- 22. ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

- 24. AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the State and the

Vendor.

- 25. NO WAIVER:** Notwithstanding any other language or provision in The Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 26. 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.
- 27. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in The Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
- 28. PERSONAL IDENTIFYING INFORMATION:** If the University provides the Vendor with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-133.20(b) or any other legally confidential information including “personally identifiable information” from student education records as defined by the Family Educational Rights and Privacy Act (FERPA), 34 CFR §99.3, Vendor hereby certifies that collection of this information from University is necessary for the performance of Vendor’s duties and responsibilities on behalf of the University under this Contract. Vendor further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed by FERPA, 34 CFR §99.33, or other State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with Vendor for a period of at least five (5) years from date of violation. If Vendor experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the Vendor’s responsibilities under the NC Identity Theft Protection Act, Vendor shall immediately notify the University with a minimum of information required under N.C.G.S. 75-65 and shall fully cooperate with the University.
- 29. USE OF PRIMARY AGREEMENT BY THIRD PARTIES:** It is the intent of this Agreement to allow for cooperative procurement strictly to those entities within the University of North Carolina. Accordingly, within the University of North Carolina, any constituent institution may access the Sub-Agreement. Participation in this cooperative procurement is strictly voluntary. If authorized by vendor, and agreed to in writing by the University, this Agreement may extend to the entities indicated above to purchase at fees in accordance with the Agreement. Vendor will notify the University in writing of any such entities accessing the Agreement. No modification of this Agreement or execution of a separate agreement is required by a third party in order to participate. If requested by University, vendor will provide semi-annual usage reports for all entities accessing this Sub-Agreement. Participating entities will be bound by the MA and this Agreement; will place their own orders directly with vendor, and will fully and independently administer their use of the Agreement to include contractual disputes, invoicing and payments without direct administration from the University. The University will not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by vendor to extend the Agreement. It is understood and agreed that the University is not responsible for the acts or omissions of any entity, and will not be considered in default of the Agreement. Use of this Agreement does not preclude any participating entity from signing other agreements or competitive processes as the need may be.
- 30. PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS (PCI DSS) COMPLIANCE:** In the event Vendor may have access to credit or debit card information and/or may affect the security of a credit or debit card transaction, Vendor agrees to comply with the Payment Card Industry Data Security Standards for itself and any of its sub-contractors.

ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with NC General Statute 143-59.4, the Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of this Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Please complete items a, b, and c below.

a) Will any work under this Contract be performed outside the United States? YES NO

If the Vendor answered "YES" above, Vendor must complete items 1 and 2 below:

1. List the location(s) outside the United States where work under this Contract will be performed by the Vendor, any sub-contractors, employees, or other persons performing work under the Contract:

2. Describe the corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other sub-contractors that will perform work outside the U.S.:

b) The Vendor agrees to provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-contractors of the Vendor, or other persons performing services under the Contract outside of the United States YES NO

NOTE: All Vendor or sub-contractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall** disclose to inbound callers the location from which the call or contact center services are being provided.

c) Identify all U.S. locations at which performance will occur:

ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: _____

The undersigned hereby certifies that: [check all applicable boxes]

The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: _____

The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

The Vendor is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.

The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.

The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.

He or she is authorized to make the foregoing statements on behalf of the Vendor.

Note: This is a continuing certification and Vendor shall notify the Contract Lead within fifteen (15) days of any material change to any of the representations made herein.

If any one or more of the foregoing boxes is NOT checked, Vendor shall explain the reason in the space below:

Signature Date

Printed Name Title

[This Certification must be signed by an individual authorized to speak for the Vendor]

ATTACHMENT F: SUPPLEMENTAL VENDOR INFORMATION

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 in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to 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 sub-contractors to perform the required functions in this RFP. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330. The Vendor shall respond to question #1 and #2 below.

- a) Is Vendor a Historically Underutilized Business? **Yes** **No**
- b) Is Vendor Certified with North Carolina as a Historically Underutilized Business? **Yes** **No**

If so, state HUB classification: _____

ATTACHMENT G: IT SERVICES & SYSTEMS ADDENDUM

Vendor acknowledges that UNCW will disclose Personally Identifying Information (PII) to the Vendor during the performance of this Agreement, and/or the Agreement allows the Vendor access to PII. Vendor agrees to maintain strict confidentiality of PII, in accordance with the requirements and conditions set forth in this Addendum.

Vendor attests and warrants that any documentation submitted or supplied is accurate, complete, and is a comprehensive assessment of the requirements for which it is submitted. Vendor shall immediately notify the University of any errors, omissions, corrections, or material changes in the documentation and/or underlying information used to prepare the documentation. The University assumes no responsibility to verify the documentation.

1) DEFINITIONS:

- a) "Data" is information, formulae, algorithms, or other content that UNCW, UNCW's employees, agents and end users provide, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which UNCW's Data may be ascertainable. All data provided or derived is the property of UNCW and is to be confidential and kept private unless otherwise noted by mutual agreement.
- b) "Regulated data" means Personally Identifiable Information (PII) and any other Data that is protected or regulated by state or federal law.
- c) "Services" are the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this Agreement.
- d) "Support" includes provision of ongoing service updates, fixes, training, consulting, and maintenance for Vendor supplied services.
- e) "Personally Identifiable Information", or "PII", is any information that can be used to distinguish one person from another and can be used for de-anonymizing anonymous data. Personally Identifiable Information shall include "Education Records" and "Personnel Information" as those terms are further defined herein.

2) ACCESS AND USE OF IT SERVICES:

- a) Vendor grants UNCW a personal non-transferable and non-exclusive right to use and access, all contracted Services. UNCW may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. UNCW is authorized to access UNCW Data and any data provided as part of the contracted Services. Services may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. UNCW shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. All Services and information designated as "confidential" or "proprietary", and all Data, shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq.*
- b) UNCW's right to license the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, unless otherwise agreed to by the parties. Vendor has a limited, non-exclusive license to access and use UNCW Data as provided to Vendor, but solely for providing the specified contracted Services.
- c) The technical and professional activities required for establishing, managing, and maintaining the Services and environment are the responsibility of the Vendor.
- d) Any additional agreements or terms derived by end user assent (e.g., "clickthrough") are null and void.
- e) All UNCW Data must remain within the legal jurisdiction of the United States unless the Data's disposition is otherwise explicitly designated by UNCW.
- f) The Vendor is ultimately responsible for providing the contracted Services under the specified provisions. The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, but Vendor assumes all responsibility for third party activities in those regards. Vendor will not provide Data to any subcontractor or agent without UNCW's prior written consent, and until the subcontractor or agent agrees in writing to comply with these Terms and Conditions.

3) MODIFICATION OF SERVICES:

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

4) TRANSITION PERIOD:

- a) For a minimum of ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist UNCW, upon written request, in extracting and/or transitioning all Data in the format determined by UNCW ("Transition Period").
- b) The Transition Period and terms may be modified as specified by both parties in writing.
- c) During the Transition Period, Services access shall continue to be made available to UNCW without alteration.
- d) Vendor agrees to compensate UNCW for damages or losses UNCW incurs as a result of Vendor's failure to comply with this Transition Period section.
- e) Upon termination, and unless otherwise stated in an SLA, and after providing UNCW Data to UNCW as indicated above in this section with acknowledged receipt by UNCW in writing, the Vendor shall permanently destroy or render inaccessible all UNCW Data. The vendor shall provide written documentation confirming the destruction or inaccessibility of UNCW's Data.

5) CONFIDENTIALITY:

UNCW may maintain the confidentiality of certain types of information provided by Vendor described in N.C. Gen. Stat. § 132-1, *et seq.* Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. § 132-1.2. Vendor may designate information, products, or Services or 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, or portion of a 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.** UNCW agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C. Gen. Stat. § 132-9 to compel UNCW to disclose information marked "confidential," the Vendor agrees that it will intervene in the action through its counsel and participate in defending UNCW, including any public official(s) or public employee(s). The Vendor agrees that it shall hold UNCW and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against UNCW in the action. UNCW shall have the right, at its option and expense, to participate in the defense of the action through its counsel. UNCW 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. Gen. Stat. §132-9 or other applicable law.

6) SECURITY OF UNCW DATA:

- a) All materials, including software, Data, information, and documentation provided by UNCW to the Vendor (UNCW Data) during the performance or provision of Services hereunder are the property of UNCW and must be kept secure, returned to UNCW, and afterwards destroyed. The Vendor will protect UNCW Data from disclosure, unauthorized modification, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to UNCW 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 provided to UNCW as part of the Services.
- b) The Vendor shall protect the confidentiality and integrity of all information, Data, instruments, studies, reports, records and other materials provided to it by UNCW or maintained or created in accordance with provided services. No such information, Data, instruments, studies, reports, records, other materials, or derivatives of such, in the possession of Vendor, shall be disclosed in any form without the prior written consent from UNCW Purchasing.

- c) The Vendor is responsible for the protection of UNCW Data, including but not limited to Personal Identifying Information (PII). Vendor acknowledges its responsibility for securing any UNCW Data used in connection with the provision of the Services. Vendor warrants, it shall provide reasonable care and efforts to protect private and Regulated Data, detect fraudulent activity involving such Data, and promptly notify UNCW Purchasing of any unauthorized access, use, or Data loss. Specific terms and conditions for Personally Identifiable Information are included herein.
- d) Vendor will provide and maintain secure backups of UNCW Data on an acceptable periodic schedule.
- e) Vendor shall implement and maintain appropriate access controls for its online system providing the Services, as well as all appropriate administrative, physical, technical, and procedural safeguards at all times during the term of this Agreement to secure the Data and the Services from loss, corruption, unauthorized disclosure.
- f) Vendor will apply the principle of "least privilege" for employee and contractor access in providing the contracted services.
- g) Vendor must maintain logs of all changes in user privilege and any access to data.
- h) Upon request Vendor must provide UNCW with the most recent report, audit, or certification, performed by a third party, that relates to the security, availability, processing integrity, confidentiality, and privacy of the operations and systems of the Vendor.
- i) UNCW may, at any time, make a local copy of all UNCW data.
- j) Vendor shall certify to UNCW:
 - i. They have and adhere to a periodically tested and annually reviewed disaster recovery plan.
 - ii. That the Services will comply with the following where applicable:
 1. Privacy provisions of the Federal Privacy Act of 1974;
 2. The Family Educational Rights and Privacy Act (FERPA) if records include student information.
 3. The Health Insurance Portability and Accountability Act if records include any health-based information.
 4. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act requirements for access to and use of their provided services.
 5. The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);
 6. The North Carolina Public Records Act, N.C.G.S. Chapter 132; and
 7. Applicable industry standards and guidelines, including but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Computing Guidelines.
- k) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60) means (1) any circumstance pursuant to which any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any UNCW Data or UNCW confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon UNCW Data or UNCW confidential information described in Section 1 above, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording,

organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying. Notwithstanding the above, Vendor shall, within one business day of discovery, report to UNCW any use or disclosure of PII not authorized by these Terms and Conditions or in writing by UNCW. Vendor's report shall identify:

- (1) the nature of the unauthorized use or disclosure;
- (2) the PII used or disclosed;
- (3) who made the unauthorized use or received the unauthorized disclosure;
- (4) what Vendor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- (5) what corrective action Vendor has taken or shall take to prevent future similar unauthorized use or disclosure.

UNCW, in its sole discretion, shall have the right to require Vendor to submit to a plan of monitoring and reporting; provide Vendor with a fifteen (15) day period to cure the breach; or terminate the Agreement immediately if cure is not possible, subject to Vendor's obligations upon termination described in this paragraph 6. Vendor shall provide any such other information relevant to UNCW's breach investigation and mitigation, including a written report, as reasonably requested by UNCW.

- l) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense,
- (1) immediately notify UNCW Purchasing of such Security Breach and perform a root cause analysis thereon,
 - (2) investigate such Security Breach,
 - (3) provide a remediation plan, acceptable to UNCW, to address the Security Breach and prevent any further incidents,
 - (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and
 - (5) cooperate with UNCW, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach.

UNCW shall make the final decision on notifying UNCW's persons, entities, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of UNCW's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by UNCW) shall be considered legally required. If the Family Policy Compliance Office of the U.S. Department of Education determines that the Vendor improperly disclosed PII obtained from UNCW's Education Records, UNCW may not allow the Vendor access to Education Records for at least five (5) years.

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

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

- i. The scale and quantity of UNCW Data loss;
- ii. What Vendor has done or will do to recover the UNCW Data from backups and mitigate any deleterious effect of UNCW Data and Services loss; and
- iii. What corrective action Vendor has taken or will take to prevent future UNCW Data and Services loss.
- iv. If Vendor fails to respond immediately and remedy the failure, UNCW may exercise its options for assessing damages or other remedies.

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

o) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold UNCW Data or any other UNCW confidential information or refuse for any reason, to promptly return to UNCW Data and any other UNCW confidential information (including copies thereof) if requested to do so on such media as reasonably requested by UNCW, even if UNCW is then or is alleged to be in breach of the Agreement as long as UNCW has paid any undisputed sums. As a part of Vendor's obligation to provide UNCW Data pursuant to this Paragraph 10j), Vendor will also provide UNCW any data maps,

documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for UNCW to use, translate, interpret, extract and convert UNCW Data.

7) CONFIDENTIALITY OF EDUCATION RECORDS AND PERSONNEL INFORMATION

a) Education Records

- i. **Definition: *Education Records*** shall have the meaning prescribed to it in 34 CFR § 99.3, and includes paper and electronic student education record information supplied by UNCW, as well as any data provided by UNCW's students to the Vendor, excluding any information that is designated as "directory information" in UNCW Policy 04.150 Student Records and Family Educational Rights and Privacy Act (FERPA).
- ii. **Protection of Education Records:** Vendor agrees to abide by the limitations on re-disclosure of personally identifiable information from education records set forth in the Family Educational Rights and Privacy Act (34 CFR § 99.33(a)(2)) and with the terms set forth below. 34 CFR § 99.33 (a)(2) states that the officers, employees and agents of a party that receives education record information from the institution may use the information, but only for the purposes for which the disclosure was made.
- iii. **School Official Designation:** For purposes of this Agreement and receipt of Education Records, Vendor is a school official with a legitimate educational interest as defined in 34 CFR § 99.31(a)(1)(i)(B).

b) Personnel Information

- i. **Definition: *Personnel Information*** shall mean staff and faculty identification numbers beginning with "850," and, to the extent applicable, confidential information contained in an employee's personnel file as provided in N.C.G.S. §§ 126-22 *et seq.*
- ii. **Vendor Designation:** To the extent N.C.G.S. § 132-6 applies, Vendor acknowledges that it is not a custodian of public records under that statute.

c) Ownership and Use of Education and Personnel Records

- i. **Property of UNCW:** Education Records and Personnel Information shall remain the sole property of UNCW. Vendor expressly acknowledges and agrees that Vendor has no property right or interest whatsoever in any such data.
- ii. **Prohibition on Unauthorized Use or Disclosure of Education Records:** Vendor agrees to hold Education Records and Personnel Information in strict confidence. Vendor shall not use or disclose Education Records and Personnel Information received from or on behalf of UNCW except as permitted or required by the Agreement, as required by law, or as otherwise authorized in writing by UNCW. Vendor agrees not to use Education Records and Personnel Information for any purpose other than the purpose for which the disclosure was made. In the event that Vendor receives a request for Education Records and Personnel Information by subpoena or other legal process or from a court, governmental authority, accrediting agency, or other third party, Vendor shall give prompt written notice to UNCW.

8) PAYMENT CARD INDUSTRY DATA SECURITY STANDARDS (PCI DSS) COMPLIANCE:

In the event Vendor may have access to credit or debit card information and/or may affect the security of a credit or debit card transaction, Vendor is required to maintain PCI compliance. Vendor will provide documentation of PCI compliance per the PCI Security Standards Council (www.pcisecuritystandards.org) for itself and any of its third-party vendors, contractors, and service providers used for services provided to the university. Vendor will provide annually a PCI Security Standards Council Attestation of Compliance (AOC), preferably signed by a registered QSA firm, to the university.