

NC STATE UNIVERSITY

Raleigh, North Carolina Request for Proposals (RFP)

#63-KGS949143 - Event Ticketing Software & Services

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NC STATE UNIVERSITY

REQUEST FOR PROPOSALS (RFP)

RFP # 63-KGS949143

TITLE: Event Ticketing Software & Services

USING DEPARTMENT: Athletics

ISSUE DATE: August 11, 2023

DUE DATE: 2:00 pm, Tuesday, September 12, 2023

ISSUING AGENCY: NC State University
Procurement Services Department
Campus Box 7212
Raleigh, NC 27695

Proposals subject to the conditions made a part hereof will be accepted until **2:00 pm, Tuesday, September 12, 2023** for furnishing services described herein.

Proposals must be submitted electronically at:

<https://ncsu.bonfirehub.com/opportunities/102599>

Upload scanned pages from this RFP document included with your proposal response where indicated on the Bonfire website.

Direct all inquiries (via email) concerning this RFP to: Kristen Shelton, CPPB
NC State University
Procurement Services Department
Email: kgshelto@ncsu.edu

NOTE: Questions concerning the RFP requirements must be submitted in writing via email to kgshelto@ncsu.edu . Subject Line: RFP #63-KGS949143 - Questions , no later than 5:00 P.M. on Thursday, August 24, 2023 . Questions will be answered in the form of an addendum to this RFP. No other contact with university representatives regarding this RFP is allowed during the proposal process. Attempts to obtain information directly from university personnel, or by any other means, may subject your proposal response to rejection. Please use the following template to submit your questions:	
Reference	Vendor Question
RFP Section, Page Number	Vendor question ...?
	Insert rows as needed

1. INTRODUCTION: PURPOSE AND BACKGROUND

NC State University's Athletics Department (hereafter referred to as Athletics or University) seeks proposals from qualified contractors (hereafter referred to as Contractor) to provide a Ticketing, Donor, Marketing, and Customer Relationship Management (CRM) solution(s) for the Athletics Department with cutting-edge technology and customization abilities. The solution should meet the mandatory requirements listed on the following pages (or approved equivalent) in order to support functionality of the Athletics Department. The Contractor shall have an existing module/functionality that meets the requirements and shall demonstrate it or provide a reference that can vouch for meeting the said requirement.

Athletics currently utilizes Pacolian for its athletics event ticket management software solution. Currently, Athletics tickets eight (8) sports across five (5) venues. Athletics reserves the right to increase or decrease the number of ticketed sports at any time during the length of any resulting contract.

TICKETED SPORTS (8):

- Football
- Men's Basketball
- Women's Basketball
- Baseball
- Gymnastics
- Softball
- Volleyball
- Wrestling

On-line Transactions (July 1, 2021-June 30, 2022):

Description	Total On-line Transactions
Single Events	74,803
Season Renewals*	7,862
New Season Items	3,631
Electronic Delivery	56,904
Back Office e-delivery	270,375
Electronic Transfers	235,207
Electronic Return	5,420
\$0.00 Student Tickets	91,558
Total:	745,760

***#of accounts: Football=8,000, Men's Basketball=2,000, Women's Basketball=1,000, Baseball=600**

Estimated # of users at Go Live date = 20

2. CONTRACT PERIOD

The complete solution shall Go Live July 1, 2024. Hosting services shall be provided for a period of three years from "go live" date. In addition, NC State Athletics reserves the right to renew for two, additional, two-year periods, not to exceed June 30, 2031.

Optional renewals will be at the option of NC State Athletics, subject to review of operational requirements, budgets, current pricing, etc. Renewal of hosting services are confirmed only when a university purchase order has been issued to the Contractor.

3. SCOPE OF WORK

3.1 Software Specifications:

The following sections contain the requirements of the ticketing/donor software and associated services.

3.1.1 e-Commerce and Account Management Solution:

Each of the following requirements shall be addressed in the proposal response:

- Support an integrated, real time, branded, large scale e-commerce site tied to sales, ticketing/donor database, student online ticketing/lottery functionality, post-season events, and additional outside events such as used by Athletics today
 - Lottery Functionality: Students request a ticket on-line during an exclusive two day window for football and men's basketball games (game by game). After the request phase closes, tickets are awarded based on loyalty points (accumulated and automatically updated based on class standing, attendance at events, and manual data loads for attendance at Olympic Sports) and digitally delivered to the student.
 - If tickets remain after the initial request phase, the system goes into an on-demand phase and tickets are claimed on a first come first served basis. Guest tickets may also be purchased during the on-demand phase.
- Provide a fully optimized mobile sales channel
- Functionality solution shall provide:
 - Season Ticket Sales
 - Combo items or season ticket times sold from a Pick Your Own Seat map as needed
 - Single Tickets
 - Mini Plans
 - Student Tickets
 - Pick a Package/Flex Plans/Item Package
 - Event parking permits
 - Season Ticket Requests (to be used in a Seat Upgrade process)
 - Season Ticket Renewals (applications/invoices)
 - Secure mobile ticketing, including, but not limited to NFC technology
- Online Gift Certificate sales or integrated Gift Cards
- Misc. Items (i.e. Kids Clubs, Coaches Camps/Clinics, Merchandise sales)
- Management of Promotions/Pre Sales limited use, multiple use or general use
- Post Season Ticket Processing
- Cross-sell/Upsell
 - Required Seat Donation
 - Optional Seat Donation based upon location and/or quantity
 - Suggested Donation
 - Parking permits
 - Other events
- "View from seat" functionality, 3D map functionality and Pick Your Own Seat functionality during the online buying process
- Support customized online cross-sell and up-sell functionality during purchase process
 - Ability to place header images and/or other locations on consumer facing ticketing pages
 - Lightbox (pop up) upsell or similar
 - Fixed upsell images in the shopping cart, confirmation page or similar
- Support an online Account Management system, which is optimized for mobile functionality, to allow patrons to manage their tickets/donations with functionality including:
 - Ticket Transfers via text message
 - Ticket exchanges
 - Secondary Market Buy/Sell feature
 - Ticket Reissue
 - Season Renewals
 - Order History
 - Priority Points
 - Returns

- Donation History
 - Student Priority Points
- Provide system functionality that helps to reseat and/or upgrade season ticket holders' tickets and parking including 3D map functionality
 - An online system that allows season ticket holders to upgrade their season tickets and parking or run a reseating process based upon our priority point system.
- Support online student ticketing including ability to run an integrated lottery based on priority points from attendance at events, class standing, and other factors, or one entry.

3.1.2 Secondary Market Solution to include:

- Option for integrating with an industry leading secondary market provider
- If a secondary market integration is provided it must support the following functionality:
 - Ability to access and use secondary market transaction history to service customers and help in troubleshooting issues
 - Gain access to secondary market pricing and analytics data
 - Gain access to secondary market customer data and the ability to market to those customers
 - The ability to list primary inventory for sale on the secondary market

3.1.3 Development and Fundraising Functionalities to include

- Must either provide an integrated fundraising development system or the ability to integrate via API integration into another fundraising development platform.
 - For integrated fundraising platform please provide detailed information on:
 - The ability to customize the fundraising system to allow for unique programs such as donor specific priority point calculators, quick donate pages for simplified donations and donation upsell features to drive additional donations.
 - Tools for creating development and ticketing solicitations.
 - Tools for creating fundraising campaigns, processing fundraising transactions, ticketing transactions all at the same time – in either the fundraising system or the ticketing system.
 - For 3rd party fundraising development platforms that you are currently able to integrate with via API integration provide the following details:
 - A list of at least three (3) Power-5 clients that utilize this integration.
 - Any and all costs associated with building out and maintaining the API integration.

3.1.4 Access Management to include

- Real time communication between the access system and the ticketing system, such that all bar codes issued, voided or otherwise changed in status are updated instantly on the access control system
- Utilization of access management to support student ticketing including the ability to swipe student ID cards for entry into events
- Ability to update priority points based on attendance, time of entry and other factors.
- Ability for a system to utilize NFC technology for entry into venues using mobile ticketing.

3.1.5 Integrated Customer Relationship Management (CRM) solution to include:

- Customer Relationship Management (CRM) solution or an integration with an industry leading CRM system (i.e. Salesforce/Dynamics)
- Full integration of the CRM system with the ticketing and fundraising systems and the ability to connect to other data sources
- The ability to customize the CRM system including user access, customizable fields and dashboards
- The ability to utilize the CRM solution to manage and maintain sales pipelines
- The ability to offer CRM support services, including, but not limited to best practices, consulting, and system administration

3.1.6 Data Sharing to include:

- Integration with multiple external data repositories. Specifically:
 - The system must be able to access data from the NC State student registrar system

and share data with this source in order to provide accurate student ticketing transactions (files currently transferred via ftp)

- Donor information sharable in both directions.
 - The system must be able to share information in both directions with either an internal donation management system or through an API integration with a 3rd party donation management system.

3.1.7 Integrated Data Warehouse / Analytics /Reporting Solution to include:

- Data warehouse functionality or integrate with a data warehouse provider...i.e. enabling data to be shared across multiple systems including external databases and stored within a central data warehouse
- Standard suite of dashboards and reports as part of the Data Warehouse as well as the ability to personalize and customize reports

3.1.8 Marketing Services to include

- Identifies and offers retargeting ads to consumers who visit the site but fail to purchase products.
- Works with social media resources, such as Facebook, Twitter, Instagram, YouTube, Tik Tok, and any additional future resources to increase revenues.
- Event discovery tools and partnerships specific to the College Athletics market.
 - Please include any partnerships you offer to help drive event awareness/event discovery.

3.1.9 E-mail Solutions and Marketing Automation to include:

- Industry-leading integration with a marketing automation provider that includes the ability to set up messaging and deploy based on actions, inactions, time periods, specific interest, and any other parameters.
- Additional functionality, including but not limited to microsites/PURLS, web tracking, shopping cart abandonment, scan based messaging, and survey forms
- Provide the ability to Integrate between the marketing automation solution and the provided CRM solution (see section 3.1.5)

3.1.10 System Control and Customization that provides NC State Athletics control over:

- Ownership of the customer data
- Advertising and sponsorship opportunities
- All consumer fees
- Customization/personalization of the solution including, but not limited to custom HTML, custom user settings, etc.
- Customize multiple mobile ticket designs

3.1.11 Dedicated Customer Support to include:

- 24/7/365 customer support.
 - Details on the proposed customer support structure, including number of support staff, hours of operation, typical response times, and process for prioritizing problems/issues

3.1.12 APIs / Partnerships

- Must be able to provide API functionality for 3rd party partnerships.
 - Include a list of any current partnerships utilizing APIs in the College Athletics market

3.1.13 System Security / PCI Compliance

- The Contractor must obtain and maintain current and ongoing PCI Level 1 Service Provider status or equivalent (obtain PCI compliance validation by a QSA). Proposers cannot base their compliance of this requirement on the PCI Service Provider status of the integrated credit card payment processor, which for the NC State Athletics is currently CyberSource. The Contractor must have its own separate Level 1 Service Provider or equivalent certification.
 - The Contractor shall:
 - Guarantee a continuous state of compliance with PCI standards and requirements, and

- Define PCI requirement(s) responsibilities of each party to the contract.
- Provide a security level overview and infrastructure of the hosting facility
- Outline your Secure Socket Layer (SSL) Encryption security for the transmission of data

3.1.14 Fraud Management and Payment Processing to include:

- System mechanisms to detect and protect client/personal confidential information, commercial misuse, and hacking
- Anti-fraud, anti-thief, robot attacks and anti-malice protection
 - system security intrusion incident handling procedures, including methodology used to determine incident severity and timeline for escalation
- Flexible payment processing options (i.e. Athletics collects all of the funds? or does the system provider?)
- Must offer an integration that supports account protection, fraud and abuse protection, payment optimization, and chargeback management (i.e. Accertify)

3.1.15 Implementation and Training

- The Contractor shall provide a comprehensive implementation plan that demonstrates a full understanding of the scope of work and how it will address and execute all objectives in this RFP. Contractor must provide a detailed timeline that includes specific tasks or activities required for implementing the scope of work by the “go live” date of July 1, 2024. The proposal must clearly demonstrate that the Contractor has the ability to begin implementing all services, tasks, training, and other related activities beginning on an agreed upon ramp up period and the estimated go-live date.
- The proposal shall outline the responsibilities of both parties in order to transition to the awarded solution including, but not limited to, data migration, system build configuration, system integration, system testing, staff training, which sports’ seasons and sales that would take place before and after the go-live date and all other related task and activities to have a User Acceptance Testing Solution (UAT) ready for review and approval by Athletics.
- In order to evaluate the Contractor’s ability to implement the scope of work, Contractor shall include the following items and describe for how they will be completed by the go-live date:
 - Implementation Proposal and Description
 - A project proposal for the development, integration, installation, and testing of the solution. The proposal response to the Scope of Work, at a minimum, shall include:
 - A clear understanding of the specific tasks or activities required to accomplish project objectives (implementation).
 - Definition of each phase or component and provide a roadmap as to how each phase will be undertaken.
 - A timeline for the completion of each phase or component. The timeline shall be specific and detailed enough to demonstrate the Contractor’s ability to complete objectives on time. Include days, hours, weeks, etc. for each task or phase.
 - Any on-site or off-site resources proposed to assist with the implementation. Include names, titles, years of experience and resumes for each individual.
 - Methods that the Contractor will employ to ensure quality control as well as budget and schedule controls for the project.
 - Demonstrate the methods that the Contractor will use to design the budgeted cost of the project.
 - Identifying any special issues or problems that are likely to be encountered in a project of this type. Describe how issues/problems are handled and if any additional costs that might be expected.
- **Project Planning and Management**
 - A comprehensive project plan – schedule of tasks, time, dates, events and milestones – associated with the implementation of the solution. Please include check points, planning details, meetings, conference calls, site visits, project management and all procedures to ensure a seamless and complete implementation. Any additional cost associated (if any) with implementation will occur at the proposer’s expense.

- **Hardware & Software**
 - The complete hardware and software infrastructure necessary to support the proposed solution and delivery by go-live date.
 - List of necessary hardware to implement solution and identify any equipment that is included in the proposal pricing
 - Hardware installation support
 - Software installation support
 - Requirement gathering and analysis
 - Hardware and software configuration
 - Development
 - Current Hardware Owned by NCSU:
 - 100 handheld ticket scanners (Janam) with backup batteries for use at all ticketed facilities as well as the access points at each facility
 - 6 thermal ticket printers (i.e. Boca printers)
 - Athletics anticipates that during the initial term of the resulting agreement from this RFP, all of the aforementioned hardware will need to be fully replaced to new condition. If the Contractor will provide hardware investment, please disclose the amount and nature of such investment relative to this information. Additionally, the Contractor should disclose any limitations on utilizing the current hardware during a transition to a new solution/system. Athletics wants a clear commitment and/or understanding of how current and/or future hardware needs will be handled between the parties.
- **Data Migration**
 - Includes the extracting, analysis, cleanup, importing and testing of existing and historical data from current databases and storage mechanisms into the overall solution.
- **Training and Live Support**
 - The proposal response shall include the process proposed to provide staff training and training documentation for the overall solution so that key Athletics stakeholders are trained beginning on the contract award date through the go-live date. The proposal shall include, at a minimum:
 - On-site system administrator training
 - On-site training of system users (20)
 - Physical and/or digital of training materials
 - Online training
 - On-site training and support for up to twenty (20) users
 - Recommendation for training logistics including classroom size and required network, hardware and software facilities, program, and timetable.
 - Contractor shall provide an experienced account manager to be the single point of contact for Athletics throughout the life of any resulting contract. Responsibilities include:
 - Assist with problem resolution
 - Scheduled meetings
 - Best practice discussions
 - Updating on newest technologies
 - Provide or assist with the creation of a FAQ tools and web-resources (tutorials/how to guides) for Athletics' account holders during transition/implementation
 - The proposal shall include information on the number of other clients that the assigned project manager would be managing simultaneous to this project?
- **Maintenance and Implementation Control**
 - Must outline the process by which the Contractor will ensure all routine maintenance issues will be handled to ensure no interruption of the system at the time of go-live. Demonstrate how the Contractor will ensure that clients, donors, buyers will not see an interruption in service from how they use the system currently.

- **Software and Hardware Upgrades**
 - Contractor must outline the process for upgrading software and hardware including frequency and costs.
- **Issue Resolution and Contingency Planning**
 - Contractor must outline how implementation issues (that impact the project plan) will be handled: to include back-up equipment, services personnel, problem solving resolution protocols, escalation protocols, and response and resolution times (if different than baseline support services). Include names, titles and resumes to individuals that will be responsible for problem resolutions.

3.1.16 Proof Of Concept Session:

- The intent of the POC demonstration is to demonstrate the software's capabilities in relation to the needs of the University. Respondents must include a proposed agenda for the POC demonstration with their submissions. This agenda may be used as part of the criteria to determine which respondents, if any, are selected to complete the POC demonstration. The selected top 2-3 respondents may be asked to present a Proof of Concept (POC) demonstration.

3.2 Governance and Regulatory Compliance Requirements:

Governance and Regulatory Compliance requirements are Mandatory. If a supplier cannot support these requirements, the proposed solution cannot be implemented at the University. These requirements provide the basis for the University to meet its expected organizational compliance baselines.

The proposal response shall provide information on how the proposed software meets these stated Requirements.

ID #	Requirement
R-1	<p>Suppliers must support the University's commitment to promote and integrate universal IT accessibility in the delivery of its resources and to develop innovative solutions to accessibility challenges for students, faculty and staff.</p> <p>Suppliers must:</p> <p>a. Assure all features, components and sub-systems of the software or IT System contained in this RFP fully comply with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), (http://www.section508.gov);</p> <p>OR</p> <p>Detail why any feature, component or sub-system contained in this RFP does not fully comply with Section 508, and the way in which the proposed product is out of compliance;</p> <p>b. If the Voluntary Product Accessibility Templates (VPAT) are used, they must include compliance checklists for:</p> <ol style="list-style-type: none"> 1. Technical Standards 2. Function and Performance Criteria 3. Documentation and Support; <p>c. The product offered in response to this RFP is subject to an accessibility evaluation by the University.</p>
R-2	<p>The platform must support customization of any Notification being transmitted via insecure communications channels (e.g., email) from the platform in order to ensure the University's compliance with the Electronic Communications Privacy Act.</p>
R-3	<p>The supplier must maintain and provide their certificate of insurance outlining Cyber Liability coverage of no less than \$1,000,000 per event, \$2,000,000 aggregate.</p>

ID #	Requirement
R-4	The platform shall support TLS 1.2 or higher network encryption with strong ciphers from the browser through the routing layer to the target app environment.
R-5	The supplier must provide access to the SSAE 16 (SOC2) report for the platform to the University's Security and Compliance team for review, when requested.
R-6	The supplier must provide data backup and recovery mechanisms. Please provide documentation of your data retention policy.
R-7	The supplier must provide an overall security structure, including all relevant certificates or other credentials, to protect the sensitive data that is being stored, processed, or transmitted. Minimum of 256-bit encryption is required. Please provide documentation of your overall security structure.
R-8	The supplier must provide Disaster Recovery (DR) capabilities which support the resumption of operations from the same or physically different location. What is the timeframe for resumption of solution availability after a disaster? Does your solution support multiple DR models? Please provide documentation of your DR plan.

4. SUPPLIER QUALIFICATION/EXPERIENCE REQUIREMENTS

Contractors must introduce us to your organization and provide a list of the total number of current "Power-5" clients as well as the average length of partnership with "Power-5" clients to demonstrate a minimum of five (5) years of experience similar in nature and scope to the services required.

In addition, Contractors must supply at least three (3) references demonstrating a minimum of five (5) years of experience similar in nature and scope to the services required. References provided shall demonstrate that the Contractor has the required solution already developed and functional has performed past work in a satisfactory manner. Contractor is required to submit three (3) references from other NCAA Division I Universities within the "Power-5" conferences (ACC, SEC, PAC12, BIG10, BIG12) directly using the same, or substantially the same, system and solution. It is the vendor's responsibility to provide valid reference information and the University reserves the right to use reference check responses in its evaluation of proposals.

References not responding to the University's request for information within forty-eight (48) hours will be scored as if not provided. The University will not accept references that have to be coordinated by the proposing supplier. We must be able to contact references directly. Preference may be given to vendors demonstrating these services having been provided for higher education customers.

5. SUPPLIER PROPOSAL RESPONSE

The following information is required in response to this RFP. Failure to adequately provide specific information that can be effectively evaluated by NC State may disqualify your proposal from consideration. All files must be separated and uploaded in the appropriate section of Bonfire.

At minimum, the proposal response shall include the following:

1. A **detailed technical proposal** addressing **Sections 3 and 4**; please address each item by number (i.e. Section 3.1, 3.1.1, 3.1.2, etc.). Describe in your proposal response the approach, processes and steps you will follow to perform and complete the tasks in the Scope of Work. Include any additional tasks that you recommend for achieving successful outcomes. Note any requirements you have, and any assumptions being made which impact your proposed approach or the time required to complete the work.
2. Completed Cover Page with Firm Name and Tax ID# (Completed NCSU RFP)
3. Completed Reference Page (Completed NCSU RFP)

4. Completed and Signed Execution of Proposal Page (Completed NCSU RFP)
5. Section 7 Cost Proposal Illustrations for 7.1-7.5
6. Section 7 Cost Proposal Spreadsheets, 7.1, 7.2, 7.3 and 7.4.
7. Certificate of Insurance as outlined in 3.2, ID# R-3.
8. Any applicable RFP addenda subsequent to this RFP that is required for return by statement on the addendum.

Incomplete proposals will not be considered for award.

NOTE: Top ranked Proposer(s) may be requested to appear for a virtual Proof of Concept Session (POC) and/or interview before the evaluation committee to respond to questions from the committee concerning their proposal. Proposers are prohibited from recording these interviews electronically. The committee reserves the right to request additional information from any or all Proposers.

6. CRITERIA FOR EVALUATION AND AWARD

All proposals will be evaluated according to the following:

SCREENING CRITERIA: Complete proposal response (as outlined in Section 5). All items requested are included in the response package and submitted as instructed. All files are transmitted to the Bonfire site without password or other lockdown requirements and proof of insurance demonstrates existing coverage meeting required minimum limits. Incomplete responses will not be considered further.

Proposals meeting the screening criteria will then be further evaluated by the following weighted criteria in order to select the Contractor providing the best overall value to the department requesting these services:

40% Technical

The proposal provides enough information to determine that the proposing contractor has sufficient resources to provide the specified service. Items to be evaluated:

- The extent the solution (meets or exceeds) the specifications and service requirements as described in this RFP.
- Solution fit and qualities: robust, customizable, adaptable, ease of use, etc.
- Technical/software fit and infrastructure requirements.
- Ticket system solution that meets the current demands, and has the ability to expand to future needs.

5% Implementation and Support Plan/Schedule

- Method and timeline for full implementation, including training.
- Plan for ongoing customer service and support needs.
- Anticipated resource needs from Athletics both during and post implementation.
- Demonstrated ability to assist in the increase of sales and the ability to incorporate CRM tools into ticket sales efforts.

35% Qualifications/Experience/References

Qualifications of the Contractor in general, similar experience, specific experience is similar in nature and scope, and qualifications of personnel proposed to support any resulting contract. Reference responses demonstrate a record of better than satisfactory history of providing similar work without issues. Items to be evaluated:

- Years in business including mergers/acquisitions (five (5) years minimum).
- Size of organization with details on resources available for the project.
- Three (3) D-1 NCAA "Power-5" references that demonstrate knowledge and experience with providing similar solutions to institutions similar in size and scope
- Qualifications including company literature and attachments (contractor newsletters,

published articles concerning company/staff/equipment, sample reports, press releases, etc.).
Please limit to no more than 5 pages.

20% Cost Proposal

Cost scores are calculated by dividing each score into the lowest total cost proposal/proposed solution total cost x 20. Lowest cost proposal receives all of the 20 available points. The remaining proposals scores are calculated by dividing their cost into the low cost and multiplying that result by 0.20.

EXAMPLE

Supplier A's proposed total cost = 150,000

Supplier B's proposed total cost = \$200,000

Supplier C's proposed total cost = **\$100,000 (lowest total cost proposed)**

Cost scores would be calculated as follows:

Supplier C: $(100,000/100,000) \times 20 = 20$ points

Supplier B: $(100,000/200,000) \times 20 = 10$ points

Supplier A: $(100,000/150,000) \times 20 = 13.33$ points

7. COST PROPOSAL

The cost to provide specific items listed in Section #3. Scope of Work and other general requirements of this RFP must be outlined. This includes all labor, transportation, tools, equipment, expenses (travel and otherwise), and any other costs incurred by the contractor (this includes all hidden or additional cost fees associated with any functionality or hardware).

Athletics is requesting several pricing options. Each option will be scored independently and Athletics reserves the right to select the option best meeting the needs of NC State Athletics.

The proposal response shall contain current pricing that will be fixed for an initial five (5) year period. If certain components of pricing are subject to change, the proposer must specifically disclose each component and explain the facts and circumstances for any such potential changes (rate increases or rate decreases). Pricing shall include any and all components of the solution, including but not limited to, all fees included in the following pricing proposals (7.1 - 7.4). Athletics is seeking to make an informed decision, and therefore, is requesting detailed and all-inclusive ("all-in") pricing for comparison purposes.

Proposers are required to download and complete the following Cost proposal spreadsheets, 7.1, 7.2, 7.3 and 7.4 from Bonfire. These are required to be returned. Cost proposal illustrations should be uploaded separately under the requested information section, Section 7 Cost Proposal Illustrations.

7.1 "All-in" Package pricing to include:

Fixed fee structure (i.e. no variable fee component)

- Annual fees such as the following types:
 - i. Annual software fee
 - ii. Annual hosting fee
 - iii. Annual access subscription
 - iv. Annual CRM license subscription
 - v. Any other annual subscriptions (3rd party vendors/partners)

7.2 Variable fee based Package pricing (i.e. no fixed annual payments) to include:

- Variable fee structure – Outline how the following fees, will be applied to each ticket or transaction type:
 - i. Single event tickets - including any range parameters such as:
 - a. Max fee per ticket
 - b. Min fee per ticket
 - c. Percentage of ticket sale price

- ii. New Season Tickets
- iii. Season Renewals
- iv. Electronic transfers
- v. Electronic delivery
- vi. Electronic checking (eCheck) transactions
- vii. Back Office Electronic delivery
- viii. Item Packages (partial plans/mini-packs)
- ix. \$0.00 Student Tickets
- x. \$0.00 Ticket Requests (i.e. post-season events)
- xi. Other ticket or transaction types

Transaction Type	# of Transactions	Cost per Transaction	Total cost per Transaction
Single Events	75,000		
Season Renewals	9,000		
New Season Items	4,000		
Electronic Delivery	60,000		
Back Office e-delivery	275,000		
Electronic Transfers	300,000		
\$0.00 Student Tickets	100,000		
Total:	823,000		

*Use the - table outlined in Section I, On-line Transactions (July 1, 2021-June 30, 2022), as a reference and guide for preparing variable fee pricing models and/or components.

7.3 Hybrid Fee Option:

1. Provide a hybrid fee model which establishes an annual fixed fee portion (Section 7.3.A) along with a variable fee portion (Section 7.3.B).
2. Include any other Pricing models that may be of interest and applicable to Athletics that Contractor has developed at other similarly situated clients.

7.4 Percent of Revenue Option:

1. If your company offers a revenue fee structure please provide those details:
 - a. What is the percentage? Is it fixed or variable?
 - b. Are these percentages only on certain sales methods or all tickets sold?
 - c. Are there caps or minimums that could be hit?
 - d. Any additional fees/costs or is this an all in model?
 - i. Please list out all additional fees that may be incurred within the span of this contract.

7.5 Additional Information:

1. Do any of your models offer account credits, investments or spends on software, hardware, advertising, or other? If available, the exact offer must be illustrated and provided.

REFERENCES**RFP # 63-KGS949143**

COMPANY NAME _____

REFERENCES

OFFERORS MUST PROVIDE THREE (3) REFERENCES FOR CLIENTS WHO HAVE PERFORMED
SIMILAR WORK IN THE PAST FIVE (5) YEARS.

#1	Company Name:	
	Company Full Address:	
	Contact Name:	
	Email Address:	
	Telephone Number:	

#2	Company Name:	
	Company Full Address:	
	Contact Name:	
	Email Address:	
	Telephone Number:	

#3	Company Name:	
	Company Full Address:	
	Contact Name:	
	Email Address:	
	Telephone Number:	

THIS PAGE MUST BE COMPLETED AND SUBMITTED AS A PART OF YOUR PROPOSAL.

EXECUTION OF PROPOSAL

DATE: _____

RFP #63-KGS949143

The potential Contractor certifies the following by placing an "X" in all blank spaces:

- ___ That this proposal was signed by an authorized representative of the firm.
- ___ That the potential Contractor has determined the cost and availability of all materials and supplies associated with performing the services outlined herein.
- ___ That all labor costs associated with this project have been determined, including all direct and indirect costs.
- NA** That the potential Contractor has attended the pre proposal conference and is aware of the prevailing conditions associated with performing these services.
- ___ That the potential Contractor agrees to the conditions as set forth in this **Request for Proposals** with no exceptions.
- ___ That no employee or agent has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32; and
- ___ That it, and each of its sub-contractors under this contract, 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, as required by G.S. §143-48.5.
- ___ That this proposal is submitted competitively and without collusion. That none of our 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 we are not an ineligible supplier as set forth in G.S. 143-59.1. False certification is a Class I Felony.

Therefore, in compliance with the foregoing **Request for Proposal**, and subject to all terms and conditions thereof, the undersigned offers and agrees, if this proposal is accepted within ninety (90) days from the date of the opening, to furnish the services for the prices quoted during any resulting contract period.

CONTRACTOR _____ ADDRESS _____

PHONE _____

CITY AND STATE _____ ZIP CODE _____ Cell _____

BY _____ TITLE _____
(Signature)

(Printed Name) E-MAIL _____

THIS PAGE MUST BE COMPLETED AND INCLUDED IN YOUR PROPOSAL RESPONSE

GENERAL INFORMATION ON SUBMITTING PROPOSALS

1. **EXCEPTIONS:** All proposals are subject to the terms and conditions outlined herein. All responses shall be controlled by such terms and conditions and the submission of other terms and conditions, price lists, catalogs, and/or other documents as part of an offeror's response will be waived and have no effect either on this Request for Proposals or on any contract that may be awarded resulting from this solicitation. Offeror specifically agrees to the conditions set forth in the above paragraph by signature to the proposal.
2. **PROPOSAL SUBMITTAL:** All proposals must be received by the issuing agency not later than the date and time listed on the cover sheet of this proposal. Proposals shall be uploaded to: <https://ncsu.bonfirehub.com/opportunities/102599>.

Request for Proposals (RFP) directions are advertised at The State of North Carolina Interactive Purchasing System (IPS) www.ips.state.nc.us. An addendum to this RFP may be issued. If required, any subsequent addenda must be signed and submitted with the proposal upload. It is the **vendor's responsibility** to verify that all applicable addenda are submitted as required.
3. **ORAL PRESENTATIONS:** During the evaluation and at their option, the evaluators may request oral presentations from any or all offerors for the purpose of clarification or to amplify the materials presented in any part of the proposal. However, offerors are cautioned that the evaluators are not required to request clarification; therefore, all proposals should be complete and reflect the most favorable terms available from the offeror.
4. **PROPOSAL EVALUATION:** Proposals will be evaluated as outlined herein. The award of a contract to one offeror does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed to provide the best value to the University, and/or the State.
5. **COMMENCEMENT OF SERVICES:** After proposals are evaluated, and offer is made, accepted and approved by appropriate authorities, the University will issue a purchase order, a contract or a letter of agreement as an indicator to commence services.
6. **REQUEST FOR OFFERS:** Offerors are cautioned that this is a request for offers, not a request to contract and the University/State reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the University or State.
7. **ORAL EXPLANATIONS:** The University shall not be bound by oral explanations or instructions given at any time during the competitive process or after award.
8. **REFERENCE TO OTHER DATA:** Only information which is received in response to this RFP will be evaluated; reference to information previously submitted shall not be evaluated.
9. **ELABORATE PROPOSALS:** Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.

In an effort to support the sustainability efforts of the State of North Carolina we are receiving proposals via electronic submission. Please visit <https://ncsu.bonfirehub.com/opportunities/102599> for specific submission instructions.
10. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by offerors in preparing or submitting offers are the offerors' sole responsibility; the University will not reimburse any offeror for any costs incurred prior to award.
11. **TIME FOR ACCEPTANCE:** Each proposal shall state that it is a firm offer which may be accepted within a period of ninety (90) days from the proposal opening. Although the contract is

expected to be awarded prior to that time, the 90-day period is requested to allow for unforeseen delays.

12. **TITLES:** Titles and headings in this RFP and any subsequent contract are for convenience only and shall have no binding force or effect.
13. **CONFIDENTIALITY OF PROPOSALS:** In submitting its proposal the offeror agrees not to discuss or otherwise reveal the contents of the proposal to any source outside of the using or issuing agency, government or private, until after the award of the contract. Offerors not in compliance with this provision may be disqualified, at the option of the State, from contract award. Only discussions authorized by the University are exempt from this provision.
14. **RIGHT TO SUBMITTED MATERIAL:** All responses, inquiries, or correspondence relating to or in reference to the RFP, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the offerors shall become the property of the State when received.
15. **OFFEROR'S REPRESENTATIVE:** Each offeror 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.
16. **PROPRIETARY INFORMATION:** To the extent permitted by N.C.G.S. §132-1.3 trade secrets which the Contractor does not wish disclosed other than to personnel involved in the evaluation or contract administration will be kept confidential identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL". Any section of the proposal which is to remain confidential shall also be so marked in boldface on the title page of that section. Cost information is not confidential. In spite of what is labeled as confidential, the determination as to whether or not it is shall be determined by North Carolina law.
17. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to N.C.G.S. §143-48 and Executive Order #150, the University 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.
18. **PROTEST PROCEDURES:** A party wanting to protest a contract award pursuant to this solicitation must submit a written request to the Director of Purchasing, North Carolina State University, Purchasing Department, Campus Box 7212, Raleigh, NC 27695-7212. This request must be received in the University Purchasing Department within thirty (30) consecutive calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. NOTE: Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. Offerors may call the purchaser listed on the first page of this document to obtain a verbal status of contract award. All protests will be handled pursuant to the North Carolina Administrative Code, Title 1, Department of Administration, Chapter 5, Purchase and Contract, Section 5B.1519.
19. **CONTRACTOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Contractor Link NC allows Contractors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available on the web site: <http://www.state.nc.us/pandc/>.
20. **RECIPROCAL PREFERENCE:** N.C.G.S. §143-59 establishes a reciprocal preference law to discourage other states from applying in-state preferences against North Carolina's resident offerors. The "Principal Place of Business" is defined as the principal place from which the trade or business of the offeror is directed or managed.
21. **ENTERPRISE-LEVEL IT SYSTEMS OR TECHNOLOGIES:** The University is committed to promote and integrate universal IT accessibility in the delivery of its resources and to develop innovative solutions to accessibility challenges for students, faculty and staff. Contractors shall:

- a. Assure all features, components and subsystems of the software or IT System contained on this RFP **fully comply** with Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C.794d), (<http://www.section508.gov>);

OR

Detail why any feature, component or sub-system contained in this RFQ does not **fully comply** with Section 508, and the way in which the proposed product is out of compliance;

- b. If the Voluntary Product Accessibility Templates (VPAT) (<http://www.access-star.org/ITI-VPAT-v1.2.html>) are used, they must include compliance checklists for:
 - 1. Technical Standards;
 - 2. Function and Performance Criteria; and.
 - 3. Documentation and Support
- c. The product offered in response to this RFP is subject to an accessibility evaluation by the University.
- d.

**Department of Information
Technology Terms and Conditions**

1) DEFINITIONS:

- a) "Data" includes means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State as included in Paragraph 7) c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- c) "Services" shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
- d) "State" shall mean the State of North Carolina, and North Carolina State University ("Purchasing State Agency").
- e) "Support" includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2) ACCESS AND USE OF SAAS SERVICES:

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

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

- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third-party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.
- g) Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

3) WARRANTY OF NON-INFRINGEMENT; REMEDIES.

- a) Vendor warrants to the best of its knowledge that:
 - i) The Services do not infringe any intellectual property rights of any third party; and
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Should any Services 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 Services, or replace or modify the same to become noninfringing. 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 Services, and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute Services. If, in the sole opinion of the State, the cessation of use by the State of any such Services 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.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services 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 Services, or from the continued use of the good(s) or Services after receiving notice they infringe on a trade secret of a third party.

4) ACCESS AVAILABILITY; REMEDIES:

- a) The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services.
- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State. If the Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to receive automatic credits as indicated immediately below, or the State may use other contractual remedies such as recovery of damages, as set forth herein in writing, e.g., in Specifications, Special Terms or in an SLA, and as such other contractual damages are limited by N.C.G.S. §143B-1350(h1) and the Limitation of Liability paragraph below. If not otherwise provided, the automatic remedies for nonavailability of the Subscription Services during a month are:
 - 1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
 - 2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
 - 3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

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

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

5) EXCLUSIONS:

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

6) PERFORMANCE REVIEW AND ACCOUNTABILITY. N.C.G.S. § 143B-1340(f) and 09 NCAC

06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of 10% of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

7) LIMITATION OF LIABILITY: Limitation of Vendor's Contract Damages Liability:

- a) Where Services are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Services and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Services.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

8) Vendor's Liability for Injury to Persons or Damage to Property:

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Services either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or tangible personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of this Contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

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

10) TRANSITION PERIOD:

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
- d) Vendor agrees to compensate the State for damages or losses the State incurs as a result of

Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.

- e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data and specifying when it was destroyed and by what methods under NIST SP800-88 or other previously agreed upon destruction method.
 - f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.
- 11) TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.
- 12) TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses specifically agreed to in writing and arising under the performance of this Agreement, reimbursement will be at the out-of-state rates set forth in G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.
- 13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with the Vendor. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1207, or other provision of law.
- 14) AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the State for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to terminate any Services supplied to the State under this Agreement, and relieve the State of any further obligation thereof. The State shall remit payment for Services accepted on or prior to the date of the aforesaid notice in conformance with the payment terms.
- 15) PAYMENT TERMS:**
- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein, but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
 - b) Upon Vendor's written request of not less than 30 days and approval by the State, the State

may:

- i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,
 - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon Vendor's receipt of a disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

16) ACCEPTANCE CRITERIA:

- a) Initial acceptance testing is required for all Vendor supplied Services before going live, unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of Services may be controlled by additional written terms as agreed by the parties.
- b) After initial acceptance of Services, the State shall have the obligation to notify Vendor, in writing and within a reasonable time following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld, but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice have been successfully corrected.

- 17) CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information 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, 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.*** The State 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 the State to disclose information marked "confidential," the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense,

to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

18) SECURITY OF STATE DATA:

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by 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 or provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to, and duplication and dissemination of, all such information, Data, instruments, studies, reports, records and other materials. Vendor shall safeguard and protect Sensitive and Confidential Information of the University in accordance with all applicable laws and regulations and consistent with ISO/IEC 27000 series information security best practices. "Sensitive and Confidential Information" means any of, but not limited to, the following: "Personal Information" under the North Carolina Identity Theft Protection Act of 2005, confidential "personnel information" under the North Carolina Human Resources Act, "Protected Health Information" under the Health Insurance Portability and Accountability Act (HIPAA), student "education records" under Family Educational Rights and Privacy Act (FERPA), "customer record information" under Gramm Leach Bliley Act (GLBA), "cardholder data" as defined by the Payment Card Industry Data Security Standard (PCI-DSS), and any information protected from disclosure under the North Carolina Public Records Act. Sensitive and Confidential Information must be restricted by Vendor to those with a legitimate business need for access to such information. For purposes of illustration, Sensitive and Confidential Information may appear in research data, public safety information, financial donor information, information concerning select agents, system access passwords, information security records, and information file encryption keys.
- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) If the Services involve the hosting or accessing of student education records by Vendor, Vendor acknowledges and agrees that (i) the University has outsourced to Vendor the performance of institutional services or functions for which the University would otherwise use its own employees, (ii) Vendor is considered to be a "school official" with "legitimate educational interests" in "personally identifiable information" from "education records" of University students, as those terms have been defined under FERPA (34 CFR 99), (iii) Vendor is under the direct control of the University with respect to Vendor's use and maintenance of data in the education records, and (iv) Vendor will abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Vendor will use such data only

for the purpose of fulfilling its duties under this Agreement, and will not monitor or share such data with or disclose it to any third party except as required by law, or authorized in writing by the University.

- e) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- f) The Vendor shall certify to the State:
 - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
 - ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid 3rd party security certification not to exceed 1 year and is consistent with the data classification level and a security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.
 - iii) That the Services will comply with the following:
 - (1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:
 - (a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
 - (b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;
 - (2) Privacy provisions of the Federal Privacy Act of 1974;
 - (3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75- 65 and -66);
 - (4) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and
 - (5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA);
 - (6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.
- g) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site

- or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- h) 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 the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
 - i) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
 - j) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
 - k) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
 - l) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
 - m) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
 - n) In the event of disaster or catastrophic failure that results in significant State Data loss or

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

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

Vendor shall investigate of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, 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 the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- p) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

19) ACCESS TO PERSONS AND RECORDS: Pursuant to N.C. General Statute 147-64.7, the State, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any State, if in the State's opinion, such requirement is imposed by federal or state law or regulation. The Vendor shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days' advance written notice and shall not unreasonably interfere with the Service Provider's business.

20) ASSIGNMENT: Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days of any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

21) NOTICES: Any notices required under this Agreement should be delivered to the Agreement Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.

22) TITLES AND HEADINGS: Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

23) AMENDMENT: This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.

24) TAXES: The State of North Carolina is exempt from Federal excise taxes and no payment will be

made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.

- 25) GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- 26) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the material requirements and specifications herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide Services as provided herein.
 - b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such Vendor failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure. Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- 27) FORCE MAJEURE:** Except as provided for herein, 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.
- 28) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and the provision of Services hereunder, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 29) TERMINATION:** Any notice or termination made under this Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. The parties may mutually terminate this Agreement by written agreement at any time.
- a) The State may terminate this Agreement, in whole or in part, pursuant to the Paragraph entitled "Default," above, or pursuant to Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following
 - i) Termination for Cause: In the event any goods, Services, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Agreement, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 7), entitled "Limitation of Liability." The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement. Vendor shall not be relieved of liability to the State for damages sustained

by the State arising from Vendor's breach of this Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

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

30) DISPUTE RESOLUTION: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Agreement Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

31) SEVERABILITY: In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

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