

STATE OF NORTH CAROLINA	REQUEST FOR PROPOSALS LITE 24-RQ244000-NM
DEPARTMENT OF PUBLIC INSTRUCTION (DPI) Division of Digital Learning and Technology Services	Offers will be publicly opened: February 5, 2026 at 10:00 AM ET
	Issue Date: December 19, 2025
Refer <u>ALL</u> inquiries regarding this RFP Lite in the Sourcing Tool to: Nicole Mathis procurement@dpi.nc.gov	Commodity Number: 811121 Internet Services
	Description: E-Rate Category One Internet Service Access
	Using Agency: Department of Public Instruction
See page 5 for Offer Submittal instructions.	Requisition No.: RQ244000

OFFER AND ACCEPTANCE

The State seeks offers for the Software, Services and/or goods described in this solicitation. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this Request for Proposal-RFP Lite, (3) specifications, (4) Department of Information Technology Terms and Conditions of this RFP Lite, and (5) the agreed portions of the awarded Vendor's offer. **No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.**

EXECUTION

In compliance with this RFP Lite and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

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

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

Offer valid for thirty (180), days from date of offer opening unless otherwise stated here: ____ days

ACCEPTANCE OF OFFER

If any or all parts of this RFP Lite are accepted, an authorized representative of North Carolina Department of Public Instruction shall affix their signature hereto. A copy of this acceptance will be forwarded to the successful Vendor(s).

<u>FOR DEPARTMENT OF PUBLIC INSTRUCTION USE ONLY</u>
Offer accepted and contract awarded (Effective Date) _____.
By: _____ Maurice "Mo" Green, Superintendent of Public Instruction (Authorized representative of NC Department of Public Instruction)
By: _____ Alexis Schauss, Chief Financial Officer of Public Instruction (Authorized representative of NC Department of Public Instruction)

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1.0 INTENT, USE, DURATION AND SCOPE

The purpose of this RFP Lite is to obtain pricing for and procure statewide E-Rate Category 1 eligible Internet Service for North Carolina Public School Units (PSU)s. Products and Services will be provided in accordance with the terms and conditions of this RFP Lite.

The services requested in this solicitation shall be E-rate category 1 eligible services. Vendors are encouraged to review both the approved FY 2025 Eligible Services List (ESL) (<https://www.fcc.gov/document/wcb-releases-amended-eligible-services-list-funding-year-2025>) and the draft FY 2026 Eligible Services List (<https://www.fcc.gov/document/wcb-seeks-comment-e-rate-eligible-services-list-fy-2026>) to confirm the eligibility of their proposed solution, understanding that the final ESL may be amended prior to award.

The participation of Public School Units (PSU) and their site-level needs will change from year to year. NCDPI will issue an updated PSU recipient list and associated bandwidth requirements annually. Each year, Vendors will be required to provide refreshed pricing for every participating location. Pricing for any existing location may decrease but shall not increase during the term of the contract. Vendors may propose lower updated pricing as part of this annual refresh.

In addition to the annual update, moves, adds, deletes, and changes will occur throughout the contract period. Some PSUs may elect to join the network mid-year, while others may exit. PSUs choosing to leave the network must be permitted to do so without any additional fee. For PSUs joining mid-year, new locations may be added and Vendors must provide a clear methodology for determining pricing for these new circuits. Vendors should describe the price guarantee they will provide for new additions. For example, a Vendor may propose a flat recurring rate for any new circuit and an incremental construction charge, consistent with applicable E-Rate rules. All mid-year changes must comply with FCC and USAC requirements.

Pricing for all adjustments will follow the awarded speed tiers and rates, and any relocation-related construction costs must be handled in accordance with the Vendor's proposed pricing and all applicable E-Rate rules.

The State considers internet connectivity to be critical infrastructure for North Carolina public schools. For this reason, the State prefers to make a single award; however, it recognizes that a single award may not be feasible.

1.1 RFP LITE INTENDED SCHEDULE OF PROCUREMENT

The table below shows the intended schedule for this RFP Lite Qualification. NCDPI will make every effort to adhere to this schedule.

Action	Responsibility	Date and Time
Issue RFP Lite	NCDPI	December 19, 2025
Deadline to Submit Written Questions	Vendors	January 5, 2026 at 10:00 AM ET
Provide Responses to Questions	NCDPI	January 8, 2026
Submit Bids (Bid Deadline)	Vendors	February 5, 2026 by 10:00 AM ET
Public Bid Opening	NCDPI	February 5, 2026 at 10:00 AM ET See MS Teams Link Below under Public Bid Opening
Evaluate Offers	NCDPI	TBD
Best and Final Offer Negotiations (if needed)	NCDPI and Finalist Vendors	TBD

Award Contracts	NCDPI	TBD
Deadline to Submit Protest	Vendors	15 calendar days after award

PUBLIC BID OPENING

The public bid opening will occur virtually via the Microsoft Teams link below:
 This meeting will be recorded for audit purposes only.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 218 790 479 566 24

Passcode: yJ3zo6M3

Dial in by phone

[+1 323-484-5095, 156405807#](#) United States, Los Angeles

[Find a local number](#)

Phone conference ID: 156 405 807#

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

2.0 GENERAL INFORMATION

2.1. VENDOR QUESTIONS

All inquiries regarding the solicitation specifications or requirements are to be addressed to the contact person listed on Page One of this solicitation. **Vendor contact regarding this Solicitation with anyone other than the contact person listed on Page One of this Solicitation may be grounds for rejection of said Vendor’s offer.**

Written questions concerning this Solicitation will be received until January 5, 2026 at 10:00 AM ET. **They must be submitted in the Sourcing Tool.** Please enter “**Questions Solicitation 24-RQ244000-NM**” as the subject for the message. Questions should be submitted in the following format:

QUESTION #	RFP LITE SECTION, SUBSECTION, PAGE NUMBER	VENDOR QUESTION

2.2. ADDENDA

The State may issue addenda if Vendor questions are permitted as described above, or if additional terms, specifications, or other changes are necessary for this procurement. It is important that all Vendors bidding on this RFP Lite periodically check the NC eVP and USAC EPC for any and all Addenda that may be issued prior to the offer opening date.

All addenda shall become an Addendum to this RFP Lite.

2.3. OFFER SUBMITTAL

Due Date: February 5, 2026

Time: 10:00 AM ET

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

Sealed offers, subject to the conditions made a part hereof, will be received until 10:00 AM ET on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted via the Ariba Sourcing Module with the Execution page signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed offer shall result in disqualification.

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

- a) Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
- b) The Ariba Sourcing Module document number is: **WS1911751032**
- c) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the Vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- d) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
- e) If the Vendor's proposal contains any confidential information (as defined in Section 7 , Paragraph #18), then the Vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

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

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

2.4. BASIS FOR REJECTION

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

2.5. LATE OFFERS

Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. **Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.**

2.6. NON-RESPONSIVE OFFERS

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

- "This offer does not constitute a binding offer",
- "This offer will be valid only if this offer is selected as a finalist or in the competitive range",
- "Vendor does not commit or bind itself to any terms and conditions by this submission",

- “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
- “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent.

2.7. NOTICE TO VENDORS

The State objects to and will not be required to evaluate or consider any additional terms and conditions not previously agreed to by the State and submitted with an Offeror’s response. This applies to any language appearing in or attached to the document as part of the Offeror’s response. By execution and delivery of this RFP Lite and response(s), the Offeror agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

2.8. E-PROCUREMENT SOLICITATION

This is an E-Procurement solicitation. See Paragraph #31 of the attached Department of Information Technology Terms and Conditions.

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

2.9. DISTRIBUTORS AND RESELLERS

“Resellers” as used herein, refers to businesses that routinely sell or distribute Vendor’s Products or Services, and may include “Distributors”, “Value Added Resellers” (VARs), “Original Equipment Manufacturers” (OEMs), Channel Partners, or such other designations, including underlying carriers or upstream or wholesale providers. These businesses must be approved by the State prior to placement of any orders. Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State’s competitive bidding process.

The Agency acknowledges that the Reseller has merely purchased the Third-Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third-Party Items are owned by parties other than the Reseller (“Third Parties”). The Agency further acknowledges that except for the payment to the Reseller for the Third-Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third-Party Items which are provided to the Reseller. The Reseller shall assign all applicable third-party warranties for Deliverables to the Agency.

2.9.1 Submission of Letter. If a Reseller submits an offer, the Reseller must include a letter from its upstream or underlying provider. The letter must be on the provider’s letterhead, dated within thirty (30) days of the bid opening, signed by an authorized representative, and must state the following:

- 1. Relationship Confirmation:** That the provider supplies the services the Reseller is offering under this RFP.
- 2. Support for Contract Performance:** That the provider will support the Reseller for the duration of the contract by supplying the necessary services, capacity, and resources for the Reseller to meet its contractual obligations.
- 3. Warranty / Service Commitments:** That any warranty or service commitments applicable to the provider’s network or services will be honored for all services included in the Reseller’s offer.

4. Agreement Negotiation: That the provider will negotiate any required license, service, support or other applicable agreements directly with the State, as the Reseller does not have authority to bind the provider to such terms.

2.10. POSSESSION AND REVIEW

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

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

2.11. BEST AND FINAL OFFERS (BAFO)

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

2.12. AWARD

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

A link to the NC electronic Vendor Portal (eVP) allows the public to retrieve contract award information electronically from the web site: <https://evp.nc.gov/solicitations/> Results may be found by searching by RFP Lite number or agency name. This information may not be available for several weeks depending upon the complexity of the acquisition and the length of time to complete the evaluation process.

2.13. POINTS OF CONTACT

Contact by the Offeror with the persons shown below for contractual and technical matters related to this RFP Lite is only permitted if expressly agreed to by the purchasing lead named on page 4, or upon award of contract:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
Name of Vendor: _____ Street: _____ City, State, Zip: _____ Attn: _____ Email: _____	Name of Vendor: _____ Street: _____ City, State, Zip: _____ Attn: _____ Email: _____

State Contractual Point of Contact (after contract award)	State Technical Point of Contact (after contract award)
Name: Adam Benjamin Email: Adam.Benjamin@dpi.nc.gov	Name: Adam Benjamin Email: Adam.Benjamin@dpi.nc.gov

2.14 SOURCE SELECTION

A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award this RFP Lite to the Vendor providing the Best Value. **Consistent with E- Rate rules, price of E-Rate eligible goods and services will be the most important factor in determining the award.** By using this method, the overall ranking may be adjusted up or down when considered with or traded-off against other non-price factors.

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

Vendors are advised that the State is not obligated to ask for or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.

2.15 EVALUATION CRITERIA

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

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Order	Evaluation Criteria	Weighting	Description
1	Cost of E-Rate Eligible Goods and Services	40	Calculated on a per circuit basis using the formula: lowest proposed cost/Vendor's proposed cost x maximum cost points.
2	Percentage of PSU's Served	20	Calculated based on the percentage of locations bid.
3	How well the Vendor's offer conforms with the specifications of the RFP Lite	20	Listed in Section 3.5 of this RFP Lite
4	Burst Capacity, Service Level guarantee and timeframe	10	Section 3.5 – Specification 23
5	Vendor Qualifications and Reference Check	5	Attachment C - Vendor Qualification & 3.5 Question 3
6	Financial Stability	5	Section 2.18 Financial Statements; Please see Attachment D: Financial Review Form

Contracts may be awarded to multiple Vendors, with each Vendor responsible for the PSUs included in their proposal, if no single Vendor proposes coverage for all areas. In such cases, the State will compare responsive proposals to determine which combination of Vendors provides the best value and coverage for the PSU service areas. Final awards will be based on the comparative results of the scoring, with the cost of eligible goods and services remaining the primary factor.

2.16. RFP LITE AWARD

It is the general intent to award this contract to multiple Vendors. As provided by statute, award will be based on Best Value Analysis, in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302.

A link to the eVP System allows the public to retrieve contract award information electronically from the Internet web site: Results may be found by searching by RFP Lite number or agency name. This information may not be available for several weeks depending upon the complexity of the acquisition and the length of time to complete the evaluation process.

2.17. ALTERNATE BIDS

Unless provided otherwise in this RFP Lite, Vendor may submit alternate bids for comparable Goods, Services, various methods or levels of Service(s), or that propose different options. Alternate bids must specifically identify the RFP Lite requirements and advantage(s) addressed by the alternate bid. Each bid must be for a specific set of Goods and Services and must include specific pricing. Each bid must be complete and independent of other bids offered. If a Vendor chooses to respond with various offerings, Vendor shall follow the specific instructions for uploading Alternate Bids in the Sourcing Tool.

2.18 FINANCIAL STATEMENTS

The Vendor shall provide evidence of financial stability by returning with its offer 1) completed Financial Review Form (Attachment D), and 2) copies of Financial Statements as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements. a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, the Vendor must explain the reason why they are not available. b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition. c) The State may, in its sole discretion, accept

evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of this RFP award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

3.0 SPECIFICATIONS

3.1. VENDOR STANDARD AGREEMENT(S)

Vendor should provide for review and evaluation any standard license, subscription, maintenance, service, support, or other agreements applicable to the delivery of Vendor's proposed services. Terms offered for Vendors' proprietary assets, such as software licensing/access grants and use restrictions, maintenance and support for licensed products or software, intellectual property rights, and warranties will be considered for acceptance by the State.

A Reseller or Distributor bidding for the underlying carrier or upstream or wholesale provider should provide the entity's agreements referenced in the above paragraph, as well as the name, phone number, and email address for the entity's legal contact authorized to negotiate the agreements.

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

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S. – DISCLOSURE STATEMENT

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

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

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Vendor to complete:

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

Click here to enter text.

performed outside the United States.

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

YES NO

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

3.3. E-VERIFY

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

3.4 REQUIREMENTS SPECIFIC TO THIS RFP LITE

1. The Vendor must service at least 25 percent of the locations included in the solicitation. Refer to Attachment B – Cost Template where the service locations are identified. By submitting pricing for the location, the Vendor acknowledges that it is fully capable of servicing the location.

The percentage is determined by =

$$\frac{\text{Total Number of locations served}}{\text{Total Number locations requested}} = \frac{306}{306} * 100$$

Can you offer service to at least 25% of the service locations listed in Attachment B?	<input type="checkbox"/> YES <input type="checkbox"/> NO
--	---

2. For all E-Rate eligible services, Vendors must possess an active Service Provider Identification Number (SPIN) issued by USAC. SPIN number must be provided in the Vendor Qualification Form on Attachment C.
3. **Provider Peering:**
 - a. Are you a Tier-1 Provider? **Yes / No?**
 - b. If you are not a Tier-1 provider, do you provide a minimum of **three (3) geographically diverse, BGP4-based hand-offs** to at least three (3) Tier-1 or Tier-2 providers at a minimum aggregate connection speed of **20 Gbps** to each Tier 1 provider? Specify the names of the upstream providers.

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3.5 SPECIFICATIONS SPECIFIC TO THIS RFP LITE

General and Project Management Specifications:

#	General and Project Management Specifications Description
1.	<p>Describe in detail the Project Management resources assigned to handle all organizational and coordination details of any migration and/or upgrade activities for the life of the contract. Your response should include, at the minimum, a dedicated Project Manager, a Project team, and a detailed Project Plan with appropriate timelines to address any conversion that will be required to meet the specifications within this RFP Lite.</p> <ol style="list-style-type: none"> I. Within the Project Plan provided, include an organizational chart of the proposed project team and the recommended number of corresponding customer roles/skillsets. II. Provide brief biographical narratives and professional qualifications of key personnel proposed for this project who will be responsible for migration/conversion including any costs for resources.
2.	<p>Describe your organization's experience with implementations comparable in size and scope to the services proposed. Include detailed and verifiable information demonstrating the relevance of this experience.</p> <p>Describe at least three (3) comparable implementations, preferably within a K-12 education environment.</p> <p>For each reference, describe the following information:</p> <ol style="list-style-type: none"> 1. The name of the client organization 2. The nature and scope of the services delivered 3. The project timeline, including start and completion dates 4. The size and complexity of the implementation 5. The primary point of contact, including title, phone number, and email address 6. Any outcomes, performance results, or lessons learned relevant to this RFP

Internet Service Specifications:

#	Internet Service Specifications Description
3.	<p>Provider Peering: If you are a Tier-2 provider, describe how all connections to Tier 1 providers are redundant, and independently routed.</p>
4.	<p>Uptime: Describe your approach to monitoring and managing typical monthly network uptime performance, including how your network architecture and operational practices support an average monthly network uptime of at least 99.95%, your uptime and availability metrics within NC, where applicable, for the most recent three (3) months, or if such metrics are not available, describe your most significant outage that lasted more than an hour and how it was addressed.</p>
5.	<p>Latency: Describe your organization's typical round-trip latency and how your network design supports latency levels such as 25 ms or less between the End-User's last-mile connection and any point on your network, and describe any factors that influence latency.</p>
6.	<p>Packet Loss: Describe how your organization monitors and manages packet loss for End-User connections, including your typical packet loss performance levels and how your network design supports packet-loss rates such as 0.25% per month.</p>
7.	<p>Time-to-Repair: Describe your approach to maintaining a mean time-to-repair (MTTR) of 4 hours or less for service-impacting issues.</p>

#	Internet Service Specifications Description
8.	Repeat Troubles: Describe your approach to maintain that no End-User experiences more than two (2) repeat trouble incidents per month?
9.	Scalability: Describe how your peering meet-points and hand-offs scale to support statewide K–12 demand exceeding 500 Gbps at the 95th percentile.
10.	Peering: Describe how you connect or peer with Akamai, Google, Amazon, Microsoft Azure, Internet2, Apple iCloud and/or other high-value educational networks.
11.	Jumbo Frames: Describe how you support super jumbo frames up to 9000 bytes.
12.	Facilities: Describe your approach to maintaining all local loop (last-mile) circuits are delivered over fiber-based facilities.
13.	Equipment: Describe your approach to installation and maintenance of the required enterprise-grade broadband Customer Premises Equipment at each End-User location.
14.	Handoff: Describe your approach to handoff the Ethernet or IEEE 802.3 copper or fiber handoff at each PSU. Describe any physical layer interface handoffs available to End-Users that are not Ethernet. How will you ensure your CPE will interface with existing End-User devices.
15.	Handoff Location: Describe your approach to handoff fiber to the building’s Main Distribution Frame (MDF) or clearly provide charges for building the connection into the MDF. Specify any E-Rate ineligible charges separately.
16.	Access: Describe your approach to handoff full and complete access to the Internet, Internet2, and all State education network resources.
17.	Security: Describe the internal controls, monitoring systems, and operational practices in place within their network to detect, mitigate, and respond to Distributed Denial of Service (DDoS) attacks. The description should address how the Offeror’s network architecture, traffic-management tools, and incident-response procedures minimize the risk of a DDoS event degrading or interrupting the underlying service delivered to participating PSUs. This information is requested for evaluation of network reliability and resiliency only and is not a request to include any separately priced or E-Rate ineligible DDoS protection services.
18.	Protocols: Describe how you support both IPv4 and IPv6 addressing and transport.
19.	Support: Describe your approach to 24/7/365 Network Operations Support.
20.	<p>Utilization Alerts: The State seeks a Vendor with the capability and commitment to proactively monitor End-User bandwidth utilization and to provide timely notification when connections approach levels that may affect performance. The State desires a network management approach that continuously tracks utilization, identifies emerging capacity constraints, and alerts NCDPI before service degradation occurs.</p> <p>Describe the tools, systems, and processes used to monitor utilization across all End-User loops. The State is particularly interested in approaches that rely on industry standard measurements, such as 95th percentile calculations using 5-minute intervals or comparable methodologies.</p> <p>Describe how monitoring practices will identify circuits that may require capacity upgrades. As guidance, the State is interested in receiving alerts when utilization exceeds approximately 60 percent for links below 10 Gbps, 70 percent for links between 10 Gbps and 100 Gbps inclusive, and 80 percent for links above 100 Gbps. Offerors may propose alternative thresholds, provided they include a clear rationale and demonstrate how their approach will allow NCDPI to make informed, data-driven decisions about increasing circuit capacity.</p> <p>The State strongly prefers Vendors that will proactively notify NCDPI of these conditions and support right-sizing bandwidth rather than oversubscribing circuits or allowing chronic congestion to persist.</p>

#	Internet Service Specifications Description
21.	Remediation: Describe your escalation and remediation plan if any utilization threshold is exceeded, including and not limited to, required Vendor actions, timeline expectations, and customer notification procedures.
22.	Reporting Access: Describe your approach to access to historical utilization statistics—at minimum 5-minute intervals for the past 24 hours —via a web portal, for each End-User connection point and at an aggregate K-12 level.
23.	<p>Burstable Bandwidth: Describe any circumstances in which a circuit may burst to a higher bitrate than the contracted rate. Describe the following -</p> <ol style="list-style-type: none"> Supported burst capacity based on the contracted bandwidth Conditions under which bursting is enabled Thresholds and rate limits or traffic policies during burst periods Burst performance and service level monitoring, reporting and validation Cost – describe here if and when burstable bandwidth results in additional cost. <p>If a circuit can burst, denote that on the cost matrix.</p> <p>Describe the speeds at which circuits will burst. Describe the physical line rates used when less than full line rate is provided, and in which cases if any those circuits will provide burstable bandwidth. If only some of the End-User circuits are burstable, please indicate which ones on the pricing matrix.</p>

3.6. SECURITY SPECIFICATIONS

3.5.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE – RESERVED

3.5.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The E-Rate Category I will be required to receive and securely manage data that is classified as low risk. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

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

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

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

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

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

of the contract. Timely submission of this preferred assessment report shall be a material requirement of the contract.

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

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

3.7 ENTERPRISE ARCHITECTURE SPECIFICATIONS

ENTERPRISE, SERVICES, AND STANDARDS

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

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

3.7.1 ARCHITECTURE DIAGRAMS - Reserved

3.7.2 SOLUTION ROADMAP - Reserved

3.7.3 IDENTITY AND ACCESS MANAGEMENT – Reserved

3.7.4 INTEGRATION APPROACH – Reserved

3.7.5 DISASTER RECOVERY AND BUSINESS CONTINUITY

Describe the proposed solution capabilities related to the following areas:

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

System Backup – describe backup plan capabilities.

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

3.7.6 DATA MIGRATION – Reserved

3.7.7 APPLICATION MANAGEMENT

Describe how the service is monitored and service levels are reported. Include current metrics on system performance.

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

3.7.8 ACCESSIBILITY - Reserved

3.8. BRAND SPECIFIC PRODUCT - Reserved

3.9. DELIVERY

Delivery, installation or provision of professional services shall not be considered to have occurred until installation has been completed. Upon completion of the installation, the Vendor shall remove and

properly dispose of all waste and debris from the installation site. Vendor shall be responsible for leaving the installation area clean and ready to use.

If circumstances beyond the control of the contractor result in a late installation, it is the responsibility and obligation of the contractor to notify the Purchasing Agent listed on the purchase order, in writing, immediately upon determining delay of shipment. The written notification should indicate the anticipated delivery date.

3.10. CONTRACT TERM

A contract awarded pursuant to this RFP Lite shall have an effective date as provided in the Notice of Award. The term shall be five (5) years and will expire on June 30th of the fifth (5) year unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for one (1) additional five (5) year period at its sole discretion.

3.11 EFFECTIVE DATE

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

4.0 FURNISH AND DELIVER

Refer to Attachment B for the Cost Template

5.0 HISTORICALLY UNDERUTILIZED BUSINESSES

“Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the aforementioned categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.” <http://ncadmin.nc.gov/businesses/hub>

Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFP Lite.

Is Vendor a Historically Underutilized Business? YES NO

If “YES”, specify classification. _____

6.0 DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
 - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
 - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.

- **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **THE STATE:** Is the state of North Carolina and its agencies.
 - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
 - 4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this RFP Lite can be altered only by written addendum and that verbal communications from whatever source are of no effect.
 - 5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
 - 6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
 - 7) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
 - 8) **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000, they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days of 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. RFP Lite status and Award notices are posted on the Internet at eVP.com. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 -.1121.**

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

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

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7.0 DEPARTMENT OF INFORMATION TECHNOLOGY SAAS 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, the Department of Information Technology as an agency, or the agency identified in this solicitation as the Purchasing Agency and Award Authority.
- 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 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 Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.

b. The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of this Agreement, 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.

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 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 of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.

b. The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.

c. Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.

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

e. The Vendor shall certify to the State:

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

ii. That the system used to provide the Subscription Services under this Contract has and will maintain a valid 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.
- f. Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- g. Breach Notification. In the event 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.

h. 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.

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

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

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

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

m. In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, 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.

n. 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.

o. **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 or other Deliverables.

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

33. **ELECTRONIC PROCUREMENT:** (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract. The E-Procurement fee does not normally apply to services.

a. Reserved.

b. Reserved.

- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Agreement. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

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ATTACHMENT A: DEFINITIONS

- **24/7x365:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year (365 days) specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24/7x365 implies NO loss of availability of systems, communications, and/or supporting resources.
- **AGENCY SPECIFIC TERM CONTRACT:** A contract generally intended to cover all normal requirements for a commodity for a specified period of time based on estimated quantities for a single entity.
- **Deliverables:** Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, and incidental materials, including any goods, data, reports and documentation provided or created during the performance or provision of Services hereunder.
- **LIBRARY:** An E-Rate eligible North Carolina public library that is independent of any public school and meets the statutory definition of library found in the Library Services and Technology Act of 1996 (LSTA) (20 U.S.C. Section 9122) and shall be eligible for assistance from the North Carolina State Library Agency.
- **MDF:** Main Distribution Frame is a signal distribution frame for connecting equipment (inside PSU) to cables and Vendor carrier equipment (the last mile).
- **NCDPI:** The North Carolina Department of Public Instruction; the procurement lead, holder of a Letter of Agency from each PSU and Library participating in this convenience contract.
- **Public School Units (PSU):** refers to any of the following schools:
 - A local education agency
 - A charter school
 - A regional school
 - A Lab school
 - A Residential school
 - A school providing elementary or secondary instruction operated by one of the following:
 - The State Board of Education, including schools operated under Article 7A and Article 9C of House Bill 57
 - The University of North Carolina, including schools operated under Articles 4, 29, and 29A of Chapter 116 of the General Statutes.
- **Reserved:** Specific terms, clauses, or provisions that are intentionally set aside or maintained by one party typically the issuing agency or organization for their exclusive control or future use. This language is not open to negotiation or modification by the other party.
- **Security Breach:** As defined in N.C.G.S. §75-61.
- **Tier 1:** Global backbone networks that peer settlement-free (no fees) with all other Tier 1 providers to reach the entire Internet without buying transit services. They sell transit to lower tiers and maintain worldwide connectivity.
- **Tier 2:** Regional or national networks that peer for free with some providers but purchase IP transit or paid peering from Tier 1s (or others) to access parts of the Internet they can't reach directly.
- **Tier 3:** Local or end-user-focused providers that solely buy transit or peering services from Tier 1 or Tier 2 networks to connect customers to the broader Internet; they do not peer directly at scale (e.g., residential broadband ISPs).
- **Universal Service Administrative Company (USAC):** is the organization that administers the federal Universal Service Fund (USF) under the direction of the FCC (Federal Communications Commission).
- **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

ATTACHMENT B: COST TEMPLATE

Included as Cost Table Attachment – Vendors shall submit its response in Excel format using the Cost Table Attachment.

ATTACHMENT C: VENDOR QUALIFICATIONS

ITEM	RFP LITE NEEDS	VENDOR RESPONSES
1	Company Name	
2	Service Provider Identification Number (SPIN)	
3	Are you a Tier-1, Tier-2 or Tier-3 provider?	<input type="checkbox"/> TIER 1 <input type="checkbox"/> TIER 2 <input type="checkbox"/> TIER 3
4	FCC Registration Number (FRN)	
5	USAC Registration Status	
6	Supported E-Rate Invoice Method	<input type="checkbox"/> BEAR (Form 472) <input type="checkbox"/> SPI (Form 474)
7	Do you commit to clearly itemizing eligible and ineligible costs on invoices?	<input type="checkbox"/> YES <input type="checkbox"/> NO
8	Vendor agrees to monthly invoicing with Billing Dates of the first and last day of each month	<input type="checkbox"/> YES <input type="checkbox"/> NO
9	Are you currently, or have you in the last year, been in Red Light Status with the FCC due to an E-Rate issue?	<input type="checkbox"/> YES <input type="checkbox"/> NO
10	If 'YES' briefly explain the issue:	
11	Vendor agrees to file annually with USAC the FCC Form 473 – Service Provider Annual Certification (SPAC) to certify compliance with the Rules of the E-Rate program.	<input type="checkbox"/> YES <input type="checkbox"/> NO
12	As required by Section 54.500(f) of Part 47 of the Code of Federal Regulation all responses to this RFP Lite must offer the lowest corresponding price (LCP), which is defined as the lowest price that a service provider charges to nonresidential customers who are similarly situated to a particular E-Rate applicant (school, library, or consortium) for similar services. See https://www.usac.org/E-Rate/service-providers/step-2-responding-to-bids/lowest-corresponding-price/ for more details. Do you agree to offer the LCP?	<input type="checkbox"/> YES <input type="checkbox"/> NO
13	By submitting a proposal on the requested services herein, the Vendor certifies its proposed services and/or products comply with Part 47 Section 54.9 and 54.10 of the FCC rules which prohibits the sale, provision, maintenance, modification, or other support of equipment or services provided or manufactured by Huawei, ZTE, or any other covered company posing a national security threat to the integrity of communications networks or the communications supply chain. See https://www.usac.org/about/reports-orders/supply-chain/ for more details.	<input type="checkbox"/> YES <input type="checkbox"/> NO

ATTACHMENT D: FINANCIAL REVIEW FORM

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

1. Vendor Name:
2. Company structure for tax purposes (C Corp, S Corp, LLC, LLP, etc.):
3. Have you been in business for more than three years? Yes No
4. Have you filed for bankruptcy in the past three years? Yes No
5. In the past three years, has your auditor issued any notification letters addressing significant issues? If yes, please explain and provide a copy of the notification letters. Yes No
6. Are the financial figures below based on audited financial statements? Yes No
7. Start Date of financial statements:
End Date of financial statements:
8. Provide a link to annual reports with financial statements and management discussion for the past three complete fiscal years:
9. Provide the following information for the past three complete fiscal years:

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