|  |  |
| --- | --- |
| **STATE OF NORTH CAROLINA** | **REQUEST FOR PROPOSAL NO.** |
| **Department of Health and Human Services**  **Division of Public Health** | Contract Name: Breastfeeding Hotline |
| Bid Opening Date: 02/28/2025 |
| **Refer ALL inquiries regarding this RFP to:**  Name: Anthony Benzor  Email: Anthony.Benzor@dhhs.nc.gov | Issue Date: 01/06/2025 |
| Commodity Code: 851222 |
| Purchasing Agency: North Carolina Department of Health and Human Services, Division of Public Health |
| Requisition No.: |

**OFFER**

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

**EXECUTION**

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

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

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

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

ACCEPTANCE OF OFFER

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

|  |
| --- |
| **FOR PurchasiNG AGENCY USE ONLY**  Offer accepted and contract awarded this date\_\_\_\_\_\_\_\_\_\_\_\_\_, as indicated on attached certification, by (Authorized representative of Purchasing Department of Health and Human Service). |

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# ANTICIPATED Procurement Schedule

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

| Action | Responsibility | Date |
| --- | --- | --- |
| RFP Issued | Agency | 01/06/2025 |
| Written Questions Deadline | Potential Vendors | 01/17/2025 |
| Agency’s Response to Written Questions/  RFP Addendum Issued | Agency | 01/24/2025 |
| Offer Opening Deadline | Vendor(s) | 02/28/2025 02:00PM EST |
| Offer Evaluation | Agency | 02/28/2025-04/11//2025 |
| Contract Award | Agency | 05/09/2025 |
| Protest Deadline | Responding Vendors | 15 days after award |

**Opening of the RFP can be access at the below link on the offer opening deadline mentioned above:**

<https://teams.microsoft.com/l/meetup-join/19%3ameeting_NmU2MTU1ZGMtYzI3Ni00NzAxLWIyMjQtYjQ5YmVmZjY3MTJi%40thread.v2/0?context=%7b%22Tid%22%3a%227a7681dc-b9d0-449a-85c3-ecc26cd7ed19%22%2c%22Oid%22%3a%228a75060e-8be0-4692-9cf8-01cab64f28dd%22%7d>

# Purpose of RFP

## Introduction

The purpose of this RFP is to solicit offers for a twenty-four (24) hours a day, seven (7) days a week, centralized, statewide breastfeeding hotline and textline to expand breastfeeding support to all families in the State of North Carolina (the “Solution”). The Solution will provide accessible, consistent breastfeeding support via phone calls and text messaging, as well as facilitate referrals to local resources including, but not limited to, the North Carolina Women, Infants, and Children (WIC) Program and the North Carolina Breastfeeding Peer Counselor Program. The Solution will allow parents to access professional lactation support regardless of their geographic location or financial means and at critical times when parents are vulnerable to misinformation and immediately when needed and useful, such as when struggling to breastfeed at home.

## Agency Background

The North Carolina Department of Health and Human Services, Division of Public Health (“DPH” or “Division”) works to protect the public's health across North Carolina and helps shape positive health outcomes for North Carolinians. Within the Division, the Women, Infant, and Community Wellness Section (WICWS) develops and promotes programs and services that protect the health and well-being of infants and of women during their child-bearing years. The goal is to improve the overall health of women, reduce infant sickness and death, and strengthen families and communities. 

## SUMMARY OF PROBLEM Statement

Breastfeeding is a well-documented protector of infant and maternal health. The American Academy for Pediatrics currently recommends exclusive breastfeeding for approximately 6 months followed by continued breastfeeding with complementary foods for at least 2 years and beyond as mutually desired. Successful breastfeeding requires support from trained individuals with established relationships in the health care community who are flexible enough to meet mothers’ needs outside of traditional work hours and locations and provide consistent information.

Despite growing evidence about these benefits, breastfeeding rates in North Carolina continue to remain low. Available breastfeeding data sources document a disparity between racial and ethnic groups, with lower breastfeeding rates among minority populations in North Carolina. Accessibility of the limited number of available International Board-Certified Lactation Consultants (IBCLCs) is further complicated by geographic location, as greater than 50% of North Carolina’s counties are without any outpatient IBCLC services. Even when outpatient IBCLC services are available, Medicaid beneficiaries may be limited due to prohibitive financial cost.

Implementation of a statewide breastfeeding hotline and textline staffed by IBCLCs and Certified Lactation Counselors (CLCs) accessible 24 hours per day, 7 days per week, will provide flexible and consistent access to evidence-based lactation support during the prenatal and postpartum period. The statewide breastfeeding hotline and textline would allow parents to access comprehensive support regardless of their geographic location or financial means at critical times when pediatric and obstetric offices may not be available or have limited expertise to adequately support breastfeeding success.

This is the first breastfeeding hotline and textline implemented by the State of North Carolina. A state similar in size to NC, with an established breastfeeding hotline, receives approximately 400 calls per month on average. The quantities of calls and texts listed in the optional cost tables of this RFP are estimates only. The State has no historical data on which to base anticipated call and text quantities.

## Contract Term

A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be two (2) years and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend the Agreement for three (3) 1-year periods at its sole discretion.

## 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.

## Contract Type

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

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

# RFP requirements and Specifications

## General requirements and Specifications

* + 1. REQUIREMENTS

Requirement means, as used herein, a function, feature, or performance that the System must provide. If the offer cannot meet the requirements, they will not be evaluated.

* + 1. Specifications

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

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

* + 1. Site and System Preparation

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

* + 1. Equivalent Items

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

* + 1. enterprise Licensing-RESERVED

## Security Specifications

* + 1. Solutions Hosted on State Infrastructure-RESERVED
    2. Solutions Not Hosted on State Infrastructure

The *Breastfeeding Hotline* 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.

## Enterprise Specifications

## 3.3.1 ARCHITECTURE DIAGRAMS – RESERVED

## 3.3.2 SOLUTION ROADMAP – RESERVED

## 3.3.3 IDENTITY AND ACCESS MANAGEMENT – RESERVED

## 3.3.4 INTEGRATION APPROACH – RESERVED

## 3.3.5 DISASTER RECOVERY AND BUSINESS CONTINUITY

Describe the Vendor’s capabilities related to the following areas:

Disaster Recovery Plan (DRP) – describe how the Vendor supports Recovery Point Objectives (RPO) and Recovery Time Objectives (RTO) metrics, and how frequently the Vendor tests for end-to-end disaster recovery.

System Backup – describe the Vendor’s backup plan when there is a disruption to business continuity.

## 3.3.6 DATA MIGRATION-RESERVED

## 3.3.7 APPLICATION MANAGEMENT – RESERVED

## 3.3.8 ACCESSIBILITY-RESERVED

## 3.3.9 ENTERPRISE, SERVICES, AND STANDARDS – RESERVED

## Business and Technical Requirements - reserved

## Business and Technical Specifications

Describe in detail your proposed Solution’s ability to accomplish each of the following specifications, providing a narrative response, including screenshots as appropriate, detailing how the proposed Solution accomplishes each specification outlined below, including capabilities, features, or limitations of the Solution. As applicable, describe any configurations or customizations needed to the Solution to meet a particular specification.

## Organization Capacity

* + - 1. Describe how the Vendor will develop and implement a statewide telephone and text-based Solution which will be available to the public 24 hours a day, 7 days a week, including holidays.
      2. Describe how the Solution will provide interpretive services for languages such as Spanish, Arabic, Mandarin, Hmong and Creole and be accessible to the hearing impaired.
      3. Describe the process and timeframe in which the Vendor will return missed calls and address texts in a manner.
      4. Describe how the Vendor will deliver services with Cultural Humility through the Solution.
      5. Describe how the Solution will address the different needs of callers including lactating people, their families, partners, and expectant parents.
      6. Describe how Vendor will comply fully with the International Code of Marketing of Breast-milk Substitutes and relevant World Health Assembly resolutions detailed in Appendix 1.
      7. Describe how the Vendor will monitor peak call volume times and adjust as needed in order to provide live call responses by currently certified IBCLCs or CLCs with a minimum of one IBCLC available to answer calls twenty-four hours a day, seven days a week, including holidays.
      8. Describe how the Vendor will incorporate an IBCLC practicum internship for students of minority-serving institutions, such as Historically Black Colleges and Universities (HBCUs).
      9. Describe the Vendor’s staffing plan. Include details about hiring and retaining supervisors who are currently IBCLCs and phone staff currently certified as an IBCLC or CLC, with at least 2 years of experience providing lactation support. Describe the type of knowledge and work experience you would require from those hired.
      10. Describe how the Vendor will ensure that consistent information is provided by hotline staff.
      11. Describe the Vendor’s proposed implementation schedule, including milestones, throughout implementation of the Solution. Include a timeline.

## Data Collection, Tracking, Impact Measurement and Quality Assurance

* + - 1. Describe how the Solution will accurately track and produce reports on the number of calls, time and date of the call, provider(s) who took the call, escalations required, length of the call, main reason for call, plan of care given in call, and details of any referrals made in call.
      2. Describe how the system will accurately track and produce reports on the number and types of callers, call patterns by time of day, day of week, and month.
      3. Describe how the Solution will capture and report caller demographic data and specific data points of individual callers including but not limited to:
* Caller’s state of residence.
* Caller’s county of residence.
* How the caller heard about the Solution.
* If it is the caller’s first time calling.
  + If not, is the call for the same issue as the previous call?
  + If not, is the call about the same lactating child or a different child?
* Caller’s relationship to the lactating mother.
* Lactating child’s age.
* Lactating mother’s age.
* Lactating mother’s race.
* Lactating mother’s ethnicity.
* Is the lactating mother currently enrolled in WIC?
* Is the lactating mother: Uninsured? Enrolled in Medicaid? Privately insured?
  + - 1. Describe any other types of demographic data and specific data points of individual callers which the Solution can track and report.
      2. Describe how the Vendor will track incoming calls and texts including number of calls/texts, type of issues/problems, number of infants in Low Income families served.
      3. Describe how the Vendor will track and follow up on breastfeeding solutions provided to callers to ensure issue resolution and survey user satisfaction.
      4. Describe how the Vendor will perform quarterly quality assurance checks to measure performance including wait time for callers, number of calls answered live, number of text messages sent and/or received, and accuracy of information provided by the staff.
      5. Describe how the Vendor will monitor quality assurance through customer surveys at 4, 8, and 12 weeks after the initial call including checks on problem resolution, current infant feeding practices and satisfaction with the service provided.
      6. Describe how the Solution will provide detailed reporting using de-identified data about the key outcomes of the Solution including data about: call volume, dropped/abandoned calls, call backs within 30 minutes, analysis of client intake characteristics, issues and solutions provided, outcomes by breastfeeding status, etc.

## System Capacity

* + - 1. Describe how the Vendor will assure core functionality to provide qualified personnel, adequate facilities, and equipment necessary to provide a toll-free telephone, supporting both voice and text messaging services.
      2. Describe how Vendor shall ensure that all calls from the hotline to individuals will be identified as North Carolina Breastfeeding Hotline or [XXX-XXX-XXXX] via Caller ID.
      3. Describe how the Solution will be able to handle multiple, simultaneous incoming and outgoing calls with Spanish bilingual TTY capability and standard Video Relay Service for the deaf and hard of hearing community.
      4. Describe how the Solution will utilize automated services such as automatic call answering extensions for particular services (e.g. dial 1 for resource materials) in order to channel callers to the most appropriate trained staff, while also ensuring the system is easy to use and quickly connects them to a live person who can provide the requested services.
      5. Describe how the Solution will support scalable communications, automatic call distribution functionality, real-time monitoring of overall activity as well as individual calls, collections, analysis and reporting of data, and telephony integration allowing information exchange between voice and data systems.
      6. Describe how the Vendor will account for changes in call volume in response to marketing efforts, holidays, public health concerns, and changes in government policy.
      7. The Agency wants to own the hotline and texting numbers for the Solution. Describe how this can be accomplished and how the Vendor will ensure the hotline and texting numbers are transferable back to the Agency upon the end of the contract.
      8. Describe how Vendor’s Solution will store, maintain, and process the data collected by the Vendor in Vendor’s provision of the hotline and textline, including descriptions of Vendor’s computer systems, software, or cloud-hosted services, as applicable.

## Service Level agreement

* + - 1. Describe the Service Level Agreement which the Vendor will provide for this Solution.
      2. Attach the Service Level Agreement in the Vendor’s offer.

## Delivery Protocols

* + - 1. Describe how the Vendor will ensure that support aligns with the guidelines set forth by the Academy of Breastfeeding Medicine and the National Institutes of Health LactMed website regarding drugs and lactation.
      2. Describe what protocols the Vendor will have in place to address calls received related to medical diagnoses, emergencies, or calls outside the scope of practice for the staff.
      3. Describe how the Vendor will provide local, appropriate, and up to date information and referrals based on knowledge of services available within the state of NC with special consideration given to providing accessible and culturally appropriate referrals.
      4. Describe how the Vendor will ensure that the most recent version of the North Carolina Breastfeeding Coalition’s county-based lactation resource list is used when referring callers.

# Cost of Vendor’s Offer

## Offer Costs

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

## Payment Schedule

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

# Evaluation

## Source Selection

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

1. Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
2. To be eligible for consideration, Vendor’s offer must substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State. Offers that do not meet the full intent of all specifications listed in this RFP may be deemed deficient. Further, a serious deficiency in the offer to any one (1) factor may be grounds for rejection regardless of overall score.
3. 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.
4. 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.

## Evaluation Criteria

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

1. How well the Vendor’s offer conforms with the solicitation and specifications in Section 3.0 and related Appendices of this RFP.
2. How well each Vendor’s offer compares with other Vendors’ offers.
3. Vendor Schedule / Timeline for implementing the Solution.
4. Vendor’s performance of work similar in scope, magnitude, effort, and complexity similar to this solicitation, including strength of references as identified by the Vendor using Attachment H: References. Vendor’s organization, personnel, and experience substantiates its qualifications and capabilities to provide the Solution described in this RFP. The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
5. Total Cost of Ownership.
6. Risks associated with Vendor’s offer, including errata and exceptions to the State’s terms and conditions and any submitted Vendor Agreements.

## 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.

## 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.

# Vendor Information and Instructions

## General Conditions of Offer

* + 1. Vendor Responsibility

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

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

* + 1. Rights Reserved

While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:

1. waive any formality;
2. amend the solicitation;
3. cancel or terminate this RFP;
4. reject any or all offers received in response to this RFP;
5. waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
6. if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
7. not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
8. if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.
   * 1. Solicitation amendments or revisions

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

* + 1. Oral Explanations

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

* + 1. E-PROCUREMENT

**This is not an E-Procurement solicitation.** See ATTACHMENT B, paragraph #38 of the attached North Carolina Department of Information Technology Terms and Conditions.

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

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

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

* + 1. **Protest Procedures**

Protests of awards exceeding $25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in the purchasing agency’s office within fifteen (15) calendar days from the date of this RFP award and provide specific reasons and any supporting documentation for the protest. **All protests are governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

## General Instructions for Vendor

* + 1. **SITE VISIT OR PRE-OFFER CONFERENCE. ReSerVED.**
    2. **QUESTIONS CONCERNING THE RFP**

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

Written questions concerning this Solicitation will be received until 01/17/2025 at \_2 pm Eastern Time.

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

|  |  |
| --- | --- |
| **REFERENCE** | **VENDOR QUESTION** |
| RFP Section, Page Number |  |

* + 1. **Addendum to RFP**

If a pre-offer conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State shall become an Addendum to this RFP and provided via the State’s Ariba Sourcing Tool. Vendors’ questions posed orally at any pre-offer conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer. Oral answers are not binding on the State.

Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this RFP periodically check the State’s Sourcing Tool for all Addenda that may be issued prior to the offer opening date.

* + 1. COSTS related to OFFER SUBMISSION

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

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

* + 1. **vendor errata and exceptions**

Any errata or exceptions to the State’s requirements and specifications may be presented on a separate page labeled “Exceptions to Requirements and Specifications”. Include references to the corresponding requirements and specifications of the Solicitation. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or non-equivalent goods or services may be rejected if not found substantially conforming; and if offered, must be supported by independent documentary verification that the offer substantially conforms to the specified goods or services specification.** If a vendor materially deviates from RFP requirements or specifications, its offer may be determined to be non-responsive by the State.

Offers conditioned upon acceptance of Vendor Errata or Exceptions may be determined to be non-responsive by the State.

* + 1. **Alternate Offers**

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

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

* + 1. **MODIFICATIONS TO OFFER**

An offer may not be unilaterally modified by the Vendor.

* + 1. **Basis for Rejection**

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

* + 1. **non-responsive OFFERs**

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

* “This offer does not constitute a binding offer”,
* “This offer will be valid only if this offer is selected as a finalist or in the competitive range”,
* “The Vendor does not commit or bind itself to any terms and conditions by this submission”,
* “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
* “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
* A statement of similar intent
  + 1. **VENDOR REGISTRATION WITH THE SECRETARY OF STATE**

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

* + 1. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**

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

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

## Instructions for Offer Submission

* + 1. **General Instructions For Offer**

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

1. Organize the offer in the exact order in which the specifications are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP specification and the specific page of the response in the Vendor's offer.
2. Provide complete and comprehensive responses with a corresponding emphasis on being concise and clear. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
3. Clearly state your understanding of the problem(s) presented by this RFP including your proposed solution’s ability to meet the specifications, including capabilities, features, and limitations, as described herein, and provide a cost offer.
4. Supply all relevant and material information relating to the Vendor’s organization, personnel, and experience that substantiates its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If relevant and material information is not provided, the offer may be rejected from consideration and evaluation.
5. Furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with its offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. Proposals that do not comply with these instructions may be rejected.
6. Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
7. **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.
   * 1. Offer Organization

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

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

1. Signed Execution Page AND all pages of this solicitation document in ONE (1) PDF. This includes:
   * + - Attachments A and B
       - Completed Description of Vendor Submitting Offer Form (Attachment D)
       - Completed Cost Form of Vendor’s Offer (Attachment E)
       - Completed and Signed Vendor Certification Form (Attachment F)
       - Completed Location of Workers Utilized by Vendor Form (Attachment G)
       - Completed References (Attachment H)
       - Completed Financial Statements (Attachment I)
2. Vendor Response to Specifications and Requirements
3. Security Vendor Readiness Assessment Report (VRAR)
4. Architecture Diagrams
5. Detailed Project Timeline
6. Errata and Exceptions if any
7. Vendor's License and Maintenance Agreements, if any
8. Vendor may attach other supporting materials that it feels may improve the quality of its response. These materials should be included as items in a separate appendix.

* + 1. OFFER SUBMITTAL

Due Date: 02/28/2025

Time: 2 PM Eastern Time

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

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

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

1. Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
2. The Ariba Sourcing Module document number is: WS1283809413
3. 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.
4. 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.
5. If the vendor’s proposal contains any confidential information (as defined in Attachment B, Section 2, Paragraph #17), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

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

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

# Other Requirements and Special Terms

## Vendor Utilization Of Workers Outside of U.S.

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

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

## Financial Statements

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

1. 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.
2. 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.
3. 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.

## Financial Resources Assessment, Quality Assurance, Performance and Reliability. RESErVED.

## Vendor’s License or Support Agreements

Vendor should present its license or support agreements for review and evaluation. Terms offered for licensing and support of Vendors’ proprietary assets will be considered. If Vendor’s proposed Solution does not include the grant of a Software license or access right to a Vendor Software-as-a-Service to the State, along with corresponding support agreement, Vendor should explain.

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

## Resellers -RESERVED.

## DISCLOSURE OF LITIGATION

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

a) The Vendor shall notify the State in its offer, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. The Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving the Vendor or any subcontractor, or any of the foregoing entities’ then current officers or directors during the term of the Agreement or any Scope Statement awarded to the Vendor.

b) The Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to the Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.

c) All notices under subsection A and B herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the DIT Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

## 7.7 CRIMINAL CONVICTION

In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of North Carolina employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor’s business integrity and such vendor shall be prohibited from entering into a contract for goods or Services with any department, institution or agency of the State.

## 7.8 Security and Background Checks

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

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

## 7.9 Assurances

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

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

## 7.10 Confidentiality of offers

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

Certain State information is not public under the NC Public Records Act and other laws. Any such information which the State designates as confidential and makes available to the Vendor in order to respond to the RFP or carry out the Agreement, or which becomes available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

## 7.11 Project Management-RESERVED.

## 7.12 Meetings

The Vendor is required to meet with Agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Agreement. Meetings will occur as problems arise and will be coordinated by Agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at the Vendor’s option and expense, a conference call meeting may be substituted.

## 7.13 Recycling and Source Reduction

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

## 7.14 Special Terms and Conditions. RESERVED.

# Attachment A: Definitions

1. **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
2. **Breastfeeding**: For the purposes of this RFP, the term breastfeeding is included but is not intended to exclude those who identify with other lactation terms such as nursing or chestfeeding.
3. **Certified Lactation Counselor** (CLC) means an individual who has received training and competency verification in breastfeeding and lactation support and received a certification by the Academy of Lactation Policy and Practice, Inc. Examiners.
4. **Cultural Humility** means an ongoing process of self-exploration and self-critique combined with a willingness to learn from others as well as entering a relationship with another person with the intention of honoring their beliefs, customs, and values.
5. **Cybersecurity Incident (GS 143B-1320):** An occurrence that:
   1. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or
   2. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
6. **Deliverables**: Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include “Work Product” and means any expression of Licensor’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software.
7. **DHHS**: North Carolina Department of Health and Human
8. **Division**: North Carolina Division of Public Health.
9. **DPH**: North Carolina Division of Public Health.
10. **EHR or EMR**: Electronic health record or electronic medical record is the systematized collection of patient and population electronically stored health information in a digital format. These records can be shared across different health care settings.
11. **Goods**: Includes intangibles such as computer software; provided, however that this definition does not modify the definition of “goods” in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
12. **International Board-Certified Lactation Consultant** (IBCLC) means an individual who has completed the advanced requirements in lactation and breastfeeding established by the International Board of Lactation Consultant Examiners and has passed the qualifying exam to be certified as an IBCLC.
13. **International Board of Lactation Consultant Examiners** refers to the independent, international certification body conferring credentials to individuals who demonstrate expert knowledge and training about breastfeeding.
14. **Low Income** means Medicaid eligible individuals as well as those who are uninsured and underinsured.
15. **NCDIT or DIT:** The NC Department of Information Technology.
16. **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
17. **Reasonable, Necessary or Proper**: as used herein shall be interpreted solely by the State of North Carolina.
18. **Request for Proposal (RFP):** The RFP is a formal, written solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services. The RFP is used when the value is over $10,000. This document contains specifications of the RFP, instructions to bidders and the standard IT Terms and Conditions for Goods and Related Services. User should add Supplemental Terms and Conditions for Software and Services, when applicable.
19. **Security Breach:** As defined in N.C.G.S. §75-61.
20. **Significant Security Incident (GS 143B-1320):** A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
    1. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
       1. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or
       2. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
    2. Incidents that involve information that is not recoverable or cannot be recovered within defined time lines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
21. **Solution** means an implementation of people, processes, information and technologies in a distinct system to support a set of business and technical capabilities that solve one or more business problems.
22. **TDD** means the Telecommunication Device for the Deaf
23. **Total Cost of Ownership:** includes the term of the contract, optional renewal terms, and additional costs that may be incurred by the State to implement the Vendor’s proposed Solution. Reference Section 4.1 Offer Costs for applicable offer costs and Attachment E: Cost Form for Cost Tables to be completed.
24. **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.
25. **WIC:** The Special Supplementation Nutrition Program for Women, Infants and Children (WIC) provides nutritious foods and nutrition education (including breastfeeding promotion and support) to eligible participants at no charge.
26. **WICWS** means Women, Infant, and Community Wellness Section, a section of the North Carolina Division of Public Health.

# Attachment B: Department of Information Technology Terms and Conditions

**Section 1. General Terms and Conditions Applicable to All Purchases**

1. **Definitions:** As used herein;

Agreement means the contract awarded pursuant to this RFP.

Data shall mean and include all information, materials, data, and other content provided to the Vendor by the State, the State’s employees, the State’s agents, or by those persons using the Vendor’s breastfeeding hotline and textline Services and managed by the Vendor during Vendor’s provision of Services from acquisition to utilization including, without limitation, collecting, analyzing, reporting, delivering, or processing. The term “Data” is used interchangeably with “State Data.”

Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Section 2, Paragraph 2 of these Terms and Conditions unless superseded by a Vendor’s Warranties pursuant to Vendor’s License or Support Agreements.

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

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

State shall mean the State of North Carolina, the Department of Information Technology (DIT), or the Purchasing State Agency in its capacity as the Contracting Agency, as appropriate.

1. **Standards:** Any Deliverables shall meet all applicable State and federal requirements, such as State or Federal Regulation, and NC State Chief Information Officer’s (CIO) policy or regulation. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender or provide to the State only those Deliverables that have been inspected and found to conform to the RFP specifications. All Deliverables are subject to operation, certification, testing and inspection, and any accessibility specifications.
2. **Warranties:** Unless otherwise expressly provided, any goods Deliverables provided by the Vendor shall be warranted for a period of 90 days after acceptance.
3. **Subcontracting:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
4. **Travel Expenses:** **All travel expenses should be included in the Vendor’s proposed costs. Separately stated travel expenses will not be reimbursed**. In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.
5. **Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate the Agreement and compensate Vendor for sums then due under the Agreement.
6. **Prohibition Against Contingent Fees and Gratuities:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any Contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any Contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Agreement or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign the Agreement and bind the Party to the terms and conditions of this RFP. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of the Agreement; obligation or Contract for future award of compensation as an inducement or consideration for making the Agreement. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B..1206, or other provision of law.
7. **Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in the Agreement. If the Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency’s performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in this RFP. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under the Agreement, terminate any Services supplied to the Agency under the Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
8. **ACCEPTANCE PROCESS:**
   1. The State shall have the obligation to notify Vendor, in writing ten calendar days following provision, performance (under a provided milestone or otherwise as agreed) or delivery of any Services or other Deliverables described in the Agreement that are not acceptable.
   2. Acceptance testing is required for all Vendor supplied software and software or platform services unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State’s specifications, and Vendor’s Product Warranties and technical representations. The State shall have the obligation to notify Vendor, in writing and within thirty (30) days following installation of any software deliverable if it is not acceptable.
   3. Acceptance of Services or other Deliverables including software or platform services may be controlled by an amendment hereto, or additional terms as agreed by the Parties consistent with IT Project management under GS §143B-1340.
   4. The notice of non-acceptance shall specify in reasonable detail the reason(s) a Service or given Deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of any applicable inspection and testing procedures. Should a Service or Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. Services or Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors contained in the Services or Deliverables or non-compliance with the specifications were not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Services or Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.
9. **Payment Terms:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 9 (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency’s use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq*. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor’s written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
   1. Forward the Vendor’s payment check(s) directly to any person or entity designated by the Vendor, or
   2. Include any person or entity designated in writing by Vendor as a joint payee on the Vendor’s payment check(s), however
   3. In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
10. **Equal Employment Opportunity:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
11. **Advertising/Press Release:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
12. **Late Delivery:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
13. **Access to Persons and Records:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency’s opinion, such requirement is imposed by federal or state law or regulation. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.
14. **Assignment:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
15. **INSURANCE COVERAGE:** During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
    1. **Worker’s Compensation** - The Vendor shall provide and maintain Worker’s Compensation Insurance, as required by the laws of North Carolina, as well as employer’s liability coverage with minimum limits of $100,000.00, covering all of Vendor’s employees who are engaged in any work under the Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and
    2. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of $2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
    3. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be $500,000.00 bodily injury and property damage; $500,000.00 uninsured/under insured motorist; and $5,000.00 medical payment; and
    4. Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor’s liability and obligations under the Agreement.
16. **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor’s Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
17. **Confidentiality:**  In accordance with N.C.G.S. §§ 143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq*. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL**”. By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State may serve as custodian of Vendor’s confidential information and not as an arbiter of claims against Vendor’s assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys’ fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor’s confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.
    1. Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.
    2. Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 *et seq*. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor’s execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
    3. Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.
    4. The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
    5. All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the State or are not proprietary to the Vendor are the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.
18. **Default:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 9) herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
    1. If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
    2. Should the State fail to perform any of its obligations upon which Vendor’s performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State’s failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor’s offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
    3. 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.
    4. If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 9) of the DIT Terms and Conditions is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State’s options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract.
19. **Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of the Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to the Agreement pursuant to Paragraph 40) herein below.
20. **Termination:** Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
    1. The parties may mutually terminate the Agreement by written agreement at any time.
    2. The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
       1. Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor’s breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
       2. Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
       3. Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.
21. **Limitation of Vendor’s Liability:**
    1. Where Deliverables are under the State’s exclusive management and control, the Vendor shall not be liable for direct damages caused by the State’s failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State’s intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor’s Software by or on behalf of the State, (ii) the State’s failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor’s Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor’s Software not in accordance with the operating procedures developed for the Vendor’s Software or otherwise in a manner not contemplated by this Agreement.
    2. The Vendor’s liability for damages to the State arising under the contract shall be limited to two (2) times the value of the Contract.
    3. The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney’s fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor’s failure to comply with the requirements stated therein.
22. **Vendor’s Liability for Injury to Persons or Damage to Property:** 
    1. 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.
    2. The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of the Agreement, whether tangible or intangible, arising out of the ordinary negligence, wilful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.
    3. 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.
23. **Time is of the Essence:** Time is of the essence in the performance of the Agreement.
24. **Date and Time Warranty:** The Vendor warrants that any Deliverable, whether Services, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs, modifies or affects any date and/or time data recognition function, calculation, or sequencing, will still enable the modified function to perform accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.
25. **Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. The Agreement shall not operate as a joint venture, partnership, trust, agency or any other similar business relationship.
26. **Transportation:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
27. **Notices:** Any notices required under the Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
28. **Titles and Headings:** Titles and Headings in the Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
29. **Amendment:** The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 36) herein.
30. **Taxes:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of the Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
31. **Governing Laws, Jurisdiction, and Venue:**
    1. The Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
    2. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.
32. **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
33. **Compliance with Laws:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
34. **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of the Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
35. **CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.
36. **FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
37. **Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Services. The State’s third party agent shall serve as the Supplier Manager for this E-Procurement Services. The Vendor shall register for the Statewide E-Procurement Services within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of the Agreement.
    1. **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service**. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under the Agreement. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor’s failure to perform or comply with specifications or requirements of the contract.
    2. Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State’s transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
    3. The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Services. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of Contract, and the payment for goods delivered.
    4. 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.
38. **PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**
    1. Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor technology"). To the extent that any Vendor technology is contained in any of the Services or Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor technology in connection with the Services or Deliverables for the State's purposes.
    2. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential deliverables first originated and prepared by the Vendor for delivery to the State.
    3. The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or other Deliverables supplied by the Vendor, or the operation of such pursuant to a current version of vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
       1. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
       2. 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.
    4. Should any Services or other Deliverables supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the Services or Deliverables, or to replace or modify the same to become non-infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.
    5. Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded Service or Deliverable, or (ii) results from the continued use of the good(s) or services and other Services or Deliverables after receiving notice they infringe a trade secret of a third party.
    6. Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.
39. **UNANTICIPATED TASKS** In the event that additional work must be performed that was wholly unanticipated, and that is not specified in the Agreement, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed. For each item of unanticipated work, the Vendor shall prepare a work authorization in accordance with the State’s practices and procedures.
40. It is understood and agreed by both parties that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.
41. Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by the Vendor’s personnel as a Deliverable, an identification of all significant materials to be delivered by the State to the Vendor’s personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor’s personnel to be assigned, the Vendor’s estimated work hours required to accomplish the purpose, objective or goals, the Vendor’s billing rates and units billed, and the Vendor’s total estimated cost of the work authorization.
42. All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the State prior to beginning work.
43. The State has the right to require the Vendor to stop or suspend performance under the “Stop Work” provision of the North Carolina Department of Information Technology Terms and Conditions.
44. The Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:
    1. Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
    2. Terminate the work authorization, or
    3. Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
    4. The State will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor’s notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

**41) Stop Work Order** The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under the Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.

* 1. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:
     1. Cancel the Stop Work Order, or
     2. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.
  2. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:
     1. The Stop Work Order results in an increase in the time required for, or in the Vendor’s cost properly allocable to the performance of any part of the Agreement, and
     2. The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon an offer submitted at any time before final payment under the Agreement.
  3. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
  4. The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

1. **TRANSITION ASSISTANCE** If the Agreement is not renewed at the end of the term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to six (6) months after the expiration or cancellation of the Agreement, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Agreement, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Agreement for Contract performance. If the State cancels the Agreement for cause, then the State will be entitled to off set the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

**Section 2: Terms and Conditions Applicable to Security of Vendor Infrastructure.**

**1) SECURITY OF STATE DATA:**

* 1. Vendor will be required pursuant to this Agreement, to collect, store, maintain, handle and process State Data. The Vendor shall not store or transfer State Data outside of the United States. This includes backup data and Disaster Recovery locations.
  2. 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 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 subVendors 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.
  3. 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 access to the Data.
  4. The Vendor shall certify to the State:
  5. The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
  6. That the system used to provide the Services under this Agreement 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 5. The State reserves the right to independently evaluate, audit, and verify such requirements.
  7. 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:
        1. The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
        2. 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.
  8. Security Breach. “Security Breach” under the NC Identity Theft Protection Act (N.C.G.S. § 75-60 *et. seq*.) 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.
  9. 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 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. 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.
  10. 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.
  11. 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.
  12. 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.
  13. 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.
  14. 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:
  15. The scale and quantity of the State Data loss;
  16. 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
  17. What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
  18. 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.

* 1. 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.
  2. 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.

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**Section 3: Terms and Conditions Applicable to Personnel and Personal Services**

1. **Vendor’s Representation:** Vendor warrants that qualified personnel will provide Services in a professional manner. “Professional manner” means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor’s obligations hereunder. Such third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
   1. Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
   2. Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor’s proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.
   3. Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.
2. **Services Provided by Vendor - RESERVED** Reserved.
3. **Personnel:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor’s offer. Any desired substitution shall be noticed to the Agency’s Contract Administrator in writing accompanied by the names and references of Vendor’s recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.
   1. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
   2. Vendor personnel shall perform their duties on the premises of the State, during the State’s regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
   3. The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
      1. Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
      2. Such use does not conflict with any procurement law, regulation or policy, or
      3. Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor’s personnel.
   4. Unless otherwise provided by the Agency, the Vendor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the accomplishment of the tasks specified in the Agreement. The Vendor shall be legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. The Vendor shall be solely responsible for acquiring any equipment, furniture, and office space not furnished by the State necessary for the Vendor to comply with the Agreement. The Vendor personnel shall comply with any applicable State facilities or other security rules and regulations.
4. **PERSONAL SERVICES**: The State shall have and retain the right to obtain personal Services of any individuals providing Services under the Agreement. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal Services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor to ensure continuity of Services provided under the Agreement. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal Services due as all or part of any performance due under the Agreement.
   1. Vendor personnel shall perform any duties on the premises of the State during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
   2. The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under the Agreement. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ best commercial efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.
   3. Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.
   4. The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
      1. Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
      2. Such use does not conflict with any procurement law, regulation or policy, or
      3. Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

# Attachment C: NCDHHS Terms and Conditions

**1) Record Retention**

Records shall not be destroyed, purged, or disposed of without the express written consent of NCDHHS. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. However, this contract is subject to federal policy and regulations, record retention is a minimum of ten years. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the ten-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period described above, whichever is later

# Attachment D: Description of Offeror

Provide the information about the offeror.

|  |  |
| --- | --- |
| Offeror’s full name |  |
| Offeror’s address |  |
| Offeror’s telephone number |  |
| Ownership | Public  Partnership  Subsidiary  Other (specify) |
| Date established |  |
| If incorporated, State of incorporation. |  |
| North Carolina Secretary of State Registration Number, if currently registered |  |
| Number of full-time employees on January 1st for the last three years or for the duration that the Vendor has been in business, whichever is less. |  |
| Offeror’s Contact for Clarification of offer:  Contact’s name  Title  Email address and Telephone Number |  |
| Offeror’s Contact for Negotiation of offer:  Contact’s name  Title  Email address and Telephone Number |  |
| If Contract is Awarded, Offeror’s Contact for Contractual Issues:  Contact’s name  Title  Email address and Telephone Number |  |
| If Contract is Awarded, Offeror’s Contact for Technical Issues:  Contact’s name  Title  Email address and Telephone Number |  |

**HISTORICALLY UNDERUTILIZED BUSINESSES**

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included as HUBs are disabled business enterprises and non-profit work centers for the blind and severely disabled.”

Pursuant to N.C.G.S. §§ 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFP. Contact the North Carolina Office of historically Underutilized Businesses at 919-807-2330 with questions concerning NC HUB certification. <http://ncadmin.nc.gov/businesses/hub>

Respond to the questions below.

1. Is Vendor a Historically Underutilized Business?  Yes  No
2. Is Vendor Certified with North Carolina as a Historically Underutilized Business?  Yes  No

If so, state HUB classification: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Attachment E: Cost Form

The Cost Tables below are provided for convenience. Vendors may use them or propose their own Cost Tables when submitting their Proposal.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **YEAR 1** | | | | | |
| **ITEM #** | **ESTIMATED QUANTITY\*** | **UNIT** | **DESCRIPTION** | **UNIT COST** | **EXTENDED COST** |
| **\***Estimated Quantity is based on the maximum number of calls or texts for each defined Tier. The number of calls or texts per month may not meet the maximum. E.g., The price provided for Tier 1 calls will be the same as that provided for 249 calls if the number of calls was 1 that month. | | | | | |
| 1 | 1 | month | Call Center Capacity Maintenance |  |  |
| 2 | 249 | calls | Tier 1 Breastfeeding Hotline Call Support Services (estimated 1 – 249 calls per month) |  |  |
| 3 | 1,499 | texts | Tier 1 Breastfeeding Text Support Services (estimated 500 – 1,499 texts per month) |  |  |
| 4 | 499 | calls | Tier 2 Breastfeeding Hotline Call Support Services (estimated 250 – 499 calls per month) |  |  |
| 5 | 2,499 | texts | Tier 2 Breastfeeding Text Support Services (estimated 1,500 – 2,499 texts per month) |  |  |
| 6 | 749 | calls | Tier 3 Breastfeeding Hotline Call Support Services (estimated 500 – 749 calls per month) |  |  |
| 7 | 3,499 | texts | Tier 3 Breastfeeding Text Support Services (estimated 2,500 – 3,499 texts per month) |  |  |
|  |  |  | Maximum Cost Year 1 |  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **YEAR 2** | | | | | |
| **ITEM #** | **ESTIMATED QUANTITY\*** | **UNIT** | **DESCRIPTION** | **UNIT COST** | **EXTENDED COST** |
| **\***Estimated Quantity is based on the maximum number of calls or texts for each defined Tier. The number of calls or texts per month may not meet the maximum. E.g., The price provided for Tier 1 calls will be the same as that provided for 249 calls if the number of calls was 1 that month. | | | | | |
| 1 | 1 | month | Call Center Capacity Maintenance |  |  |
| 2 | 249 | calls | Tier 1 Breastfeeding Hotline Call Support Services (estimated 1 – 249 calls per month) |  |  |
| 3 | 1,499 | texts | Tier 1 Breastfeeding Text Support Services (estimated 500 – 1,499 texts per month) |  |  |
| 4 | 499 | calls | Tier 2 Breastfeeding Hotline Call Support Services (estimated 250 – 499 calls per month) |  |  |
| 5 | 2,499 | texts | Tier 2 Breastfeeding Text Support Services (estimated 1,500 – 2,499 texts per month) |  |  |
| 6 | 749 | calls | Tier 3 Breastfeeding Hotline Call Support Services (estimated 500 – 749 calls per month) |  |  |
| 7 | 3,499 | texts | Tier 3 Breastfeeding Text Support Services (estimated 2,500 – 3,499 texts per month) |  |  |
|  |  |  | Maximum Cost Year 2 |  |  |

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| --- | --- | --- | --- | --- | --- |
| **OPTION YEAR 1 (CONTRACT YEAR 3)** | | | | | |
| **ITEM #** | **ESTIMATED QUANTITY\*** | **UNIT** | **DESCRIPTION** | **UNIT COST** | **EXTENDED COST** |
| **\***Estimated Quantity is based on the maximum number of calls or texts for each defined Tier. The number of calls or texts per month may not meet the maximum. E.g., The price provided for Tier 1 calls will be the same as that provided for 249 calls if the number of calls was 1 that month. | | | | | |
| 1 | 1 | month | Call Center Capacity Maintenance |  |  |
| 2 | 249 | calls | Tier 1 Breastfeeding Hotline Call Support Services (estimated 50 – 249 calls per month) |  |  |
| 3 | 1,499 | texts | Tier 1 Breastfeeding Text Support Services (estimated 500 – 1,499 texts per month) |  |  |
| 4 | 499 | calls | Tier 2 Breastfeeding Hotline Call Support Services (estimated 250 – 499 calls per month) |  |  |
| 5 | 2,499 | texts | Tier 2 Breastfeeding Text Support Services (estimated 1,500 – 2,499 texts per month) |  |  |
| 6 | 749 | calls | Tier 3 Breastfeeding Hotline Call Support Services (estimated 500 – 749 calls per month) |  |  |
| 7 | 3,499 | texts | Tier 3 Breastfeeding Text Support Services (estimated 2,500 – 3,499 texts per month) |  |  |
|  |  |  | Maximum Cost Year 3 |  |  |

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| --- | --- | --- | --- | --- | --- |
| **OPTION YEAR 2 (CONTRACT YEAR 4)** | | | | | |
| **ITEM #** | **ESTIMATED QTY** | **UNIT** | **DESCRIPTION** | **UNIT COST** | **EXTENDED COST** |
| 1 |  |  | Call Center Capacity Maintenance |  |  |
| 2 |  |  | Tier 1 Breastfeeding Hotline Call Support Services (estimated 50 – 249 calls per month) |  |  |
| 3 |  |  | Tier 1 Breastfeeding Text Support Services (estimated 500 – 1,499 texts per month) |  |  |
| 4 |  |  | Tier 2 Breastfeeding Hotline Call Support Services (estimated 250 – 499 calls per month) |  |  |
| 5 |  |  | Tier 2 Breastfeeding Text Support Services (estimated 1,500 – 2,499 texts per month) |  |  |
| 6 |  |  | Tier 3 Breastfeeding Hotline Call Support Services (estimated 500 – 749 calls per month) |  |  |
| 7 |  |  | Tier 2 Breastfeeding Text Support Services (estimated 2,500 – 3,499 texts per month) |  |  |
|  |  |  | Maximum Cost Year 4 |  |  |

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| --- | --- | --- | --- | --- | --- |
| **OPTION YEAR 3 (CONTRACT YEAR 5)** | | | | | |
| **ITEM #** | **ESTIMATED QTY** | **UNIT** | **DESCRIPTION** | **UNIT COST** | **EXTENDED COST** |
| 1 |  |  | Call Center Capacity Maintenance |  |  |
| 2 |  |  | Tier 1 Breastfeeding Hotline Call Support Services (estimated 50 – 249 calls per month) |  |  |
| 3 |  |  | Tier 1 Breastfeeding Text Support Services (estimated 500 – 1,499 texts per month) |  |  |
| 4 |  |  | Tier 2 Breastfeeding Hotline Call Support Services (estimated 250 – 499 calls per month) |  |  |
| 5 |  |  | Tier 2 Breastfeeding Text Support Services (estimated 1,500 – 2,499 texts per month) |  |  |
| 6 |  |  | Tier 3 Breastfeeding Hotline Call Support Services (estimated 500 – 749 calls per month) |  |  |
| 7 |  |  | Tier 2 Breastfeeding Text Support Services (estimated 2,500 – 3,499 texts per month) |  |  |
|  |  |  | Maximum Cost Year 5 |  |  |

# Attachment F: Vendor Certification Form

1. **ELIGIBLE VENDOR**

The Vendor certifies that in accordance with N.C.G.S. §143-59.1(b), Vendor is not an ineligible vendor as set forth in N.C.G.S. §143-59.1 (a).

The Vendor acknowledges that, to the extent the awarded contract involves the creation, research, investigation or generation of a future RFP or other solicitation; the Vendor will be precluded from bidding on the subsequent RFP or other solicitation and from serving as a subcontractor to an awarded vendor.

The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Vendor, or as a subcontractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP or other solicitation.

1. **Conflict of Interest**

Applicable standards may include: N.C.G.S. §§143B-1352 and 143B-1353, 14-234, and 133-32. The Vendor shall not knowingly employ, during the period of the Agreement, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing Services involving, or similar to, the scope and nature of this solicitation or the resulting contract.

1. **E-VERIFY**

Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Vendors claiming exceptions or exclusions under Chapter 64 must identify the legal basis for such claims and certify compliance with federal law regarding registration of aliens including 8 USC 1373 and 8 USC 1324a. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

1. **CERTIFICATE TO TRANSACT BUSINESS IN North Carolina**

As a condition of contract award, awarded Vendor shall have registered its business with the North Carolina Secretary of State and shall maintain such registration throughout the term of the Contract.

Signature: Date:

Printed Name: Title:

# Attachment G: Location of Workers Utilized by Vendor

In accordance with N.C.G.S. §143B-1361(b), Vendor must identify how it intends to utilize resources or workers located outside the U.S., and the countries or cities where such are located. The State will evaluate additional risks, costs, and other factors associated with the Vendor’s utilization of resources or workers prior to making an award for any such Vendor’s offer. The Vendor shall provide the following:

1. The location of work to be performed by the Vendor’s employees, subcontractors, or other persons, and whether any work will be performed outside the United States. The Vendor shall provide notice of any changes in such work locations if the changes result in performing work outside of the United States.
2. Any Vendor or subcontractor providing support or maintenance Services for software, call or contact center Services shall disclose the location from which the call or contact center Services are being provided upon request.

| **Will Vendor perform any work outside of the United States?** | YES  NO |
| --- | --- |

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

# Attachment H: References

The Vendor shall provide with their offer three (3) references of customers utilizing the proposed solution fully implemented in a setting similar to this solicitation’s scope of work. References within like North Carolina communities / industries are encouraged. If three (3) references are not supplied with your offer, your solution can not be evaluated as References is one of the Evaluation Criteria of this RFP.

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

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

1. Customer name.
2. Customer address.
3. Current telephone number of a customer employee most familiar with the offered solution implementation.
4. Customer email address
5. Time period over which each offered solution implementation was completed. Adherence to proposed schedule.
6. Summary of the offered solution implementation.
7. List of offered solution products installed and operational.
8. Number of vendor or technical staff supporting, maintaining and managing the offered solution
   * 1. Number of callers supported by the offered solution per month.
9. Summary of call metrics (such as dropped call rate, average call waiting times, maximum volume of calls per month, average time of call)

# Attachment I: 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  Yes  No

addressing significant issues? If yes, please explain and provide a copy

of the notification letters.

1. Are the financial figures below based on audited financial statements?  Yes  No
2. Start Date of financial statements:

End Date of financial statements:

1. Provide a link to annual reports with financial statements and management discussion for the past three complete fiscal years:
2. 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** |  |  |  |
| 1. Cash and Temporary Investments |  |  |  |
| 1. Accounts Receivable (beginning of year) |  |  |  |
| 1. Accounts Receivable (end of year) |  |  |  |
| 1. Average Account Receivable for the Year (calculated) |  |  |  |
| 1. Inventory (beginning of year) |  |  |  |
| 1. Inventory (end of year) |  |  |  |
| 1. Average Inventory for the Year (calculated) |  |  |  |
| 1. Current Assets |  |  |  |
| 1. Current Liabilities |  |  |  |
| 1. Total Liabilities |  |  |  |
| 1. Total Stockholders’ Equity (beginning of year) |  |  |  |
| 1. Total Stockholders’ Equity (end of year) |  |  |  |
| 1. Average Stockholders’ Equity during the year (calculated) |  |  |  |
|  |  |  |  |
| **INCOME STATEMENT DATA** |  |  |  |
| 1. Net Sales |  |  |  |
| 1. Cost of Goods Sold (COGS) |  |  |  |
| 1. Gross Profit (Net Sales minus COGS) (calculated) |  |  |  |
| 1. Interest Expense for the Year |  |  |  |
| 1. Net Income after Tax |  |  |  |
| 1. Earnings for the Year before Interest & Income Tax Expense |  |  |  |
|  |  |  |  |
| **STATEMENT OF CASH FLOWS** |  |  |  |
| 1. Cash Flow provided by Operating Activities |  |  |  |
| 1. Capital Expenditures (property, plant, equipment) |  |  |  |

# Attachment J: Federal Certifications

**FEDERAL CERTIFICATIONS**

**The undersigned states that:**

1. He or she is the duly authorized representative of the Contractor named below;
2. He or she is authorized to make, and does hereby make, the following certifications on behalf of the Contractor, as set out herein:
   1. The Certification Regarding Nondiscrimination.
   2. Certification Regarding Drug-Free Workplace Requirements.
   3. Certification Regarding Environmental Tobacco Smoke.
   4. The Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions; and
   5. The Certification Regarding Lobbying.
3. He or she has completed the Certification Regarding Drug-Free Workplace Requirements by providing the addresses at which the contract work will be performed.
4. [ Check the applicable statement]

He or she has completed the attached Disclosure of Lobbying Activities because the Contractor has made, or has an agreement to make, a payment to a lobbying entity for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action.

*OR*

He or she has not completed the attached Disclosure of Lobbying Activities because the Contractor has not made, and has no agreement to make, any payment to any lobbying entity for influencing or attempting to influence any officer or employee of any agency, any Member of Congress, any officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action.

1. The Contractor shall require its subcontractors, if any, to make the same certifications and disclosure.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature Title**

**Contractor [Organization’s] Legal Name Date**

**This Certification must be signed by a representative of the Contractor who is authorized to sign contracts.**

**I. Certification Regarding Nondiscrimination**

**The Contractor certifies** that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

**II.** **Certification Regarding Drug-Free Workplace Requirements**

1. **The Contractor certifies** that it will provide a drug-free workplace by:
2. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violation of such prohibition.
3. Establishing a drug-free awareness program to inform employees about:
4. The dangers of drug abuse in the workplace.
5. The Contractor’s policy of maintaining a drug-free workplace.
6. Any available drug counseling, rehabilitation, and employee assistance programs; and
7. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
8. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (a).
9. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the agreement, the employee will:
10. Abide by the terms of the statement; and
11. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
12. **Notifying the Department within ten days after receiving notice under subparagraph (d)(2) from an employee or** otherwise receiving actual notice of such conviction.
13. Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
14. taking appropriate personnel action against such an employee, up to and including   
    termination; or
15. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
16. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
17. The sites for the performance of work done in connection with the specific agreement are listed below (list all sites; add additional pages if necessary):

**Street Address No 1:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address City State Zip Code

**Street Address No 2:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address City State Zip Code

1. The vendor will inform the Department of any additional sites for performance of work under this agreement.
2. False certification or violation of the certification may be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment. 45 C.F.R. 82.510.

**III. Certification Regarding Environmental Tobacco Smoke**

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to ‘children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000.00 per day and/or the imposition of an administrative compliance order on the responsible entity.

**The Contractor certifies** that it will comply with the requirements of the Act. The Contractor further agrees that it will require the language of this certification be included in any subawards that contain provisions for ‘children’s services and that all subgrantees shall certify accordingly.

**IV. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier**

**Covered Transactions**

**Instructions**

[The phrase "prospective lower tier participant" means the Contractor.]

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originate may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," “” earned," "suspended," "ineligible," "lower tier covered transaction," "participant, “person," "primary covered transaction," "principal," “” proposal," and "voluntarily” excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause “titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary –exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

**Certification**

1. **The prospective lower tier participant certifies,** by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**V. Certification Regarding Lobbying**

**The Contractor certifies**, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form “SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of $100,000.00 or more and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000.00 and not more than $100,000.00 for each such failure.

**VI. Disclosure of Lobbying Activities**

**Instructions**

This disclosure form shall be completed by the reporting entity, whether sub awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification for this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub awardee, e.g., the first sub awardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item “checks "Sub” awardee", then enter the full name, address, city, state, and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal Identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefix “, e.g., "RFP-D”-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting

entity identified in Item 4 to influence the covered Federation.

(b) Enter the full names of the individual(s) performing services and include full address if different

from 10(a). Enter Last Name, First Name and Middle Initial (MI).

1. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
2. Check the appropriate boxes. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
3. Check the appropriate boxes. Check all boxes that apply. If other, specify nature.
4. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Includes all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
5. Check whether a SF-LLL-A Continuation Sheet(s) is attached.
6. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

**Disclosure of Lobbying Activities**

**(Approved by OMB 0348-0046)**

**Complete this form to disclose lobbying activities pursuant to 31 U.S 1352**

|  |  |  |  |
| --- | --- | --- | --- |
| 1. Type of Federal Action:  a. contract  b. grant  c. cooperative  agreement  d. loan  e. loan guarantee  f. loan insurance | 2. Status of Federal Action:  a. Bid/offer/application  b. Initial Award  c. Post-Award | | 3. Report Type:  a. initial filing  b. material change  **For Material Change Only:**  Year\_\_\_\_\_\_\_\_\_\_\_ Quarter\_\_\_\_\_\_\_\_\_\_\_\_  Date of Last Report:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| 4. Name and Address of Reporting Entity:  Prime  Subawardee Tier \_\_\_\_\_\_\_\_\_, (if known)  Congressional District (if known) | | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:  Congressional District (if known) | |
| 6. Federal Department/Agency: | | 7. Federal Program Name/Description:  CFDA Number (if applicable)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| 8. Federal Action Number (if known) | | 9. Award Amount (if known) :  $ | |
| 10. a. Name and Address of Lobbying Registrant  (*if individual, last name, first name, MI*):  (*attach Continuation Sheet(s) SF-LLL-A, if necessary*) | | b. Individuals Performing Services (*including address if different from No. 10a.*) (*last name, first name, MI*):  (*attach Continuation Sheet(s) SF-LLL-A, if necessary*) | |
| 11. Amount of Payment (*check all that apply*):  $  actual  planned | | 13. Type of Payment (*check all that apply*):  a. retainer  b. one-time fee  c. commission  d. contingent fee  e. deferred  f. other; specify: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| 12. Form of Payment (*check all that apply*):  a. cash  b. In-kind; specify: Nature  Value \_\_\_\_\_\_\_\_\_ | |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Services, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11(*attach Continuation Sheet(s) SF-LLL-A, if necessary*): | | | |
|  | | | |
| 15. Continuation Sheet(s) SF-LLL-A attached:  Yes  No | | | |
| 16. Information requested through this form is authorized by title 31 U. S. C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U. S. C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | | Signature:  Print Name:    Title:    Telephone No:  Date: | |
| Federal Use Only | | | Authorized for Local Reproduction Standard Form - LLL |

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| --- |
| Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D. C. 20503 |

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# Attachment K: Terms and Conditions – Federally Funded

Contracts Partially or Wholly Federally Funded.

* 1. RESERVED

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

* 1. The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

* 1. The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:

The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish info

action.

The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union of workers' representatives of the Vendor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for

employment.

The Vendor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

The Vendor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and

orders.

In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided

by law.

The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein “applicant,” as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or Vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United

States.

The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.

**2** . **FEDERAL FUNDS PROVISIONS**

**Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract.** Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

1. **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor’s bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State’s award of any work under this Contract.
2. **Program Monitoring**. Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.
3. **Remedies and Termination**, for purposes of this section the State Remedies and Termination provisions above apply as written.
4. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

*1. Overtime requirements*. No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of $26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).

3. *Withholding for unpaid wages and liquidated damages*. The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.52).

4. *Subcontracts*. The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through.

1. **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**.

Clean Air Act

* + - 1. The Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
      2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
      3. The Vendor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

The Vendor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.

The Vendor agrees that these requirements will be included in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance.

1. **Debarment and Suspension.**

This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower-tier-covered transaction it enters.

This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** (as Amended).

To the extent applicable, Vendors that apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tear up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See “Certification Regarding Lobbying” found at Attachment J. Federal Certifications.

1. **Procurement of Recovered Materials.**
   * 1. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

* Competitively within a timeframe providing for compliance with the Contract performance schedule.
* Meeting Contract performance requirements; or
* At a reasonable price.
  + 1. Information about this requirement, along with the list of EPA designated items, is available at EPA’s Comprehensive Procurement Guidelines web site: https://www.epa.gov/smm/comprehensive- procurement-guideline-cpg-program.
    2. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

1. **Access to Records**. In addition to the North Carolina General Contract Terms & Conditions section entitled “**ACCESS TO PERSONS AND RECORDS”** included in this Contract, the following access to records requirements apply to this Contract:
   * + 1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
       2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
       3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
       4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.
2. **Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled “**AMENDMENTS**” and “CHANGES” except as approval and signature by any federal official may also be required.
3. **Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation, or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.

**l) Energy Efficiency**. All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL94-163)

**Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.

**No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.

**Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.

**Federal Seals, Logos, and Flags**. In addition to the prohibitions of the North Carolina General Contract Terms & Conditions section above entitled “**ADVERTISING,”** the Vendor shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.

**System for Awards Management**. Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/portal/SAM> and the State Debarred Vendors Listing, <http://www.pandc.nc.gov/actions.asp> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government.

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# APPENDIX 1: WORLD HEALTH ORGANIZATION (WHO) INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES

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