

STATE OF NORTH CAROLINA OFFICE OF STATE HUMAN RESOURCES <i>NCFlex State Insurance Plans section</i>	INVITATION FOR BIDS NO. # 13-DOA1494710863	
	Offers will be publicly opened: July 1 2025	
	Issue Date: July 15, 2025 at 2:00PM ET	
Refer <u>ALL</u> inquiries regarding this IFB to: Meredith Swartz Meredith.swartz@doa.nc.gov (984) 236-0083	Commodity Number: 441017	
	Description: Printing, Mailing and Storage for FLEX	
	Using Agency: Office of State Human Resources	
See page 4 for mailing instructions.	Requisition No.: RQ209167	

OFFER AND ACCEPTANCE

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

EXECUTION

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

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

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

Offer valid for sixty (60) days from date of offer opening unless otherwise stated here: ____ days

ACCEPTANCE OF OFFER

If any or all parts of this IFB are accepted, an authorized representative of the Office of State Human Resources shall affix their signature hereto. A copy of this acceptance will be forwarded to the successful vendor(s).

<u>FOR STATE USE ONLY</u> Offer accepted and contract awarded this ____ day of _____, 20____, as indicated on attached certification, by _____ (Authorized representative of Office of State Human Resources).

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1.0 INTENT, USE, DURATION AND SCOPE

Goods and Services will be provided in accordance with the terms and conditions of this IFB.

The North Carolina Office of State Human Resources (OSHR), NCFlex State Insurance Plans section, is seeking bids from Health Insurance Portability and Accountability Act (HIPAA) compliant vendors for time sensitive printing, mailing and storage of printed communications which consist of but are not limited to: the NCFlex State Insurance Plans Enrollment Guide; NCFlex State Insurance Plans Benefits Guide; NCFlex State Insurance Plans University Enrollment Guide; NCFlex State Insurance Plans Tri-Fold Self-Mailers; and NCFlex Pre-Tax Calculator. The NCFlex Guides contain information for benefits-eligible employees to view and make decisions when enrolling in benefits during Open Enrollment or Initial Eligibility and used by benefits representatives to reference benefits information when helping employees with questions. The NCFlex Pre-Tax Calculators are distributed to benefits-eligible employees to help them understand how Pre-Tax premiums work when coming out of their payroll. See the following link for current publications:

<https://oshr.nc.gov/state-employee-resources/benefits/ncflex/ncflex-benefits-enrollment-resources>

The purpose of this Invitation for Bid is to engage a Vendor with the expertise, resources, and scalability to provide time-sensitive printing, mailing and storage services on an as needed basis which consist of but are not limited to: the NCFlex State Insurance Plans Enrollment Guide; NCFlex State Insurance Plans Benefits Guide; NCFlex State Insurance Plans University Enrollment Guide; NCFlex State Insurance Plans Tri-Fold Self-Mailers; and NCFlex Pre-Tax Calculator for North Carolina Office of State Human Resources (OSHR), NCFlex State Insurance Plans section.

This contract will be utilized by OSHR, state agencies, community colleges, and universities.

The Vendor shall provide graphic design services, editing services, print services, mailing, and/or storage for the following:

- a. Trifold Self Mailers (two (2) versions) - full color
- b. Booklet: Benefits Guide - full color, fifty-six (56) pages
- c. Booklet: Enrollment Guide - full color, forty (40) pages
- d. Booklet: Enrollment Guide - University - full color, twenty-eight (28) pages
- e. Slide Chart (Pre-Tax Calculator) – full color

2.0 GENERAL INFORMATION RESERVED

2.1. PROCURMENT SCHEDULE:

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

Event	Responsibility	Date and Time
Issue IFB	State	June 26, 2025
Deadline Submit Written Questions	Vendor	July 3, 2025 @ 2:00PM

Provide Response to Questions	State	July 8, 2025
Submit Proposals	Vendor	July 15, 2025 @ 2:00PM
Contract Award	State	TBD
Contract Effective Date	Vendor	TBD

Bid Opening; The Department of Administration will be conducting live bid openings over Microsoft Teams conference call. Below is the call-in information for this procurement’s bid opening scheduled for July 15, 2025 @ 2:00PM ET.

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 213 926 947 533 3

Passcode: au9wZ2Rt

Dial in by phone

[+1 984-204-1487,,9435786#](tel:+198420414879435786) United States, Raleigh

[Find a local number](#)

Phone conference ID: 943 578 6#

Join on a video conferencing device

Tenant key: ncgov@m.webex.com

Video ID: 113 567 122 3

2.2 VENDOR QUESTIONS

Upon review of the IFB documents, Vendors may have questions to clarify or interpret the IFB in order to submit the best proposal possible. To accommodate the Proposal Questions process, Vendors shall submit any such questions by the “Submit Written Questions” date and time provided in the RFP SCHEDULE Section above, unless modified by Addendum.

Questions related to the content of the solicitation, or the procurement process should be directed to the person on the title page of this document via the Sourcing Tool's message board by the date and time specified in the IFB SCHEDULE Section of this IFB. Vendors will enter “IFB # 13-DOA1494710863 – Questions” as the subject of the message. Question submittals should include a reference to the applicable IFB section. This is the only manner in which questions will be received.

Questions or issues related to using the 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 ET to 5:00 PM ET.

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

REFERENCE	VENDOR QUESTION
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IFB Section, Page Number	Vendor questions . . . ?
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2.3. ADDENDA

The State may issue addenda if Vendor questions are permitted as described above, or if additional terms, specifications, or other changes are necessary for this procurement. It is important that all Vendors bidding on this IFB periodically check the NC Electronic Vendor Portal (eVP) for any and all addenda that may be issued prior to the offer opening date. All addenda shall become an addendum to this IFB.

2.4. OFFER SUBMITTAL

Due Date: July 15, 2025
Time: 2:00 pm Eastern Time

IMPORTANT NOTE: This is an absolute requirement. Late bids, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. Vendor shall bear the sole risk of late submission due to unintended or unanticipated delay. It is the Vendor's sole responsibility to ensure its proposal has been received as described in this RFP by the specified time and date of opening. Failure to submit a proposal in strict accordance with instructions provided shall constitute sufficient cause to reject a Vendor's proposal(s). Solicitation responses are subject to Sealed Bidding requirements.

Vendor's proposals for this procurement must be submitted through the Sourcing Tool. For training on how to use the 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 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.

Tips for Using the Sourcing Tool

- a) Vendors should review available training and confirm that they are able to access the Sourcing Event, enter responses, and upload files well in advance of the date and time response are due to allow sufficient time to seek assistance from the North Carolina eProcurement Help Desk.
- b) Vendors may submit their responses early to make sure there are no issues, and then submit a revised response any time prior to the response due date and time. The State will only review the most recent response.
- c) Vendors should respond to all relevant sections of the Sourcing Event. Certain questions or items are required in order to submit a response and are denoted with an asterisk. The Sourcing Tool will not allow a response to be submitted unless all required items are completed. The Sourcing Tool will provide error messages to help identify any required information that is missing when response is submitted.
- d) Simply saving your response in the Sourcing Tool is not the same as submitting your response to the State. Vendors should make sure they complete the submission process and receive a message that their response was successfully submitted.
- e) **Only Proposals submitted through the Content Section of the Ariba Sourcing Event will be considered. Proposals submitted through the Message Board will not be accepted or considered for award.**

2.5. BASIS FOR REJECTION

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s)

in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this IFB with anyone other than Denise H. Mazza may be grounds for rejection of said Vendor's offer.

2.6. LATE OFFERS

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

2.7. 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,"
- "Vendor does not commit or bind itself to any terms and conditions by this submission,"
- "This document and all associated documents are non-binding and shall be used for discussion purposes only,"
- "This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties," or
- A statement of similar intent.

2.8. NOTICE TO VENDORS

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

2.9. E-PROCUREMENT SOLICITATION

This is an E-Procurement solicitation. See Paragraph #47 of the attached Department of Information Technology Terms and Conditions.

2.10. POSSESSION AND REVIEW

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

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

2.11. BEST AND FINAL OFFERS (BAFO)

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

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

2.12. AWARD

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

A link to the NC Electronic Vendor Portal (eVP) allows the public to retrieve contract award information electronically from the website: <https://evp.nc.gov/> Results may be found by searching by IFB 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.

2.13. POINTS OF CONTACT

Contact with the persons shown below for contractual and technical matters related to this IFB is only permitted if expressly agreed to by the contact person listed on Page One of this solicitation, or upon award of contract:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact

3.0 SPECIFICATIONS

3.1. VENDOR STANDARD AGREEMENT(S)

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

3.2. VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.

In accordance with N.C.G.S. §143B-1361(b), Vendor must detail in the IFB response, the manner in which it intends to utilize resources or workers located outside the U.S. 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. The Vendor shall provide the following for any offer or actual utilization or contract performance:

- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.
- b) The corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other subcontractors.
- c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside the United States.
- d) Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided.

Will any work under this contract be performed outside the United States? YES NO

If Vendor answered "YES" above, list the location(s) outside the United States where work under this contract will be performed by Vendor, any sub-contractors, employees, or other persons performing work under the contract.

3.3. E-VERIFY

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

3.4. SECURITY SPECIFICATIONS

3.4.1. SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The NCFlex Printing, Mailing, and Storage services Vendor will be required to receive and securely manage data that is classified as *High Risk*. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

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

- (a) Vendors shall provide a completed Vendor Readiness Assessment Report Non-State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website: <https://it.nc.gov/documents/vendor-readiness-assessment-report>
- (b) Upon request, Vendors shall provide a current independent 3rd party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors are encouraged to provide a current independent 3rd party assessment report in accordance with subparagraphs (i)-(iii) at the time of offer submission.
 - (i) Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, ISO 27001, or HITRUST are the preferred assessment reports for any Vendor solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted).
 - (ii) A Vendor that cannot provide a preferred independent 3rd party assessment report as described above may submit an alternative assessment, such as a SOC 2 Type 1 assessment report. The Vendor shall provide an explanation for submitting the alternative

assessment report. If awarded this contract, a Vendor who submits an alternative assessment report shall submit one of the preferred assessment reports no later than 365 days of the Effective Date of the contract. Timely submission of this preferred assessment report shall be a material requirement of the contract.

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

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

3.5. ENTERPRISE, SERVICES, AND STANDARDS ARCHITECTURE SPECIFICATIONS

Agencies and Vendors should refer to the Vendor Resources Page for information on North Carolina Department of Information Technology regarding architecture, security, strategy, data, digital, identity and access management and other general information on doing business with state IT process. The Vendor Resources Page is found at the following link: <https://it.nc.gov/vendor-engagement-resources>. This site provides vendors with statewide information and links referenced throughout the IFB document. Agencies may request additional information.

3.5.1 ARCHITECTURE DIAGRAMS

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

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

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

3.5.2 SOLUTION ROADMAP

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

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

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

3.5.3 IDENTITY AND ACCESS MANAGEMENT

The proposed solution must externalize identity and access management. The protocols describing the State's Identity and Access Management can be found at the following link: <https://it.nc.gov/services/vendor-engagement-resources#Tab-IdentityAccessManagement-1241>
Describe how your solution supports the above protocols, as well as making them available for application integration/consumption.

3.5.4 INTEGRATION APPROACH (RESERVED)

3.5.5 DISASTER RECOVERY AND BUSINESS CONTINUITY

Describe the proposed solution capabilities related to the following areas:
Disaster Recovery Plan (DRP) – describe how proposed solution supports Recovery Point Objectives (RPO) and Recovery Time Objectives (RTO) metrics.

System Backup – describe backup plan capabilities.

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

3.5.6. DATA MIGRATION (RESERVED)

3.5.7. APPLICATION MANAGEMENT

Describe how the proposed solution monitors and reports the metrics on system performance.
Describe how the proposed solution manages user administration.
Describe the audit capabilities of proposed solution related to management of the application.

3.5.8. ACCESSIBILITY

Describe how the proposed solution complies with industry accessibility standards.
Provide product documentation that demonstrates how the proposed solution is digitally accessible or if not fully accessible, provide the roadmap with a timeline for remediation.
Standards include:

- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1:
<https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®):
<https://www.itic.org/policy/accessibility/vpat>

3.6. CONTRACT TERM

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award (Effective Date). The term shall be one (1) year 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 this contract for two (2) additional one (1) year periods at its sole discretion.

3.7. DELIVERY

Successful Vendor will complete the scope of work within the number of days as provided in Section 3.8 after receipt of purchase order to the delivery location(s):

If circumstances beyond the control of the contractor result in a late delivery, it is the responsibility and obligation of the contractor to notify the Purchasing Agent listed on the purchase order, in

writing, immediately upon determining delay of shipment. The written notification should indicate the anticipated delivery date.

3.8. Experience / Customer Service

3.8.1 VENDOR (YOU) MUST REPLY YES OR NO TO EACH OF THE FOLLOWING QUESTIONS:

1. Do you have experience printing, sorting, collating and mailing via first class bulk fulfillment to more than one hundred thousand (100,000) households? YES NO
2. Do you have experience with drop shipping and storage of over one hundred thousand (100,000) booklets? YES NO
3. Do you have knowledge of all regulations regarding mass mailings via the United States Postal Service (USPS) for first class and bulk mailings? YES NO
4. Will you destroy any unused inventory at the request of OSHR? YES NO
5. Will you provide a web-based portal and admin access for ordering OSHR's stored products throughout the year? YES NO
6. Will you notify OSHR within fifteen (15) calendar days of any changes in those individuals identified as having authority to bind the firm? YES NO
7. Will you meet quick turnaround print production and dates mutually agreed upon after award of contract? YES NO
8. Will you be available for NCFlex to reach between the hours of 8:00 a.m. – 6:00 p.m. ET, Monday through Friday on State Business Days. YES NO
9. Will you provide proof of insurance within thirty (30) Business Days from notification of award. YES NO
10. Will you provide professional graphic design and editing services on an as requested basis. YES NO
11. Any price increase due to mill paper stock pricing shall be limited to a pass through of the increase and will require supporting documentation from the Vendor before any increased rates can be reimbursed. Notice of any such increases must be provided to NCFlex at least fifteen (15) days prior to the effective date of the rate change and processed as a contract amendment agreed to in writing by the State and Vendor. Any such mill paper stock pass through cost increase must be accepted in writing by the State before it may be charged, and the amount of any such increase is limited to no more than \$50,000 measured per year. YES NO

3.8.2 REFERENCES

Vendor shall upload to the Sourcing Tool at least three (3) references, for which it has provided Services of similar size and scope to those proposed herein. These references should be provided in the format of Section 8.0 of this IFB. The State may contact these users to determine whether the Services provided are substantially similar in scope to those proposed herein and whether Vendor's performance has been satisfactory. The information obtained may be considered in the evaluation of the Bid.

3.8.3 IMPLEMENTATION

Within thirty (30) days of contract award, the awarded Vendor will accept NC Flex's publications on pallets from the former Vendor. The former Vendor will be responsible for all costs associated with shipping the publications. After verifying the number of publications per type, the awarded Vendor will house the palletized publications in a clean climate-controlled warehouse.

3.8.4 ESTIMATED QUANTITIES

All quantities/items listed in this IFB are estimates based on the State's historical and anticipated needs and are not guaranteed. Product increases or decreases may occur. OSHR shall not be obligated to purchase the amount represented by the estimated quantities contained herein (including without limitation the quantities listed in Table 1) or any other quantities.

3.8.5 PROOFS

Proofs and copy changes shall be provided at no charge, when necessary.

1. Vendor shall submit proofs to the NCFlex contact for editing and final approval no less than ten (10) business days prior to deadline for each print job.
2. Vendor shall arrange delivery of final proof to the NCFlex contact.

3.8.6 PACKAGING

Packaging shall not exceed: one hundred twenty-five (125) items per double wall carton for the Benefits Guide/Booklet; two hundred and fifty (250) items per double wall carton for the Enrollment Guide/Booklet; and twelve (12) shrink wrapped packs of twenty-five (25) of the NCFlex Pre-Tax Calculator per double wall carton.

3.8.7 ONLINE PORTAL FOR ORDERING

1. Vendor shall provide an electronic ordering method for Agencies/Universities/Community Colleges/Charter Schools and the NCFlex staff to order stored printed materials throughout the year.
2. The ordering side of the portal shall have at a minimum:
 - a. Ability to order more than one (1) type of stored publication and at different quantities without having to place separate orders.
 - b. Contact information mandatory fields should include: First Name, Last Name, Email Address, and Phone Number of persons placing the order.
 - c. Shipping information mandatory fields should include: Name of Building/Agency/School; Address line 1; Address line 2; ATTENTION line; City, State, Zip and County and a text box for message or special delivery instructions.
 - d. Be password protected with one (1) common password for NCFlex to issue to all Health Benefit Representatives (HBRs) throughout the state.
 - e. Confirmation email must be immediately and automatically sent to the contact person's email address to include: Date and time of placed order, inventory of all items and quantities placed, contact information to an onsite admin person for questions or concerns with order, estimated ship date of placed order.
3. Vendor shall provide NCFlex staff with "Administrator" type rights to the electronic ordering method to view order history, per Agency/University/Community College/Charter School, and the amount left in storage at any given time.

4. The admin portal shall have at a minimum:
 - a. Common password for the NCFlex team.
 - b. Accurate and real time rolling quantity remaining in storage for each publication.
 - c. An order number per order.
 - d. Date and time order placed.
 - e. Name, email address, telephone number of contact person for placed order.
 - f. Quantity and specific items ordered.
5. Ordering and Admin Portal must be operational and “live” to receive orders no later than February 1, 2026.

3.8.8 POSTAGE/FREIGHT

1. Accept Member address files from NCFlex or NCFlex contracted vendors.
2. Mail printed Tri-Fold Self Mailers via the USPS, unless otherwise specified by NCFlex, in accordance with the mutually agreed upon schedule.
3. Drop ship stored inventory within two (2) State Business Days from online order via USPS or FedEx.
4. Upon receipt of a mail file from NCFlex or one of its vendors, the Vendor shall:
 - a. Utilize the required USPS Coding Accuracy Support Systems (CASS) and National Change of Address (NCOA) software to correct and standardize addresses in the file, in addition to verifying whether an address is valid and deliverable prior to each printing job.
 - b. Provide OSHR with the USPS discount obtained with presorting function.
 - c. Once mailing is complete, destroy and do not retain the information in the mail file.
5. Provide pre-sorting and mail certification services.
6. Arranging for Payment of postage cost by NCFlex:
 - a. Upon receipt of the mail file from NCFlex or one of its vendors, calculate the postage cost for the mailing and invoice NCFlex for the postage cost.
 - b. Provide NCFlex with a statement that lists postage costs for each mailing job authorized by NCFlex in advance of the desired mail drop date.
 - c. After trifold mailing provide NCFlex with the actual postage receipt and return unused postage funding.
7. The State does not have a mailing permit for these services. The Vendor must use its mailing permit.

3.8.9 STORAGE FACILITY

Inventory of publications shall be housed in a clean, climate-controlled facility, on pallets.

3.8.10 INVENTORY MANAGEMENT

1. The Vendor shall provide Management reports to the designated Contract Lead or indicate where these reports can be found within the online portal to be pulled when needed. These reports shall be well organized and easy to read. The Vendor shall submit these reports electronically using Microsoft Excel and, as needed, either Microsoft PowerPoint or Microsoft Word. The Vendor shall submit the reports in a timely manner and on a regular schedule as agreed by the parties.
2. Monthly management reports shall at minimum include the following:
 - a. Quantity and description of items ordered.
 - b. Date/time order received
 - c. Date/time order fulfilled
 - d. Amount of product(s) in inventory
 - e. Sorted by Agency, University, Community College and/or Charter School
 - f. Include Name, address, quantity ordered
 - g. Vendor is responsible for maintaining real time inventory management.

3.8.11 DISPOSITION OF INVENTORY

At the request of the NCFlex team, Vendor shall destroy and dispose of any unused publications.

3.8.12 END OF CONTRACT TRANSITION PLAN

In addition to the transition assistance provided in Section 7, Part 2, Paragraph 10, Vendor shall perform both of the following types of services:

1. Thirty (30) days prior to the expiration or termination date of the contract, the Vendor shall submit to NCFlex a written inventory of existing publications, by type.
2. The Vendor shall be responsible for the cost of shipping all inventory on pallets to the new Vendor within thirty (30) days of the date of award for the new Vendor's contract.

3.8.13 SPECIFICATIONS OF THE PRINTED MATERIAL

The specifications and requirements described herein are drawn around printing, mailing and storage of printed communications which the State has evaluated and determined that the size, construction, design layout, special features and performance are necessary. Vendors are requested to offer only comparable printing, mailing and storage of printed communications which will provide the features and performance needed and implied.

Tri-fold Self Mailers	Booklet: Benefits Guide	Booklet: Enrollment Guide	Booklet: Enrollment Guide - University	Slide Chart (Pre-Tax Calculator)
<p>Format: Tri-Fold self-mailer brochures – Two (2) versions, one for University and one for Non-University</p> <p>Trim Size: Flat Size is 10"x18" folding to 10"x6"</p> <p>Paper Stock: 100# Dull Cover</p> <p>Bleeds: Yes</p> <p>Ink: Four Color Process (4x4) with dull aqueous coating 2 sides</p> <p>Finishing: Bindery – score, fold and fugitive glue closure for mailing.</p> <p>Ink-jet name and address on brochure.</p> <p>Proofs: Final proof of the completed document shall be sent to NCFlex Team for approval within three (3) business days from receipt of digital file.</p> <p>Files:</p>	<p>Format: Booklet Cover plus 52 inside pages (56 pages total)</p> <p>Trim Size: 8.5" x 10.875"</p> <p>Paper Stock: COVER = 100# Gloss Text</p> <p>INSIDE PAGES (TextStock) = 50# Opaque Offset text</p> <p>Bleeds: Yes</p> <p>Ink: COVER = Four Color Process (4x4) with gloss aqueous coating both sides</p> <p>INSIDE PAGES= Four Color Process 2 sides</p> <p>Finishing: COVER = Fold</p> <p>INSIDE PAGES = Fold</p> <p>ALL = Saddle- Stitching Binding</p>	<p>Format: Booklet Cover plus 36 inside pages (40 pages total)</p> <p>Trim Size: 8.5" x 10.875"</p> <p>Paper Stock: COVER = 100# Gloss Text</p> <p>INSIDE PAGES (Text Stock) = 50# Opaque Offset text</p> <p>Bleeds: Yes</p> <p>Ink: COVER = Four Color Process (4x4) with gloss aqueous coating both sides</p> <p>INSIDE PAGES = Four Color Process 2 sides</p> <p>Finishing: COVER = Fold</p> <p>INSIDE PAGES = Fold</p> <p>ALL = Saddle- Stitching Binding</p>	<p>Format: Booklet Cover plus 24 inside pages (28 pages total)</p> <p>Trim Size: 8.5" x 10.875"</p> <p>Paper Stock: COVER = 100# Gloss Text</p> <p>INSIDE PAGES (Text Stock) = 50# Opaque Offset text</p> <p>Bleeds: Yes</p> <p>Ink: COVER = Four Color Process (4x4) with gloss aqueous coating both sides</p> <p>INSIDE PAGES = Four Color Process 2 sides</p> <p>Finishing: COVER = Fold</p> <p>INSIDE PAGES = Fold</p> <p>ALL = Saddle- Stitching Binding</p>	<p>Format: Slide Chart Cover + Insert</p> <p>Trim Size: 3.875" x 9"</p> <p>Paper Stock: COVER = 14 pt. SBS Coated Paperboard</p> <p>SLIDE = 14 pt. SBS Coated Paperboard</p> <p>Bleeds: Yes</p> <p>Ink: COVER = Four Color Process (4x4) with gloss aqueous coating both sides</p> <p>SLIDE = One Color gloss aqueous coating, 2 sides</p> <p>Finishing: COVER = Die cuts, folds and glues. SLIDE = Die cuts (for rounded corners), include assembly: Insert slide into cover.</p>

<p>Vendor must be able to accept an electronic version of mailer via an InDesign© file either by dropbox or PDF.</p> <p>Vendor must be able to accept a large excel spreadsheet electronically of the addresses to be inkjet printed onto each flyer</p>	<p>Proofs:</p> <p>Final proof of the completed document shall be sent to NCFlex Team for approval within three (3) business days from receipt of digital file.</p> <p>Files:</p> <p>Vendor must be able to accept an electronic version of mailer via an InDesign© file either by dropbox or PDF.</p> <p>Packaging:</p> <p>Double wall cartons for shipping.</p> <p>Shipping:</p> <p>Orders will be placed through online web-portal by Agencies, Universities, Community Colleges and Charter School.</p> <p>Product pulled from warehouse and drop shipped within two (2) business days of the order being placed</p>	<p>Proofs:</p> <p>Final proof of the completed document shall be sent to NCFlex Team for approval within three (3) business days from receipt of digital file.</p> <p>Files:</p> <p>Vendor must be able to accept an electronic version of mailer via an InDesign© file either by dropbox or PDF.</p> <p>Packaging:</p> <p>Double wall cartons for shipping.</p> <p>Shipping:</p> <p>Orders will be placed through online web-portal by Agencies, Universities, Community Colleges and Charter Schools.</p> <p>Product pulled from warehouse and drop shipped within two (2)</p>	<p>Proofs:</p> <p>Final proof of the completed document shall be sent to NCFlex Team for approval within three (3) business days from receipt of digital file.</p> <p>Files:</p> <p>Vendor must be able to accept an electronic version of mailer via an InDesign© file either by dropbox or PDF.</p> <p>Packaging:</p> <p>Double wall cartons for shipping.</p> <p>Shipping:</p> <p>Orders will be placed through online web-portal by Agencies, Universities, Community Colleges and Charter Schools.</p> <p>Product pulled from warehouse and drop shipped within two (2) business days of the order being placed through an online portal.</p>	<p>Proofs:</p> <p>Final proof of the completed document shall be sent to NCFlex Team for approval within three (3) business days from receipt of digital file.</p> <p>Files:</p> <p>Vendor must be able to accept an electronic version of Slide Chart via PDF.</p> <p>Packaging:</p> <p>Shrink wrap in packs of 25 and pack 12 packs per double wall cartons for shipping.</p> <p>Shipping:</p> <p>Entire order will be delivered to OSHR/NCFlex at Raleigh, NC office at one time.</p>
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	<p>through an online portal.</p> <p>Quantities in each shipment will vary.</p> <p>Shipment Inspection: Final inspection and acceptance or rejection may be made at delivery destinations, but all materials are subject to inspection at any time.</p>	<p>business days of the order being placed through an online portal.</p> <p>Quantities in each shipment will vary.</p> <p>Shipment Inspection: Final inspection and acceptance or rejection may be made at delivery destinations, but all materials are subject to inspection at any time.</p>	<p>Quantities in each shipment will vary.</p> <p>Shipment Inspection: Final inspection and acceptance or rejection may be made at delivery destinations, but all materials are subject to inspection at any time.</p>	<p>Quantities in each shipment will vary.</p> <p>Shipment Inspection: Final inspection and acceptance or rejection may be made at delivery destinations, but all materials are subject to inspection at any time.</p>
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Other Specifications:	Tri-Fold Mailers	Benefits Guide	Enrollment Guide	Enrollment Guide – University	Slide Chart (Pre-Tax Calculator)
Order through Vendor online portal	No	Yes	Yes	Yes	No
Mailing (USPS)	Yes	No	No	No	No
Shipping	No	Yes	Yes	Yes	Yes
Storage	No	Yes	Yes	Yes	No
Estimated Production Dates	September 2026 September 2027 September 2028	August 2026 August 2027 August 2028	August 2026 August 2027 August 2028	August 2026 August 2027 August 2028	September 2026 September 2027 September 2028
Frequency of mailing and/or shipping	1 time per year	All year	All year	All year	1 time per year
Destruction of Publications	No	At request of NCFlex, usually in December for the current year's Guide	At request of NCFlex, usually in December for the current year's Guide	At request of NCFlex, usually in December for the current year's Guide	No

3.8.14 VENDOR PROJECT COMPLETION TIMES

Press run of guides, mailers and sliding calculators shall begin within ten (10) business days from NCFlex's final approval of the proof. Initial shipments waiting in the portal to be sent must be drop shipped within five (5) business days from press run. All other shipments must be drop shipped within two (2) business days from receipt of an online order or receipt of a purchase order.

The Tri-Fold Self Mailers and Pre-Tax Calculators are not warehoused by the Vendor. The Vendor will bulk mail all Tri-Fold Self Mailers via the United Postal Services (USPS), unless otherwise specified by NCFlex, in accordance with the mutually agreed upon schedule.

The entire order of Pre-Tax Calculators will be shipped or delivered in totality to the OSHR/NCFlex Raleigh office at 333 Fayetteville Street (3rd Floor), Raleigh, NC 27699.

3.8.15 DEVIATIONS

The nature of all deviations from the Product Specifications listed in Section 3.8.13 shall be clearly described by the Vendor. Otherwise, it will be considered that items offered by the Vendor are in strict compliance with the Requirements and Product Specifications, and the successful Vendor shall be held responsible to supply conforming goods. Deviations shall be explained in detail below or on an attached sheet. However, no implication is made or intended by the State that any deviation will be acceptable. Do not list objections to the General Contract Terms and Conditions in this section.

3.9. INVOICES

1. The Awarded Vendor must submit one (1) monthly invoice within fifteen (15) calendar days following the end of each month in which work was performed including warehouse costs for storage, in addition to a detailed shipping log of items shipped (excluding postage which should be invoiced immediately).
2. Invoices and detailed shipping logs must be submitted in PDF format via email to ncflex@nc.gov.
3. Invoices must be submitted on the Vendor's official letterhead stationery and must be identified by a unique invoice number. All invoice backup reports and spreadsheets must be provided in electronic format.
4. Invoices must bear the correct contract number and purchase order number to ensure prompt payment. The Vendor's failure to include the correct purchase order number may cause delay in payment.

INVOICES MAY NOT BE PAID UNTIL AN INSPECTION HAS OCCURRED AND THE GOODS OR SERVICES ACCEPTED. The acceptance process for the goods and services supplied by Vendor shall be as described Section 7, Part 1, Paragraph 14, except that the State shall have the obligation to notify Vendor, in writing thirty calendar days following the supply of the good or service if it is not acceptable.

3.10. FAITHFUL PERFORMANCE

The parties agree that calculation of actual damages resulting from failure to meet the following performance standards is extremely difficult, if not impossible, to calculate accurately, and the parties also agree that the compensation identified for such failures are a reasonable estimate of damages resulting from a failure to meet the performance standard described. Therefore, the parties agree that

the Vendor shall be subject to amounts due as liquidated damages but not as a penalty, for each such failure, as follows:

Measure	Vendor Performance Guarantee	Liquidated Damages
1. Timeliness	Complete initial mail drop by the mutually agreed upon date for each project.	\$500 per day for each day (business day) the mailing is sent after the agreed upon date
2. Timeliness	On-line ordering portal must be operational by February 1, 2026	\$500 per day (business day) for each day the on-line portal is not operational
3. Quality	All printed materials are complete without defect.	\$5,000 when a defect is found
4. Timeliness	Booklets are mailed 95% of the time within two (2) Business Days - to be measured monthly.	\$1,000 per month

Notwithstanding any other provision herein, liquidated damages shall not be subject to a limitation on damages or limit of liability for damages that otherwise may be applicable to recoverable damages. The remedies set forth by this section shall be in addition to the State’s rights under all other provisions of this procurement document, including without limitation Section 7, Part 1, Paragraph 13.

3.11. TRANSPORTATION AND IDENTIFICATION

The Vendor shall mail the Tri-Fold Self Mailers via the United States Postal Service (USPS), bulk mailing, pre-sorted, unless otherwise specified by NCFlex. Upon receipt of the mail file from NCFlex the Vendor will calculate the postage cost for the mailing and invoice NCFlex, a pass through of postage cost. After final postage is paid, a receipt should be provided to NCFlex.

In August of each calendar year, Guide and Pre-Tax calculator orders are collected for an initial bulk shipment to multiple locations. Following the initial orders, HBRs will place orders as needed on the Vendor’s online portal, through August of the following calendar year. After receipt of an on-line order, Vendor shall ship Enrollment and Benefits Guides and Pre-Tax calculators to any requested location within the State of North Carolina. Vendor shall invoice NCFlex monthly for shipping costs along with a detailed shipping log which will detail the quantity of each Guide, and the location each Guide Order was sent during that month.

3.12. SAMPLES

3.12.1 Samples to Be Delivered by the Bid Opening Date

Vendor shall provide one sample similar in size, scope and look as the NCFlex Tri-fold Self Mailer and NCFlex Benefits Booklets, and Pre-Tax Calculator specified in section 3.8.13. Samples shall be considered in award of the bid. **Samples must be delivered by the Bid Opening Date.**

Vendor should complete the following question:

Vendor requests samples be returned after evaluation and/or contract completion? YES NO

If return is requested, Vendor shall provide prepaid, pre-addressed shipping label with bid. These samples shall be handled in accordance with Section 6, Paragraph 9.

3.12.2 Samples That May Be Requested After the Contract Is Awarded

After the contract is awarded, the State may request samples of items that the State may ask the Vendor to produce under this contract. If such a request is made, the samples will be governed by the following procedures instead of Section 6, Paragraph 9.

Samples of items offered shall be furnished, free of expense, and if not destroyed will, upon request, be returned at the Vendor's expense. A written request for return shall be made no later than thirty (30) days after the bid award, and Vendor shall provide prepaid, pre-addressed shipping labels suitable for return of the sample(s). Otherwise, the samples shall become the State's property to be used or disposed of at the State's discretion. Each individual sample shall be labeled with the Vendor's name, bid number, and item number. A sample on which an award is made, will be retained until the contract is completed, and then returned, if requested as specified above.

Vendors shall send samples to the address below.

Office of State Human Resources
Attn: Kara Rouse
MSC 1331
333 Fayetteville Street (3rd Floor)
Raleigh, NC 27699-1331

3.13. VENDOR EXPERIENCE

With its bid, Vendor shall provide a detailed outlined response for items 1-7 following the format below. Responses to these items should demonstrate how the Vendor will comply with the IFB's requirements and shall be considered in award of the bid:

1. Describe the quality control process for both the printing and mailing of materials.
2. Describe the physical storage facility where printed items will be warehoused.
3. Describe in detail the end-to-end process for items that need to be stored and retrieved for shipment. List all site locations, mileage from site to site during the process if not done inhouse.
4. Describe in detail the end-to-end process for items that need to be printed and mailed, including but not limited to identifying timeline of each step in the total process.
5. Describe the Vendor's ability to receive a native InDesign© file electronically.

6. Describe the Vendor’s web-based portal capabilities, including screen shots of the ordering process.
7. Describe in detail the process for making an online order through its portal.

4.0 FURNISH AND DELIVER

Vendor shall provide pricing for Table 1.

If not bidding on a line item, place “No Bid” in the fixed cost column.

If a line item’s cost is included in another line item, place “Included” in the fixed cost column and note the line item # it is included with.

If bidding an item with no charge, place “N/C” in the fixed cost column.

At the option of the State, items in Optional Costs (Table 2) may or may not be ordered and shall not be used for evaluation purposes.

Table 1:

Project 1	Quantity	Unit Cost (Each)	**Fixed Cost (QUANTITY*UNIT COST)
Tri-Fold Self Mailer **See specifications in Section 3.8.13	130,000	\$ _____	\$ _____
Project 2	Quantity	Unit Cost (Each)	**Fixed Cost (QUANTITY*UNIT COST)
Booklet: Benefits Guide **See specifications in Section 3.8.13	2,500-4,999	\$ _____	\$ _____
	5,000-9,999	\$ _____	\$ _____
	10,000-19,999	\$ _____	\$ _____
	20,000-39,999	\$ _____	\$ _____
	40,000-60,000	\$ _____	\$ _____
Project 3	Quantity	Unit Cost (Each)	**Fixed Cost (QUANTITY*UNIT COST)
Booklet: Enrollment Guide **See specifications in Section 3.8.13	10,000-19,999	\$ _____	\$ _____
	20,000-39,999	\$ _____	\$ _____
	40,000-59,999	\$ _____	\$ _____
	60,000-79,999	\$ _____	\$ _____
		\$ _____	\$ _____
Project 4	Quantity	Unit Cost (Each)	**Fixed Cost (QUANTITY*UNIT COST)

Booklet: Enrollment Guide - University **See specifications in Section 3.8.13	10,000-19,999	\$ _____	\$ _____
	20,000-39,999	\$ _____	\$ _____
	40,000-59,999	\$ _____	\$ _____
	60,000-79,999	\$ _____	\$ _____
		\$ _____	\$ _____
Project 5	Quantity	Unit Cost (Each)	Fixed Cost (QUANTITY*UNIT COST)
Slide Chart / Pre-Tax Calculators **See specifications in Section 3.8.13	10,000	\$ _____	\$ _____
	15,000	\$ _____	\$ _____
	20,000	\$ _____	\$ _____
Other Services:	Quantity	Hourly Rate	Fixed Cost (QUANTITY*UNIT COST)
Graphic Design Services	N/A		N/A
Editing Services	N/A		N/A

Total Cost for Table 1:

Table 2:

Add/Remove - Project 2 – Booklet: Benefits Guide			
Each added:	4 pages	8 pages	12 pages
Total Cost	\$ _____	\$ _____	\$ _____
Each fewer:	4 pages or less	8 pages or less	12 pages or less
Total Cost	\$ _____	\$ _____	\$ _____
Add/Remove - Project 3 – Booklet: Enrollment Guide			
Each added:	4 pages	8 pages	12 pages
Total Cost	\$ _____	\$ _____	\$ _____
Each fewer:	4 pages or less	8 pages or less	12 pages or less
Total Cost	\$ _____	\$ _____	\$ _____

Add/Remove - Project 4 – Booklet: Enrollment Guide - University			
Each added:	4 pages	8 pages	12 pages
Total Cost	\$ _____	\$ _____	\$ _____
Each fewer:	4 pages or less	8 pages or less	12 pages or less
Total Cost	\$ _____	\$ _____	\$ _____

TOTAL COST OF TABLE 2:

TOTAL CONTRACT COST:

5.0 ADDITIONAL INFORMATION

5.1. HISTORICALLY UNDERUTILIZED BUSINESSES

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

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

Is Vendor a Historically Underutilized Business? YES NO If “YES”, specify classification. _____

5.2. RECYCLED CONTENT

In an effort to support the sustainability efforts of the State of [North Carolina Executive Order Number 156](#), we solicit your cooperation.

Does the packaging of the items offered in response to this IFB contain recycled content?

YES NO

If Vendor answered “YES” above, indicate the following:

Percentage of recycled content: _____ Can the packaging be recycled? YES NO

Do items offered in response to this solicitation contain recycled content? YES NO

If Vendor answered “YES” above, indicate the material and content percentage of applicable items.

Material: _____ Percentage of recycled content: _____

State how items may be disposed of or recycled at the end of use?

5.3. **ENERGY STAR PRODUCTS**

“ENERGY STAR® is a government-backed program helping businesses and individuals protect the environment through superior energy efficiency.” <http://www.energystar.gov/>

Do products offered meet Energy Star specifications of energy efficiency? YES NO

6.0 **DEPARTMENT OF INFORMATION TECHNOLOGY INSTRUCTIONS TO VENDORS**

- 1) **READ, REVIEW AND COMPLY:** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
- 2) **DEFINITIONS:**
 - **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
 - **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the State and use of them is optional.
 - **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
 - **THE STATE:** Is the state of North Carolina and its agencies.
 - **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4) **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor is to furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this IFB, each Vendor must submit with their offer sketches, descriptive literature and/or complete specifications covering the products offered. **Only information that is received in response to this IFB will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not satisfy this provision. Offers which do not comply with these requirements will be subject to rejection.
- 5) **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 commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The company remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Companies are strongly urged to bring to the attention of the relevant purchasers in the State those products or packaging they offer which have recycled content and that are recyclable.
- 6) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. The Vendor is cautioned that the requirements of this IFB can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 7) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

- 8) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9, and in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or peculiar to the purchase in question.
- 9) **SAMPLES:** Sample of items, when required, must be furnished as stipulated herein, free of expense, and if not destroyed will, upon request be returned at the Vendor's expense. Written request for the return of samples must be made within 10 days following date of offer opening. Otherwise the samples will become the property of the State. Each individual sample must be labeled with the Vendor's name, offer number, and item number. A sample, on which an award is made, will be retained until the contract is completed, and then returned, if requested, as specified above.
- 10) **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 11) **PROTEST PROCEDURES:** When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000 they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note:** Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. IFB status and Award notices are posted on at <https://evp.nc.gov/>. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**
- 12) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the NC Electronic Vendor Portal (eVP) at the following web site: <https://evp.nc.gov/>
- 13) **DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

7.0 **DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

Part 1. General Terms and Conditions Applicable to All Purchases

- 1) **DEFINITIONS:** As used herein;
 - a) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraphs 7 and 8, and included in Paragraph 29 c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
 - b) Purchasing State Agency or Agency shall mean the Agency purchasing the goods or Services.
 - c) Services shall mean the duties and obligations accepted by the Vendor to carry out the requirements, and meet the specifications, of this procurement.
 - d) State shall mean the State of North Carolina, the Department of Information Technology as an Agency or in its capacity as the Award Authority.

- 2) **STANDARDS:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:
- by State or federal Regulation,
 - by the Chief Information Officer's (CIO) policy or regulation, or
 - acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.
- a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
- b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.
- c) **Specifications:** 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 only material 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 products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 3) **WARRANTIES:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.
- 4) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator 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 this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract Services provided by such personnel.
- a) 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.

- b) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
- i) Such use does not conflict with the terms, specifications or any amendments to this Contract, or
 - ii) Such use does not conflict with any procurement law, regulation or policy, or
 - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.
- 5) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the 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. 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 contract; 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.
- 6) **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 this Contract. Vendor will serve as the prime Vendor under this Contract. 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. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- a) **Intellectual Property.** Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
 - b) **Inherent Services.** If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided 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 Deliverables.
 - c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
 - d) **Warranty as to Equipment; Hardware.** Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.

- 7) **SOFTWARE LICENSE** (for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto): Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however, that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 8) **MAINTENANCE/SUPPORT SERVICES**: Vendor agrees to provide the following Support Services for any Software provided with the Deliverables described in the Furnish & Deliver Table, above:
HARDWARE/EQUIPMENT:
a) **Basic Services.** Reserved.
b) **Telephone Assistance.** Reserved.
SOFTWARE:
a) **Error Correction.** Reserved.
b) Reserved.
c) **Updates.** Reserved.
d) **Telephone Assistance.** Reserved.
- 9) **TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, 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 this Contract.
- 10) **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 Contract. 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 this Contract and compensate Vendor for sums due under the Contract.

- 11) 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 Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has either (a) any direct or indirect financial or personal beneficial interest in the subject matter of this Contract or (b) any obligation or contract for future award of compensation as an inducement or consideration for making this Contract. 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 09 NCAC 06B.1206, or other provision of law.
- 12) 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 this Contract. If this Contract 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 Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any Services supplied to the Agency under this Contract, 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.
- 13) PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. 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 30 days and approval by the State or Agency, the Agency may:
- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
- 14) ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following the supply of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State 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 all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. 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 contained in the Deliverables or non-compliance with the

specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the 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. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

- 15) **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.
- 16) **INSPECTION AT VENDOR'S SITE**: The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
- 17) **ADVERTISING/PRESS RELEASE**: The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 18) **CONFIDENTIALITY**: In accordance with N.C.G.S. §§143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.
 - a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
 - b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S.

§132-1 et seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

19) DELIVERABLES: Deliverables, as used herein, shall comprise all Services, project materials, including goods, software licenses, data, and documentation created during the performance or provision of Services hereunder. Deliverables are the property of the State of North Carolina, except where licensed or leased to the State. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. 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. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

20) LATE DELIVERY, BACK ORDER: Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered 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 substitute Deliverables or Services.

21) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the 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 Deliverables for the State's purposes.
- b) Vendor shall not acquire any right, title, and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. §143B-1350(h1). Such defense and payment shall be conditioned on the following:

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or software 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 goods/hardware or software, or to replace or modify the same to become noninfringing 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 goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such 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 Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract 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 such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.
- e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.
- 22) 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 this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. 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.
- 23) ASSIGNMENT:** Vendor may not assign this Contract 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 this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. 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.
- 24) INSURANCE COVERAGE:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work

- under the Contract. 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 Contract; and
- b) **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
 - c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
 - d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.
- 25) 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 this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 26) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, the State may cancel the Contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
 - b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offers that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
 - c) Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- 27) 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 this Contract, unless so stated in writing and signed by

authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 40) herein below.

28) TERMINATION: Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 0, or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs ii) and 0 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 this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

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

29) LIMITATION OF VENDOR'S LIABILITY:

a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.

b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.

c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 et seq., the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

30) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.

- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its current and future Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

31) CHANGES: This Contract and subsequent purchase order(s) are awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or offer on which it is based. Any changes made to this Contract 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 Deliverables or Services delivered without a purchase order from the Agency or State Award Authority.

32) 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 this Contract for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.

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

33) PRICE ADJUSTMENTS FOR TERM CONTRACTS: Reserved.

34) TIME IS OF THE ESSENCE: Time is of the essence in the performance of this Contract.

35) DATE AND TIME WARRANTY: The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

36) 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. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

37) TRANSPORTATION: Transportation of 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.

38) NOTICES: Any notices required under this Contract 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.

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

40) AMENDMENT: This Contract 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 0 herein.

41) TAXES: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

42) GOVERNING LAWS, JURISDICTION, AND VENUE:

a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. 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.

43) 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.

44) 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.

45) SEVERABILITY: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract 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.

46) 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.

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

a) **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 this contract. 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.

b) 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 the 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.

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

Part 2. Terms and Conditions for Software as a Service

1) DEFINITIONS:

- a) "Data" includes means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) Deliverable/Product Warranties Reserved.
- c) "Services" Reserved.
- d) "State" Reserved.
- e) "Support" includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2) ACCESS AND USE OF SAAS SERVICES:

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

version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

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

3) WARRANTY OF NON-INFRINGEMENT; REMEDIES.

- a) Vendor warrants to the best of its knowledge that:
 - i) The Services do not infringe any intellectual property rights of any third party; and
 - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Reserved.
- c) Reserved.
- d) Reserved.

4) ACCESS AVAILABILITY; REMEDIES:

- a) The Vendor warrants that the Services will be in good working order and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services.
- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State.

If the Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to receive automatic credits as indicated immediately below, or the State may use other contractual remedies such as recovery of damages, as set forth herein in writing, e.g., in Specifications, Special Terms or in an SLA, and as such other contractual damages are limited by N.C.G.S. §143B-1350(h1) and the Limitation of Liability paragraph below. If not otherwise provided, the automatic remedies for nonavailability of the Subscription Services during a month are:

1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

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

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

5) EXCLUSIONS:

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

6) PERFORMANCE REVIEW AND ACCOUNTABILITY. N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of 10% of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

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

8) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY: Reserved

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

10) TRANSITION PERIOD:

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
- d) Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
- e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.

11) TRANSPORTATION: Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

12) TRAVEL EXPENSES: Reserved.

13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: Reserved.

14) AVAILABILITY OF FUNDS: Reserved.

15) PAYMENT TERMS (Applicable to SaaS): Reserved.

16) ACCEPTANCE CRITERIA: Reserved.

17) CONFIDENTIALITY: Reserved.

18) SECURITY OF STATE DATA:

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.
- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling>).

[policy](#)) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.

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

- (7) Any requirements implemented by the State under N.C.G.S. §§ 20-309.2(d).
- f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- g) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
 - (1) The scale and quantity of the State Data loss;
 - (2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
 - (3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
 - (4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.Vendor shall investigate the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.
- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.

8.0 CUSTOMER REFERENCE TEMPLATE

Solicitation #: _____

Vendor Name: _____

Instructions: Vendor shall use this template to submit three (3) customer references with its offer.

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	