

STATE OF NORTH CAROLINA	REQUEST FOR PROPOSAL NO.
Office of the State Controller	14-OSC-2023-02-MCS
Statewide Accounting Division	Offers will be publicly opened:
	Issue Date: 06/12/2023
Refer <u>ALL</u> inquiries regarding this RFP to:	Commodity Number: 641018
Courtney Michelle	Description: Merchant Card Processing Services
courtney.michelle@osc.nc.gov	Purchasing Agency: NC Office of the State Controller
919-733-0659	Requisition No.:

OFFER

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

EXECUTION

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

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

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

Offer valid for ninety (90) days from date of offer opening unless otherwise stated here: 120 days

ACCEPTANCE OF OFFER

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

<u>FOR PURCHASING AGENCY USE ONLY</u>
Offer accepted and contract awarded this date _____, as indicated on attached certification,
by _____ (Authorized representative of the Office of the State Controller).

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1.0 ANTICIPATED PROCUREMENT SCHEDULE

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

Action	Responsibility	Date
RFP Issued	Agency	06/12/23
Written Questions Deadline	Potential Vendors	07/10/23
Agency's Response to Written Questions/ RFP Addendum Issued	Agency	07/31/23
Offer Opening Deadline	Vendor(s)	08/14/23
Offer Evaluation	Agency	08/21/23
Selection of Finalists	Agency	08/21/23
Oral Presentations and/or Product Demonstrations by Finalists <i>(Optional)</i>	Selected Vendors	08/29/23
Negotiations with Finalists	Agency designees and selected Vendor(s)	09/18/23
Best and Final Offers Deadline from Finalists	Selected Vendors	09/18/23
Contract Award	Agency	10/09/23
Protest Deadline	Responding Vendors	15 days after award

2.0 PURPOSE OF RFP

2.1 INTRODUCTION

The purpose of this RFP is to solicit Offers for Merchant Card Processing Services.

The North Carolina Office of the State Controller (OSC) is soliciting proposals from responsible and qualified merchant card acquirers (merchant card processors) to provide merchant card processing services to various participating State agencies and local units of government. The result will be the awarding of a multi-year contract entered into with the Vendor jointly by the North Carolina State Controller and the North Carolina State Treasurer. Merchant Card Processing Services include: 1) Card capture processing (authorization and transmission for settlement); 2) Settlement of submitted transactions with the participants' depository bank(s); 3) Deployment and servicing of capture equipment; and 4) Related Reporting Services. Participants pay for the services that they may subscribe to, as offered under a Master Services Agreement (MSA), with each participant executing an Agency Participation Agreement (APA).

2.2 CONTRACT TERM

A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be 5 years, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend the Agreement with two (2) optional one (1) year renewals at its sole discretion.

2.2.1 EFFECTIVE DATE

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

2.3 CONTRACT TYPE

Definite Quantity Contract - This request is for a close-ended contract between the awarded Vendor and the State to furnish a pre-determined quantity of a good or service during a specified period of time.

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

2.4 AGENCY BACKGROUND

The State Controller is the State's Chief Fiscal Officer. The Controller serves as an independent resource to protect the financial integrity of the State and to promote accountability in an objective and efficient manner through its accounting, disbursing, payroll, internal control, data management, eCommerce and financial reporting systems.

2.5 PROBLEM STATEMENT

The State is soliciting proposals from responsible and qualified merchant card acquirers (merchant card processors) to provide merchant card processing services to various participating State agencies and local units of government, as set forth in Exhibit D. The result will be the awarding of a multi-year contract entered into with the Vendor jointly by the North Carolina State Controller and the North Carolina State Treasurer. Merchant Card Processing Services include: 1) Card capture processing (authorization and transmission for settlement); 2) Settlement of submitted transactions with the participants' depository bank(s); 3) Deployment

and servicing of capture equipment; and 4) Related Reporting Services. Participants pay for the services that they may subscribe to, as offered under a Master Services Agreement (MSA), with each executing an Agency Participation Agreement (APA).

The volume of transactions under an MSA is undetermined. An estimated transaction volume based on past history or other means may be used as a guide but shall not be a representation by the State of any anticipated purchase volume under any contract made pursuant to this solicitation. Exhibit B should be referenced for past historical transaction data and Exhibit F for prior calendar year data by participant.

Agency Participation Agreements are primarily for State entities that are subject to the State's Cash Management Law - N.C.G.S. §147-86.10 et seq. In addition, the agreements are available on a strictly voluntary basis to local units of government - See, e.g., N.C.G.S. § 143B-1321, -1350(c)(4), -1351(b). Exhibit A should be referenced for the current category of participants, and Exhibit D should be referenced for a list of the current participants.

The merchant card processor will be required to process merchant card transactions captured and submitted by a variety of methods, including POS terminals, third-party gateways, and alternative/mobile payment options.

3.0 RFP REQUIREMENTS AND SPECIFICATIONS

3.1 GENERAL REQUIREMENTS AND SPECIFICATIONS

3.1.1 REQUIREMENTS

Means, as used herein, a function, feature, or performance that the system must provide.

- A. The vendor must provide with their offer a summary of current and previous work performed for a comparable public sector client which is similar in nature to that requested by the State in this RFP. Names and contact information for all references must be provided per the format outlined in Attachment H.
- B. The vendor must provide evidence that it can provide funds settlement with one of the official depositories located in North Carolina and designated by the State Treasurer pursuant to G.S. §147-78, and in accordance with the requirements specified below in Paragraph F – Facilitate Funds Settlement with Processing Bank.
- C. The vendor must comply with all Payment Card Industry (PCI) security standards, including:
 - a) Only providing PCI compliant equipment and solutions to participants.
 - b) Storing cardholder information relating to transactions appropriately, including authorizations, settlements, and reversals, etc.
 - c) Transmitting cardholder transactions per the security requirements and specifications of this RFP.
 - d) Vendor shall provide proof of annual PCI compliance (e.g. attestation, ROC, etc.), as well as notice of any cases where compliance is not met (e.g. gap letters) and mitigation plans.
- D. The vendor must coordinate and cooperate with any PCI security assessment vendor that the State may contract with, to ensure all participants and gateways are PCI compliant.
- E. Vendor must provide a monthly detailed invoice to each participant at a minimum at the chain or outlet level for agency-specific services, as per the rates specified in the approved vendor's fee schedule. Fees must not to be netted against transactions (i.e., deducted from the settlement of transactions).

3.1.2 SPECIFICATIONS

Means, as used herein, a specification that documents the function and performance of a system or system component.

The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice

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

A. The Vendor to describe in their offer how they will perform the services specified herein as contracted by the State Controller and State Treasurer.

1. The services shall be provided to any requesting State agency, university, community college or local unit of government authorized and designated as eligible participants by the OSC.
2. The services shall only be provided to participants, under the terms of this Agreement, if participants have agreed to, and agree to be bound by the terms and conditions set forth herein. Each participant, prior to delivery of these services, shall execute a separate Agency Participation Agreement (APA). Parties to the APA will be the Vendor, OSC, and the participant. DST will be a party in the case of a State agency participant. A sample APA is enclosed herein as Exhibit E.
3. All services provided shall be in accordance with and governed by applicable statutory and regulations, including, without limitation, the Nacha (formerly National Automated Clearing House Association or NACHA) Operating Rules and the Federal Reserve Bank Regulation E.
4. All services provided shall be subject to all applicable Card Association Rules (e.g., Visa and MasterCard) provided the same are not in conflict with any governing laws, or the terms of this RFP.
5. All services shall be subject to the Vendor's Operating Guide, provided the same are not in conflict with any Card Association Rules, governing laws, or the terms of this RFP.

B. The Vendor to describe in their offer how they will Provide Structure for Multiple Participants

1. Vendor must provide accounting, reporting, identification, etc., to accommodate various categories of participants, and to accommodate rollup of data to the various hierarchy levels.
2. The following hierarchy shall be accommodated, with the capability of adding additional divisions in the future if needed:
 - a) Bank Level (1) - State
 - b) Agent Numbers (4) – General Government; Universities; Community Colleges; Local Governmental Units
 - c) Chains (120 currently) – Participants
 - d) Merchant Numbers (2370 currently) – Locations / Outlets

C. The Vendor to describe in their offer how they will Provide Merchant Processing services for Multiple Brands and Types of Cards

1. Vendor must provide merchant processing services for multiple brands and types of cards, including: 1) bank credit cards; 2) debit cards (PIN and PIN-less); and 3) proprietary cards.
2. Cards processed through the MSA include Visa, MasterCard and Discover credit and debit cards.
3. American Express is a proprietary card processed through the MSA, but under a separate Master Services Agreement.

D. The Vendor to describe in their offer how they will Accommodate and / or Provide Various Capture Methods

Vendor must support, at a minimum, the following capture methods used by various participants:

1. Point of Sale (swipe) terminals (EMV)
2. Mobile Point of Sale Units (cellular and/or wireless)
3. Card readers that accept magnetic stripe, EMV cards and have contactless payment options
4. Alternative/mobile payment methods, such as but not limited to Venmo, Apple Pay and Google Pay
5. Transaction submitted via participants' third-party gateways
6. Convenience fee services
7. A gateway service that shall include a payment engine, an API, including web service and a web consumer interface component (e.g., but not limited to, a "bill presentment engine"). Gateway should be able to accept credit and debit cards as well as ACH debit also referred to as "e-check." More than one gateway service can be provided. Gateway should have functionality to allow for card-present and card-not-present transaction processing for payment cards.

E. The Vendor to describe in their offer how they will Perform Necessary Transaction Processing

1. Vendor must provide all necessary processing services associated with processing merchant cards (e.g., Authorizations, Pre-authorizations, Capture, Chargebacks, Reversals, Voids, and Returns). Vendor must provide sufficient audit trails for each type of transaction.
2. Vendor must provide authorization processing services through the appropriate authorization networks, depending upon the type of card. Voice authorization services via toll-free telephone numbers must be provided when necessary.
3. In conjunction with the authorization process, vendor must return a unique transaction identifier with each authorization/rejection for all data capture methods, along with information necessary to identify the source of the transaction (e.g., merchant number and POS terminal number).
4. If the participant or gateway assigns an identifying transaction number to the submitted transaction, the transaction number shall be included on the authorization/rejection returned to the participant or gateway.
5. For participants requiring the service, vendor shall provide fraud verification services including, but not limited to,
 - a) Address Verification Service (Street Number and Zip Code)
 - b) Card Security Verification Service (CVV2, CVC2)
 - c) Real-time authorization to include notification of decline reason
6. In the case of proprietary card transactions, if approved in advance by the State Controller, and if the participant has the appropriate equipment (e.g., split transaction POS terminals), the option must be offered that allows for the authorization to be affected directly with the card issuing company. This option shall be determined on a case-by-case basis.
7. Vendor must provide for the acceptance and transmission of transactions for settlement through the appropriate networks. This includes all types of cards, including physical and virtual cards, from the providers herein and any proprietary providers, unless the direct submission option for proprietary cards is utilized, as referenced above.

8. The vendor must have sufficient edits in place to prevent duplicate, erroneous, or invalid payments from being sent through the appropriate networks. However, the edits should be customizable per merchant number in order to not deny valid transactions that happen to have repeating amounts from the same cardholder. (e.g., multiple DOT license renewals for the same amount and from the same cardholder, which is a common occurrence.) The error detection systems must provide the appropriate error messages and prevent transactions from processing when an approval code is missing.
- F. The Vendor to describe in their offer how they will Facilitate Funds Settlement Processing with Depository Bank(s)
1. Vendor must provide gross settlement to either a depository bank account designated by the State Treasurer in the case of a State Agency participant, or to a depository bank account designated by the chief fiscal officer of a non-State Agency participant. A participant that receives funds comprised of both State and local funds (e.g., community college or Clerk of Superior Court) may be considered a non-State agency for purposes of this requirement, depending upon the participant's banking relationships.
 2. In the case of a State Treasurer designated bank account for non-Proprietary card transactions (i.e., Visa and MasterCard), the funds must be credited the next banking day after the transaction is submitted to the Vendor for processing. The bank must be currently designated as an official depository bank that either provides the State Treasurer a daily BAI file transmission service or is able to provide a satisfactory daily BAI file transmission. The bank must also agree to accommodate the sub-ZBA requirements referenced below. Exhibit C should be referenced for a list of the State Treasurer's current official depository banks. Exhibit A should be referenced for the number of participants currently depositing funds with the State Treasurer.
 3. In the case of a State Treasurer designated bank account for Proprietary card transactions (i.e., American Express), the settlement of funds shall be in accordance with the agreement between the State and the card issuing company or vendor. The bank must be currently designated as an official depository bank that either provides the State Treasurer a daily BAI file transmission service or is able to provide a satisfactory daily BAI file transmission.
 4. In the case of a non-State agency participant for non-Proprietary card transactions (i.e., Visa and MasterCard, Discover), the funds will be credited depending upon the depository bank that the participant's chief fiscal officer designates. The vendor must offer the option of settling into a bank account that provides funds availability the next banking day after the transaction is submitted to the Vendor for processing (the same option available to State Agency participants). Funds availability may be delayed an additional day if the non-State participant designates a bank with which the Vendor does not have arrangements to accommodate "next day funding."
 5. In the case of a non-State agency participant for Proprietary card transactions (i.e., American Express), the settlement of funds will be in accordance with the agreement between the card issuing company and the participant (or with the State in the case of a master agreement).
 6. Funding must be in the form of either: 1) an ACH transaction if the Vendor and the depository bank are not the same; or 2) in the form equivalent to an ACH formatted transaction if the Vendor is also the depository bank, or if the Vendor has a correspondent type relationship with the depository bank. Vendor shall ensure that the receiving depository bank agrees to post or memo post the ACH transactions no later than 9:00 a.m. on the date received. Settlement by wire transfer is not an acceptable method of funding. Transactions hereunder will conform to any applicable requirements of the ACH Debit Services contract #45-RQ19299160 which can be found [here](#).
 7. The ACH transaction or ACH formatted transaction shall contain at a minimum, the amount of the settlement and the merchant number, which must be in the customer ID field. The merchant

number is required by the participant as a means of identifying the transaction when received and viewed through the depository's online banking system.

8. In the case of a State Treasurer designated bank account, the bank must be one that can provide each participant with a separate Deposit Demand Account (DDA) to receive the daily ACH settlements and to accommodate any chargebacks.
 - a) The participant's settlement DDA will be a "sub-zero balance account" (sub-ZBA) that sweeps "net" (of chargebacks) to the State Treasurer's statewide ZBA account maintained at the bank (which is ultimately swept to the State Treasurer's main account at the bank).
 - b) The participant shall have access to the sub-ZBA via the bank-provided online reporting system.
 - c) Each daily sweep transaction from the sub-ZBA to the ZBA must be contained on the daily BAI file that the depository bank provides the State Treasurer (for the ZBA transaction activity), with the BAI code indicator "275" (ZBA Credit), with the sub-ZBA account number being identified.
 - d) The participant shall be responsible for paying for the banking services in accordance with the pre-established fee schedule made between the depository bank and the State Treasurer for depository related services. For settlement accounts that have been "grandfathered," the State Treasurer will continue to pay for banking services as it has done historically. The State Treasurer shall not be responsible for any bank account services associated with the settlement of funds to a non-State Treasurer bank account (e.g., local unit of government, community college, local school administrative unit, Clerk of Court, etc.)
 - e) Prior to responding to this RFP, the Vendor must have made prior arrangements with a State Treasurer's depository bank to accommodate the banking needs of the State, specifically as they pertain to meeting the requirements specified in this RFP, and for the anticipated life of the contract. A statement of this agreement from the selected depository bank must be included in the Vendor's response to this RFP.

G. The Vendor to describe in their offer how they will perform Transaction Reporting

1. Vendor must provide an Internet based online reporting system for the tracking of all transactions. The system shall be accessible by each participant, and accessible by OSC (bank level) on a global basis.
2. Vendor must provide a detailed description of the reporting system, to include a list of all reports available, functionality, security, querying capabilities, exporting capabilities, historical retention, rollup reporting capabilities, minimum user technical requirements, frequency each report is generated, time of day available, etc. Vendor must describe how reporting is provided for transactions authorized but not yet submitted for settlement by the participant. Rollup reporting must accommodate the hierarchy referenced above in Paragraph B – Provide Structure for Multiple Participants. (Indicate the lowest hierarchy level for which a sales report is available (i.e., terminal ID or merchant number).
3. Vendor must, for central management purposes, provide OSC a monthly summary report depicting transaction volumes for all participants.
4. Vendor must provide samples of pertinent reports.

H. The Vendor to describe in their offer how they will perform Third Party Gateway Interaction

1. Vendor must accommodate a variety of third-party gateways that the participants may utilize. The vendor is not required to support interaction with all gateways currently being utilized by the participants. Should a vendor be selected that does not support one or more of the current gateways, the vendor may propose an alternate solution, or the State may make alternate arrangements to support those participants.
 2. Only gateways that are compliant with the Payment Card Industry (PCI) and validated level 1 service providers shall be utilized.
 3. The vendor shall provide a list of all gateways that it supports.
- I. The Vendor to describe in their offer how they will accomplish Third Party Point of Sale (POS) Software Interaction
1. Vendor must accommodate and specify in its response a variety of third-party POS software and/or payment applications that the participants may utilize. The vendor is not required to support interaction with all POS software currently being utilized by the participants. Should a vendor be selected that does not support one or more of the current gateways, the vendor may propose an alternate solution, or the State may make alternate arrangements to support those participants. (See Exhibit G for a listing of some of the current third-party software in use.)
 2. Point of Sale Software must be compliant with any Payment Card Industry (PCI) standards including Payment Application Data Security Standards (PA-DSS) and PCI Software Security Framework (SSF).
 3. The vendor shall provide a list of all Point-of-Sale Software that it supports.
- J. The Vendor to describe in their offer how they will accomplish Point of Sale (POS)/Point of Interaction (POI) Terminals / Equipment Deployment and Servicing
1. The vendor must make available to the participants suitable POS/POI terminals/equipment and supplies to accommodate the participants' capture needs. The equipment should accommodate various capture methods, to include wireless devices. Vendor may propose optional subsidies for participants who must purchase compatible terminal equipment during the conversion period of this contract.
 2. The vendor must provide for a menu of terminals/equipment from which the participants may choose.
 3. The options available to the participants must include options to purchase and rent.
 4. The terminals/equipment must comply with all industry standards, including EMV chip technology and PCI SSC Validated point-to-point encryption and provide for contactless methods.
 5. The vendor must provide adequate and timely servicing of the terminals/equipment.
 6. Split dial terminals for plural processing, allowing direct authorization with proprietary card companies must be available, if that option is chosen by the participant.
 7. Terminal/equipment offerings should include a commitment to include innovative compliant processing technologies as those evolve.
 8. As of December 31, 2022, there were 1,529 terminals in use by participants. (See Exhibit H) Current equipment includes but is not limited to:
 - i. Clover Station 2 with Accessory Kit
 - ii. Clover Station Printer

- iii. Clover Flex
- iv. Clover Mini
- v. Clover Go All-In-One Bluetooth
- vi. First Data FD150 Terminal
- vii. First Data RP10 Pin pad
- viii. Verifone Engage P200
- ix. Verifone Engage V400C Plus
- x. Verifone Engage V400M
- xi. Cash Drawer

K. The Vendor to describe in their offer how they will provide Customer Service and Support

1. The vendor must provide for a customer service arrangement to meet the needs of the Office of the State Controller and the participants. Most servicing needs of the participants are anticipated to be coordinated through the Office of State Controller, with the vendor dealing directly with the participants for selected servicing needs.
2. The vendor must provide technical support to participants 24x7 via a 1-800 telephone number, email, or other comparable method.
3. The vendor must provide training for new participants. Vendor shall indicate the methods to be utilized in its response. (Each year's cost scenarios can be referenced for the assumed growth in the number of participants.)
4. The vendor must provide an ongoing training or education programs for participants. The vendor should describe the proposed training or education methods to be provided, including frequencies, and topics in its response.
5. The vendor must keep the Office of the State Controller and participants adequately and timely informed of all card industry rule changes and provide guidance for adherence to the changes.
6. The vendor must assist the State and any participant in any resolutions relating to PCI or any additional card association rules changes or alleged violations of the any rules.
7. The vendor must conduct at least an annual onsite business review with the Office of the State Controller, providing an analysis of the utilization of services by all participants. Annual transaction volumes shall be reported on the State's fiscal year, from July 1 through June 30. The review shall also indicate the amount of revenues paid to the vendor by the various participants during the fiscal year, broken down by participant category (corporate divisions). Other pertinent statistics shall be reported, including, but not limited to, the number of participants, the number of merchant numbers, the number of terminal IDs, average ticket size, mix of card types, effective interchange rates, qualification rates, etc. An updated list of available point of sale equipment shall be provided during this review.
8. The State desires to receive the best available rate, with as many transactions as possible being coded with the program rate category of either "emerging markets" (in the case of Visa), or "public sector" (in the case of MasterCard), or other similar appropriate clearing level designation. The vendor must describe its method of coding, monitoring, and ensuring that the best and appropriate Merchant Category Code (MCC) is assigned to transactions. The method(s) shall include periodic reports that reflect transactions by participants that are experiencing excessive downgrades. The

vendor must accommodate any reasonable audit request, by either the State or contracted vendor, performed to ensure that the best available MCC is being utilized.

L. The Vendor to describe in their offer how they will execute Chargebacks and Disputed Payments

1. The vendor must provide for an online system that handles chargebacks and disputed payments. The vendor should indicate at what point in the disputed payment process chargebacks are debited to the participant's merchant account. Unless otherwise arranged, all debits shall be made to the same settlement bank account to which the original credit settlement was made.
2. The vendor must provide a system to timely communicate all notifications regarding chargebacks and disputed payments, and for the tracking of such transactions. The vendor must offer electronic notification and describe the online reporting capabilities.
3. The vendor must coordinate with the financial institutions and associated entities to resolve disputed payments within the timeframes allotted by the applicable card associations.

M. The Vendor to describe in their offer how they will perform Proprietary Card Processing

1. Vendor must provide processing of transactions for proprietary cards (i.e., other than Visa and MasterCard), in accordance with the agreements that either the State Controller or participant(s) have or may enter into directly with the issuing card company.
2. Vendor must provide the participant the option, if so elected by the participant, to utilize point of sale terminals that accommodate split dialing, allowing the equipment to transmit proprietary card transactions directly to the issuing card company, without any involvement of the vendor.

N. The Vendor to describe in their offer how they will perform Participant Billing/Invoicing

1. The vendor must provide for the timely delivery of the invoices to the participants. Electronic delivery is preferred. Provide a sample invoice.
2. The fee schedule must contain two categories of fees: pass through fees and vendor-levied fees. (See Cost Proposal section in Attachment E.) Any increases in pass-through fees may be passed on to the participants provided an advance notice is provided. Any decrease in pass through fees must be put into effect based upon the actual date effected by the charging association or switch network.
3. While the invoicing must be at the participant level, for central management purposes, OSC is interested in receiving a monthly rollup report on total fees billed to the various participants.
4. Each participant will pay the vendor directly for services invoiced.
5. The vendor must keep the Office of the State Controller timely informed of any participants that are delinquent in making payments.

O. The Vendor to describe in their offer their Conversion Plan and How It Is Administered

1. Vendor must submit a general conversion plan for conversion of the various participants, which are listed on Exhibit D.
2. The plan should:
 - a) Describe the project management process.
 - b) Describe the process for various categories of participants, e.g., participants using gateways, POS terminal users only, etc., or some other category deemed appropriate.
 - c) Address the resources available from the vendor.
 - d) Address the resources required of the State and participants.
 - e) Address the time frame for implementation.

- f) Address the process for equipment replacement and/or reprogramming.
 - g) Address training provided to participants.
 - h) Address transition issues relating to the current vendor, including but not limited to assigning of new merchant numbers, handling chargebacks and disputed items, etc.
 - i) Address the coordination process with the State Treasurer's depository bank, to include new settlement bank account set-ups and providing access to the bank accounts via the depository bank's online reporting system.
3. Following award of a contract and prior to the implementation of all services awarded, the chosen Vendor may be requested to convert the general conversion plan to a detailed plan of conversion. If a detailed conversion plan is requested, the State's acceptance of such plan shall be a condition to further performance. The detailed conversion plan must be in accordance to and pursuant with rules/policies/procedures/guidelines established by the State Chief Information Officer for Information Technology Services.
 4. The awardee agrees that it will cooperate with the prior vendor in providing parallel services in the event that the awarded vendor is not the incumbent vendor.

P. The Vendor to describe in their offer their Backup and Disaster Recovery Plan

1. Vendor must provide a backup and disaster recovery plan, relating to both technical and environmental situations. A general description of the plan should be submitted with the response. A detailed description of the plan will be requested from finalist vendors during negotiations. The awarded vendor will provide backup and disaster recovery plans periodically as updated.
2. Vendor must provide a disaster continuance plan in case of isolated and regional natural disasters. A general description of the plan should be submitted with the response. A detailed description of the plan will be requested from finalist vendors during negotiations. The awarded vendor must conduct a disaster recovery exercise on an annual basis and provide test results.

Q. Service Level Agreement (SLA)

Vendor shall provide in their offer an SLA to address the following issues:

- Network service availability percentage
- Time expectation for general problem resolution
- Service or help desk days and hours of availability
- Time expectation for the resolution of any service disruption
- What SLA reports can be provided to the State and how often
- Any other relevant items

R. Optional Services

1. The vendor may supply in their offer optional services related to merchant card processing that participants could elect to subscribe to. If optional services are proposed, a separate fee schedule must be provided. Any optional services offered will not be considered as part of the evaluation of the vendor's proposal. If any of the optional services are deemed desirable by the State to be offered to the participants, the services will be offered via the MSA in accordance with the fee schedule submitted. Participants will be able to subscribe to the optional services on a voluntary basis.
2. The following is an example of optional services: Raw data file applications for merchant reporting.

3.1.3 SITE AND SYSTEM PREPARATION - RESERVED

3.1.4 EQUIVALENT ITEMS - RESERVED

3.1.5 ENTERPRISE LICENSING - RESERVED

3.2 SECURITY SPECIFICATIONS

3.2.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE-RESERVED

3.2.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

Merchant Card Processing Services will be required to receive and securely manage data that is classified as *High Risk (Highly Restrictive)*. 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.

3.3 ENTERPRISE SPECIFICATIONS

3.3.1 ENTERPRISE STRATEGIES, SERVICES, AND STANDARDS

Agencies and vendors should refer to the Vendor Resources Page for information on North Carolina Information Technology enterprise services, security policies and practices, architectural

requirements, and enterprise contracts. The Vendor Resources Page can be found at the following link: <https://it.nc.gov/vendor-engagement-resources>. This site provides vendors with statewide information and links referenced throughout the RFP document. Agencies may request additional information.

3.3.2 ARCHITECTURE DIAGRAMS DEFINED

The State utilizes architectural diagrams to better understand the design and technologies of a proposed solution. These diagrams, required at offer submission, can be found at the following link: <https://it.nc.gov/architectural-artifacts>.

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.

3.3.3 VIRTUALIZATION - RESERVED

3.3.4 IDENTITY AND ACCESS MANAGEMENT (IAM)

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#identity-access-management>

Describe how your solution supports the above protocols as well as making them available for application integration/consumption.

3.4 BUSINESS AND TECHNICAL REQUIREMENTS-RESERVED

3.5 BUSINESS AND TECHNICAL SPECIFICATIONS- RESERVED

4.0 COST OF VENDOR'S OFFER

4.1 OFFER COSTS

Vendor must complete with their offer the Cost Form at Attachment E.

4.2 PAYMENT SCHEDULE

The Vendor shall propose its itemized payment schedule based on the content of its offer.

5.0 EVALUATION

5.1 SOURCE SELECTION

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

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

deficient. Further, a serious deficiency in the offer to any one (1) factor may be grounds for rejection regardless of overall score.

- c) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to *Raleigh*, North Carolina, to discuss technical and contractual aspects of the offer.
- d) Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.

5.2 EVALUATION CRITERIA

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

- 1) How well the Vendor's offer conforms with the solicitation and specifications referenced in 3.0.
- 2) How each Vendor's offer compares with other Vendors' offers
- 3) Total Cost of Ownership
- 4) Adherence to Section 3.2 Security Specifications
- 5) Vendor Schedule / Timeline for completing work
- 6) Strength of references relevant or material to technology area(s) or Specifications as supplied in the Vendor Offer per the format outlined in Attachment H and Vendor Past Performance - The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.

5.3 BEST AND FINAL OFFERS (BAFO)

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

5.4 POSSESSION AND REVIEW

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

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

6.0 VENDOR INFORMATION AND INSTRUCTIONS

6.1 GENERAL CONDITIONS OF OFFER

6.1.1 VENDOR RESPONSIBILITY

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

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

6.1.2 RIGHTS RESERVED

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

- a) waive any formality;
- b) amend the solicitation;
- c) cancel or terminate this RFP;
- d) reject any or all offers received in response to this RFP;
- e) waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
- f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
- g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
- h) if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.

6.1.3 SOLICITATION AMENDMENTS OR REVISIONS

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

6.1.4 ORAL EXPLANATIONS

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

6.1.5 E-PROCUREMENT

This is an E-Procurement solicitation. See Attachment B, paragraph #38 of the attached North Carolina Department of Information Technology Terms and Conditions.

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

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

6.1.6 INTERACTIVE PURCHASING SYSTEM (IPS)

The State has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve offer award information electronically from our Internet website: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-offer number 14, and then search. 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.

6.1.7 PROTEST PROCEDURES

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

6.2 GENERAL INSTRUCTIONS FOR VENDOR

6.2.1 SITE VISIT OR PRE-OFFER CONFERENCE - RESERVED

6.2.2 QUESTIONS CONCERNING THE RFP

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

Written questions concerning this Solicitation will be received until 7/10/2023 at 2:00 pm Eastern Time.

They must be submitted to the contact person listed on Page One of this Solicitation via the Ariba Sourcing Tool's message board. Please enter "Questions Solicitation **14-OSC-2023-02-MCS**" as the subject for the message.

REFERENCE	VENDOR QUESTION
RFP Section, Page Number	

6.2.3 ADDENDUM TO RFP

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

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

6.2.4 COSTS RELATED TO OFFER SUBMISSION

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

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

6.2.5 VENDOR ERRATA AND EXCEPTIONS

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

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

6.2.6 ALTERNATE OFFERS

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

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

6.2.7 MODIFICATIONS TO OFFER

An offer may not be unilaterally modified by the Vendor.

6.2.8 BASIS FOR REJECTION

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered;

non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed specification is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

6.2.9 NON-RESPONSIVE OFFERS

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

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

6.2.10 VENDOR REGISTRATION WITH THE SECRETARY OF STATE

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

6.2.11 VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM

The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following website: <https://www.ips.state.nc.us/ips/>.

This RFP is available electronically on the Interactive Purchasing System at <https://www.ips.state.nc.us/ips/>.

6.2.12 VENDOR POINTS OF CONTACT

CONTACTS AFTER CONTRACT AWARD:

Below are the Vendor Points of Contact to be used after award of the contract.

VENDOR CONTRACTUAL POINT OF CONTACT	VENDOR TECHNICAL POINT OF CONTACT
[NAME OF VENDOR]	[NAME OF VENDOR]
[STREET ADDRESS]	[STREET ADDRESS]
[CITY, STATE, ZIP]	[CITY, STATE, ZIP]
Attn: Assigned Contract Manager	Attn: Assigned Technical Lead

6.3 INSTRUCTIONS FOR OFFER SUBMISSION

6.3.1 GENERAL INSTRUCTIONS FOR OFFER

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

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

6.3.2 OFFER ORGANIZATION

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

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

- a) Signed Execution Page
- b) Table of Contents
- c) Description of Vendor Submitting Offer Form (Attachment D)
- d) Vendor Response to Specifications and Requirements
- e) Security Vendor Readiness Assessment Report (VRAR)
- f) Architecture Diagrams
- g) Cost Form of Vendor's Offer (Attachment E)
- h) Schedule of Offered Solution
- i) Signed Vendor Certification Form (Attachment F)
- j) Location of Workers Utilized by Vendor Form (Attachment G)

- k) References (Attachment H)
- l) Financial Statements (Attachment I)
- m) Errata and Exceptions, if any
- n) Vendor's License and Maintenance Agreements, if any
- o) Supporting material such as technical system documentation, training examples, etc.
- p) Vendor may attach other supporting materials that it feels may improve the quality of its response. These materials should be included as items in a separate appendix.
- q) All pages of this solicitation document (including Attachments A, B, and C)

6.3.3 OFFER SUBMITTAL

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

1. 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.
2. 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.
3. 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.
4. 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.
5. If confidential and proprietary information is included in the proposal, also submit one (1) signed, REDACTED copy of the proposal. Such information may include trade secrets defined by N.C. Gen. Stat. § 66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132- 1.2. Vendor may designate information, Products, Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the statutes and rules set forth above. By so redacting any page, or portion of a page, the Vendor

warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions determined to be confidential and proprietary and redacted as such, meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential.

6. If the Vendor does not provide a redacted version of the proposal with its proposal submission, the Department may release an unredacted version if a record request is received.

7.0 OTHER REQUIREMENTS AND SPECIAL TERMS

7.1 VENDOR UTILIZATION OF WORKERS OUTSIDE OF U.S.

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

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

7.2 FINANCIAL STATEMENTS

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

- a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, the Vendor must explain the reason why they are not available.
- b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.
- c) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of this RFP award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

7.3 FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY - RESERVED

7.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS

Vendor should present its license or support agreements for review and evaluation. Terms offered for licensing and support of Vendors' proprietary assets will be considered.

The terms and conditions of the Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this RFP may apply to the extent such terms and conditions do not materially change the terms and conditions of this RFP. In the event of any conflict between the terms and conditions of this RFP and the Vendor's standard agreement(s), the terms and conditions of this RFP relating to audit and records, jurisdiction, choice of law, the State's

electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the DIT Terms and Conditions herein shall apply in all cases and supersede any provisions contained in the Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, penalties, legal fees or other similar costs.

7.5 RESELLERS - RESERVED

7.6 DISCLOSURE OF LITIGATION

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

- a) The Vendor shall notify the State in its offer, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. The Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving the Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of the Agreement or any Scope Statement awarded to the Vendor.
- b) The Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to the Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
- c) All notices under subsection A and B herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the DIT Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

7.7 CRIMINAL CONVICTION

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

7.8 SECURITY AND BACKGROUND CHECKS

The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by the Vendor, and to refuse access to or require replacement of any such

personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other similar requirements.

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

7.9 ASSURANCES

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

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

7.10 CONFIDENTIALITY OF OFFERS

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

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

7.11 PROJECT MANAGEMENT

All project management and coordination on behalf of the Agency shall be through a single point of contact designated as the Agency Project Manager. The Vendor shall designate a Vendor Project Manager who will provide a single point of contact for management and coordination of the Vendor's work. All work performed pursuant to the Agreement shall be coordinated between the Agency Project Manager and the Vendor Project Manager.

7.12 MEETINGS - RESERVED

7.13 RECYCLING AND SOURCE REDUCTION - RESERVED

7.14 SPECIAL TERMS AND CONDITIONS

Paragraph #9 in Section 1 of the DIT Terms and Conditions is supplemented as follows: The Agency reserves the right to perform post-delivery and post-training acceptance testing for a period beginning at installation and lasting 10 days. The Agency also reserves the right to have an independent Vendor conduct testing pertaining to the functions, auditability, and related matters. At any time before the end of the test and assurance period the Agency may require any or all of the following:

- i) Have the Vendor modify the installed software to eliminate the deficiency to the Agency's satisfaction.
- ii) Have the Vendor re-install a new copy of the software product(s).
- iii) Extend the acceptance testing period for a period of 10 days to allow time for Vendor to remedy the problems.
- iv) Remove the application software, cancel this Agreement, and recover payments extended from Agency funds.

Paragraph #16 in Section 1 of the DIT Terms and Conditions is supplemented as follows: the Vendor shall provide a Certificate of Insurance naming the (select one: State or Agency) as an additional insured, with the certificate complying with all required coverages and delivered to the (select one: State or Agency) not later than ten (10) days following the date of the Notice of Award issued pursuant to this RFP. The Vendor must notify the (select one: State or Agency) immediately of any material change in insurance coverage, including, but not limited to changes in limits, coverage, or status of the policy.

ATTACHMENT A: DEFINITIONS

- 1) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- 2) **Cybersecurity Incident (GS 143B-1320):** An occurrence that:
 - a. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or
 - b. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
- 3) **Deliverables:** Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software.
- 4) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
- 5) **NCDIT or DIT:** The NC Department of Information Technology.
- 6) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.

- 7) Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- 8) Request for Proposal (RFP):** The RFP is a formal, written solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services. The RFP is used when the value is over \$10,000. This document contains specifications of the RFP, instructions to bidders and the standard IT Terms and Conditions for Goods and Related Services. User should add Supplemental Terms and Conditions for Software and Services, when applicable.
- 9) Security Breach:** As defined in N.C.G.S. §75-61.
- 10) Significant Security Incident (GS 143B-1320):** A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
- a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
 - i. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or
 - ii. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
 - b. Incidents that involve information that is not recoverable or cannot be recovered within defined timelines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
- 11) Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.
- 12) ACH:** Automated Clearing House
- 13) APA:** Agency Participation Agreement
- 14) BAI:** Bank Administration Institute
- 15) CVC:** Card Validation Code (Applies to MasterCard)
- 16) CVV:** Card Verification Value (Applies to Visa)
- 17) DDA:** Deposit Demand Account
- 18) DIT:** Department of Information Technology
- 19) DOT:** Department of Transportation
- 20) DST:** Department of State Treasurer
- 21) EMV:** Global interoperable standard for chip-based payments created by EuroPay, MasterCard, and Visa
- 22) Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
- 23) ISDN:** Integrated Services Digital Network
- 24) IVR:** Interactive Voice Response
- 25) MCC:** Merchant Category Code

- 26)** Merchant Cards: Credit cards and debit cards, whether issued by a bank or a proprietary card company
- 27)** MSA: Master Services Agreement
- 28)** NACHA: National Automated Clearing House Association
- 29)** NFC: Near Field Communication
- 30)** Open Market Contract: A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
- 31)** OSC: Office of the State Controller
- 32)** P2PE: Point-to-point Encryption
- 33)** PCI: Payment Card Industry
- 34)** POS: Point of Sale
- 35)** Proprietary Card: Merchant card issued by a company and processed other than through the Visa or MasterCard network.
- 36)** Reasonable, Necessary or Proper: as used herein shall be interpreted solely by the State of North Carolina.
- 37)** RFP: Request for Proposal
- 38)** SLA: Service Level Agreement
- 39)** Sub-ZBA: Sub Zero Balance Account. Demand deposit account that sweeps net into a Zero Balance Account.
- 40)** ZBA: Zero Balance Account. Demand account that sweeps net into a master demand account.

ATTACHMENT B: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

Section 1. General Terms and Conditions Applicable to All Purchases

1) **DEFINITIONS:** As used herein;

Agreement means the contract awarded pursuant to this RFP.

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

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

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

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

2) **STANDARDS:** Any Deliverables shall meet all applicable State and federal requirements, such as State or Federal Regulation, and NC State Chief Information Officer's (CIO) policy or regulation. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender or provide to the State only those Deliverables that have been inspected and found to conform to the RFP specifications. All Deliverables are subject to operation, certification, testing and inspection, and any accessibility specifications.

3) **WARRANTIES:** Unless otherwise expressly provided, any goods Deliverables provided by the Vendor shall be warranted for a period of 90 days after acceptance.

4) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

5) **TRAVEL EXPENSES:** **All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.

6) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation,

rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate the Agreement and compensate Vendor for sums then due under the Agreement.

- 7) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any Contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any Contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Agreement or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign the Agreement and bind the Party to the terms and conditions of this RFP. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of the Agreement; obligation or Contract for future award of compensation as an inducement or consideration for making the Agreement. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B.1206, or other provision of law.
- 8) **AVAILABILITY OF FUNDS:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in the Agreement. If the Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in this RFP. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under the Agreement, terminate any Services supplied to the Agency under the Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 9) **ACCEPTANCE PROCESS:**
- a) The State shall have the obligation to notify Vendor, in writing ten calendar days following provision, performance (under a provided milestone or otherwise as agreed) or delivery of any Services or other Deliverables described in the Agreement that are not acceptable.
 - b) Acceptance testing is required for all Vendor supplied software and software or platform services unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications, and Vendor's Product Warranties and technical representations. The State shall have the obligation to notify Vendor, in writing and within thirty (30) days following installation of any software deliverable if it is not acceptable.
 - c) Acceptance of Services or other Deliverables including software or platform services may be controlled by an amendment hereto, or additional terms as agreed by the Parties consistent with IT Project management under GS §143B-1340.
 - d) The notice of non-acceptance shall specify in reasonable detail the reason(s) a Service or given Deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of any applicable inspection and testing procedures. Should a Service or Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. Services or Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors contained in the Services or Deliverables or non-compliance with the specifications were not

reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Services or Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.

- 10) PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 9 (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
- Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - 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.
- 11) 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.
- 12) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 13) LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
- 14) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.
- 15) ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 16) INSURANCE COVERAGE:** During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
- Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with

minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and

- 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 Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.

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

18) CONFIDENTIALITY: In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

- 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. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.

- 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 the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.
- d) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
- e) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the State or are not proprietary to the Vendor are the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

19) DEFAULT: In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 9) herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such 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.
- d) If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 9) of the DIT Terms and Conditions is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract.

20) WAIVER OF DEFAULT: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of the Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to the Agreement pursuant to Paragraph 40) herein below.

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

- a) The parties may mutually terminate the Agreement by written agreement at any time.
- b) The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - 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 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - 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.
 - iii) Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.

22) 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. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.

- 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 Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

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

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of the Agreement, whether tangible or intangible, arising out of the ordinary negligence, wilful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.
- 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.

24) TIME IS OF THE ESSENCE: Time is of the essence in the performance of the Agreement.

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

26) INDEPENDENT CONTRACTORS: Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. The Agreement shall not operate as a joint venture, partnership, trust, agency or any other similar business relationship.

27) TRANSPORTATION: Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State

Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

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

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

30) AMENDMENT: The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 36) herein.

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

32) GOVERNING LAWS, JURISDICTION, AND VENUE:

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

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 the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

33) 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.

34) 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.

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

36) CHANGES: The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.

37) 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.

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

- 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 the Agreement. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- 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 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 Services. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of Contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its username 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.

39) 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 Services or Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor technology in connection with the Services or Deliverables for the State's purposes.

- 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 other Deliverables supplied by the Vendor, or the operation of such pursuant to a current version of vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
 - 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 other Deliverables supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the Services or Deliverables, or to replace or modify the same to become 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 Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.
- 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 Service or Deliverable, or (ii) results from the continued use of the good(s) or services and other Services or Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

40) UNANTICIPATED TASKS In the event that additional work must be performed that was wholly unanticipated, and that is not specified in the Agreement, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed. For each item of unanticipated work, the Vendor shall prepare a work authorization in accordance with the State's practices and procedures.

- a) It is understood and agreed by both parties that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.
- b) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by the Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to the Vendor's personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.
- c) All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the State prior to beginning work.
- d) The State has the right to require the Vendor to stop or suspend performance under the "Stop Work" provision of the North Carolina Department of Information Technology Terms and Conditions.
- e) The Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:
 - a. Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
 - b. Terminate the work authorization, or
 - c. Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
 - d. The State will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

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

- 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 the Agreement.
- 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 Agreement price, or both, and the Agreement 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 the Agreement, 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 the Agreement.
- 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.

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

Section 2: Terms and Conditions Applicable to Software as a Service (SaaS)

1) DEFINITIONS:

- a) "Data" includes and 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) Reserved.
- c) Reserved.
- d) 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) The 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) The 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). The 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 the Vendor's SaaS tenants for similar Services. The Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. The Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- d) The 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) The Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

3) **WARRANTY OF NON-INFRINGEMENT:**

- a) The 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. The 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. The 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 non-availability 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 the 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 the Vendor fails to meet Support Service response times as set forth herein or in an SLA for a period of three (3) 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 the Vendor fails to meet the support response times for the remainder of the duration of the Agreement.

5) **EXCLUSIONS:**

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

6) **PERFORMANCE REVIEW AND ACCOUNTABILITY:** N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of ten percent (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, the 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) The 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 the Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, the 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):**

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein but shall not increase more than five percent (5%) over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
- b) Upon the Vendor's written request of not less than thirty (30) days and approval by the State, the State may:
 - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor or
 - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,
 - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by the Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon the Vendor's receipt of a disputed invoice notice, the Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as the Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

16) **ACCEPTANCE CRITERIA:** 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 the 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 the 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 twenty-four (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 third party security certification not to exceed one (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;
 - (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); and
 - (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 the Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the 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.** The 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, the 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) The 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 the 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, the 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, the 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.

The 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. The 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 the Vendor from continuing to provide the Services, the 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 the Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), the 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 (e.g., disk, CD/DVD, backup tape, and paper). Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods, and certificates of destruction shall be provided to the State.

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

- 1) **VENDOR'S REPRESENTATION:** Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Such third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- a) Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
 - b) Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.
 - c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.
- 2) **SERVICES PROVIDED BY VENDOR:** Vendor shall provide the State with implementation Services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The Services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement"). (Reserve if not needed)
- 3) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be noticed to the Agency's Contract Administrator in writing accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.
- a) Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
 - b) Vendor personnel shall perform their duties on the premises of the State, during the State's regular workdays and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.

- c) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
 - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, 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.
 - d) Unless otherwise provided by the Agency, the Vendor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the accomplishment of the tasks specified in the Agreement. The Vendor shall be legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. The Vendor shall be solely responsible for acquiring any equipment, furniture, and office space not furnished by the State necessary for the Vendor to comply with the Agreement. The Vendor personnel shall comply with any applicable State facilities or other security rules and regulations.
- 4) PERSONAL SERVICES:** The State shall have and retain the right to obtain personal Services of any individuals providing Services under the Agreement. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal Services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor to ensure continuity of Services provided under the Agreement. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal Services due as all or part of any performance due under the Agreement.
- a) Vendor personnel shall perform any duties on the premises of the State during the State's regular workdays and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
 - b) The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under the Agreement. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ best commercial efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.
 - c) Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.
 - d) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
 - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, 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

ATTACHMENT C: AGENCY TERMS AND CONDITIONS - RESERVED

ATTACHMENT D: DESCRIPTION OF OFFEROR

Provide the information about the offeror.

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

HISTORICALLY UNDERUTILIZED BUSINESSES

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

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

Respond to the questions below.

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

If so, state HUB classification:

ATTACHMENT E: COST FORM

Merchant Card Processing Services RFP #14-OSC-2023-02-MCS

1. The vendor must provide a complete pricing schedule, to include all startup costs, all ongoing monthly costs, and any one-time credits offered. Any startup costs should be of the nature that can be allocated to the participants receiving the service. Should a tiered pricing schedule be offered, the vendor must describe the proposed method of determining when a new threshold level is met, when the new tiered pricing will take effect, and the frequency of re-evaluation of the volume levels. No “out of pocket” charges will be allowed. The State’s preference is that no travel related expenses be charged the State or Participants. If they are, they must be listed and described.
2. A separate pricing schedule must be submitted for equipment related expenses. The schedule should specify the costs for: 1) purchase; 2) rental; and 3) lease. It should also include pricing for supplies
3. The State expects the ongoing monthly pricing for card transaction processing to be of the nature characterized as “actual pass through fees plus vendor-levied fees,” where “pass through fees” are defined as any fees levied by switch networks, by the card associations, or by the card issuing companies (in the case of proprietary cards) for which the vendor has no control over, except for the manner in which the transactions are processed on behalf of the participants. Pass through fees typically include interchange fees, dues, assessment fees, and switch fees. Vendor-levied fees based on dollar volume will not be allowed.
4. The State desires to receive the best available rate, with as many transactions as possible being coded with the program rate category of either “emerging markets” (in the case of Visa), or “public sector” (in the case of MasterCard), or other similar appropriate clearing level designation.
5. The Vendor’s response shall include cost proposals as follows: Initial term of five (5) years with two (2) optional one (1) year renewals
6. Vendor-levied costs will be the costs used in the evaluations of the proposals. Best Value “total cost of ownership” will be used in the final cost analysis
7. The annual costs for equipment related expenses should be completed, based upon the assumed data provided on the separate form. There is only one form for equipment related expenses, and the cost should be applied to each of the five years. (Will be the same figure for each of the five years.) The equipment cost form should be completed before completing the 1-year scenario cost form. The form is not meant to be inclusive of all equipment fees that may be included on the pricing schedule.
8. The Vendor is responsible for ensuring that all calculations (including formulas) are performed correctly
9. The worksheet tab titled Cost Section I should be used to record Transaction Processing and Monthly Fees and should be used to respond to items 1, 3, 4, 6 and 8 above.
10. The worksheet tab titled Cost Section II should be used to record Equipment and supply costs and should be used to respond to Section IV. Cost Proposal, items 2, 6, 7 and 8 above.

North Carolina Office of the State Controller Merchant Card Processing Services

Cost Section I - Transaction Processing and Monthly Fees

Vendor
Name:

Assumed **monthly** volume (For Evaluation Purposes Only): - Credit Returns 1.2% of transactions.

		<u>Visa</u>	<u>MasterCard</u>	<u>Debit</u>	<u>Discover</u>	<u>Amex</u>	<u>Total</u>	
Number of Transactions	A	1,427,100	417,990	156,110	39,720	100,360	2,141,280	A
Dollar Volume (in thousands)	B	\$114,546	\$39,518	\$21,343	\$3,014	\$12,149	\$190,570	B

Processing Fees:

Rate per transaction:

C								C
Transaction Processing	D=AxC							D

(Adjust number of transactions by -1.2% if charged net of credits.)

Monthly Fees:

Assume 120 participants (chains), 2370 merchant numbers

List and describe

Address Verifications

		Rate	Per	Volume		Total	
E			Verification	50,000			E
F			Chargeback	100			F
G			Report	1			G
H							H
Total	I = E+F+G+H						I

Other (List Below in Item HH)

Other Costs Not Listed Elsewhere (List Below in Item JJ):

J

Total Vendor-levied Monthly Fees

K=D+I+J

Total Vendor-levied Annual Fees

L = K x 12

HH- Other Monthly Fees		0
ITEM		Monthly \$
Total Other Monthly Fees		(List Total In H Above)

JJ - Other Costs Not Listed Elsewhere		0
ITEM		Monthly \$
Total Other Costs Not Listed Elsewhere		(List Total in Item J Above)

North Carolina Office of the State Controller Merchant Card Processing Services

Cost Section II - Equipment and Supplies

Bidder Name:

Vendor must provide three equipment options:

	Item	⁽¹⁾ Monthly Purchase Price	⁽²⁾ Monthly Rental Price	⁽³⁾ Monthly Lease Price	Lease Term in Months
1					
2					
3					
4					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					
If more than 25 equipment options, please use additional pages.					

- (1) Purchase is defined as equipment purchased for a one-time cost. Equipment is owned by purchaser.
- (2) Rental equipment costs are defined as equipment rented month to month with no agreement. Equipment may be turned in at any time with no penalty or cost.
- (3) Lease equipment is defined as equipment leased for a pre-determined contract period of time for a set amount during the contract period.

ATTACHMENT F: VENDOR CERTIFICATION FORM

1) ELIGIBLE VENDOR

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

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

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

2) CONFLICT OF INTEREST

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

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. Vendors claiming exceptions or exclusions under Chapter 64 must identify the legal basis for such claims and certify compliance with federal law regarding registration of aliens including 8 USC 1373 and 8 USC 1324a. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

4) CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA

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

Signature: _____

Date:

Printed Name: _____

Title:

ATTACHMENT G: LOCATION OF WORKERS UTILIZED BY VENDOR

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

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

Will Vendor perform any work outside of the United States?

☐ YES ☐ NO

ATTACHMENT H: REFERENCES

REFERENCES:

The Vendor shall provide **three (3)** references of customers utilizing the proposed solution fully implemented in a setting similar to this solicitation's scope of work. References within like North Carolina communities / industries are encouraged.

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

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

- a. Customer name.
- b. Customer address.
- c. Current telephone number of a customer employee most familiar with the offered solution implementation.
- d. Customer email address
- e. Time period over which each offered solution implementation was completed.
- f. Brief summary of the offered solution implementation.
- g. List of offered solution products installed and operational.
- h. Number of vendor or technical staff supporting, maintaining and managing the offered solution
- i. Number of end users supported by the offered solution.
- j. Number of sites supported by the offered solution.

ATTACHMENT I: FINANCIAL REVIEW FORM

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

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

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

EXHIBITS

EXHIBIT A – Participants and Data for Card Transactions FY 2022 (July 1, 2021 – June 30, 2022)

Participant Category (Chain)	Number of Participants	Number of Card Transactions	Dollar Amount	Number of Merchant Outlets
General Government	35	13,225,767	\$1,443,638,795	848
Universities	18	5,376,614	\$421,010,929	934
Community Colleges	29	193,826	\$38,457,520	171
Local Government	38	5,455,477	\$299,057,697	417
Total	120	24,251,684	\$2,202,164,941	2370

EXHIBIT A.1 – Participants/ACH Data for PayPoint Gateway FY 2022 (July 1, 2021 – June 30, 2022)*

Participant Category (Chain)	Number of Participants	Number of ACH Transactions	Dollar Amount	Number of Merchant Outlets
General Government	13	4,010,798	\$15,631,024,158	75
Local Government	3	135	\$33,324	5
Total	16	4,010,933	\$15,631,057,482	80

*ACH data only. PayPoint card transaction data is included in Exhibit A.

EXHIBIT B

Historical Merchant Card Data for Card Transactions*

<u>Fiscal Year</u>	<u>Transactions</u>	<u>Dollar Volume</u>
2015-16	21,528,670	\$1,838,499,827
2016-17	23,157,963	\$2,103,340,103
2017-18	24,285,181	\$2,232,431,604
2018-19	24,677,569	\$2,044,102,423
2019-20	21,862,948	\$1,793,696,881
2020-21	17,244,405	\$1,847,047,557
2021-22	24,251,684	\$2,202,164,941

*Historical ACH data is not available. Exhibit B is card data only.

EXHIBIT C

Official State depositories providing a BAI file transmission service to the State Treasurer

Bank of America
 BB&T
 First Citizens Bank of NC
 PNC Bank
 SunTrust Bank
 Wells Fargo Bank

EXHIBIT D – Current Merchant Card MSA Participants

Current Merchant Card MSA Participants	
APPALACHIAN STATE UNIV	U
ASHEVILLE BUNCOMBE TECH COMM COLLEGE	C
ASHEVILLE REGIONAL AIRPORT AUTHORITY	L
AUCTIONEER LICENSING BOARD	G
BATTLESHIP NC	G
BLUE RIDGE COMM COLLEGE	C
BOARD OF BARBER EXAMINERS	G
BRASWELL MEMORIAL PUBLIC LIBRARY	L
CABARRUS COUNTY	L
CALDWELL COMM COLLEGE	C
CATAWBA COUNTY	L
CENTRAL CAROLINA COMM COLLEGE	C
CENTRAL PIEDMONT COMM COLLEGE	C
CITY OF ASHEVILLE	L
CITY OF CHARLOTTE	L
CITY OF FAYETTEVILLE	L
CITY OF GREENSBORO	L
CITY OF HAVELOCK	L
CITY OF HICKORY	L
CITY OF MONROE	L
CITY OF MOUNT AIRY	L
CITY OF NEWTON	L
CITY OF RALEIGH	L
CITY OF ROCKY MOUNT	L
CITY OF SANFORD	L
CITY OF WILSON	L
CITY OF WINSTON-SALEM	L
CRAVEN COMMUNITY COLLEGE	C
CURRITUCK COUNTY	L
DAVIDSON CO COMM COLLEGE	C
DEPARTMENT OF COMMERCE	G
DEPARTMENT OF INFORMATION TECHNOLOGY	G
DEPT HEALTH & HUMAN SERVICES	G
DEPT OF AGRICULTURE & CONSUMER SERVICES	G
DEPT OF REVENUE	G
DEPT OF SECRETARY OF STATE	G
DEPT OF TRANSPORTATION	G
EAST CAROLINA UNIVERSITY	U
EDGEcombe COMM COLLEGE	C
ELIZABETH CITY ST UNIV	U
FAYETTEVILLE STATE UNIV	U

GASTON COLLEGE	C
GUILFORD COUNTY	L
GUILFORD TECH COMM COLL	C
ISOTHERMAL COMMUNITY COLLEGE	C
LENOIR COMMUNITY COLLEGE	C
MACON COUNTY	L
MARTIN COMMUNITY COLLEGE	C
MCDOWELL TECH COMM COLGE	C
MONTGOMERY COMM COLLEGE	C
NC BOARD OF LANDSCAPE ARCHITECTS	G
NC BOARD OF LICENSING GEOLOGIST	G
NC DEPARTMENT OF ENVIRONMENTAL QUALITY	G
NC DEPARTMENT OF JUSTICE	G
NC DEPARTMENT OF PUBLIC INSTRUCTION	G
NC DEPT NATURAL & CULTURAL RESOURCES	G
NC DEPT OF ADMINISTRATION	G
NC DEPT OF INSURANCE	G
NC DEPT OF LABOR	G
NC DEPT OF PUBLIC SAFETY	G
NC GENERAL ASSEMBLY	G
NC HOUSING FINANCE	G
NC OFFICE OF STATE HUMAN RESOURCES	G
NC OFFICE OF THE GOVERNOR	G
NC PARTNERSHIP FOR CHILDREN	G
NC SCHOOL OF SCIENCE AND MATHEMATICS	U
NCBD OF COSMETIC ARTS	G
NORTH CAROLINA STATE UNIVERSITY	U
NORTH CAROLINA A&T UNIVERSITY	U
NORTH CAROLINA CENTRAL UNIV	U
NORTH CAROLINA EDUCATION LOTTERY	G
NORTH CAROLINA PSYCHOLOGY BOARD	G
OFFICE OF ADMINISTRATIVE HEARINGS	G
OFFICE OF THE STATE CONTROLLER	G
PERSON COUNTY	L
PIEDMONT COMM CLG BKSTR	C
PIEDMONT TRIAD AIRPORT	L
PITT COMM COLLEGE	C
RANDOLPH COMM COLLEGE	C
RICHMOND COMM COLLEGE	C
ROBESON COMM COLLEGE	C
ROBESON COUNTY	L
ROWAN CABARRUS COMM COLLEGE	C
SOUTH GRANVILLE WATER & SEWER AUTHORITY	L
SOUTH PIEDMONT COMM COLLEGE	C

SOUTHEASTERN COM COLLEGE	C
SOUTHWESTERN COM COLLEGE	C
STATE BOARD OF ELECTIONS AND ETHICS	G
STATE BOARD OF OPTICIANS	G
STATE BRD OF EXAMINERS FOR PLUMBING, HEATING AND FIRE SPKLR	G
STATE HEALTH PLAN	G
SURRY COMMUNITY COLLEGE	C
TOWN OF APEX	L
TOWN OF BLOWING ROCK	L
TOWN OF CARY	L
TOWN OF CHAPEL HILL	L
TOWN OF EMERALD ISLE	L
TOWN OF HUNTERSVILLE	L
TOWN OF MORRISVILLE	L
TOWN OF OAK ISLAND	L
TOWN OF SPRING LAKE	L
UNC - Greensboro	U
UNC - Wilmington	U
UNC ASHEVILLE	U
UNC AT PEMBROKE	U
UNC CHAPEL HILL	U
UNC CHARLOTTE	U
UNC GA	U
UNC SCHOOL OF THE ARTS	U
UNION COUNTY	L
VANCE-GRANVILLE COMM COL	C
VILLAGE OF PINEHURST	L
WAKE COUNTY	L
WARREN CO HEALTH DEPT	L
WAYNE COMMUNITY COLLEGE	C
WESTERN CAROLINA UNIV	U
WESTERN PIEDMONT COM COL	C
WILDLIFE RESOURCES COMMISSION	G
WILKES COMMUNITY COLLEGE	C
WINSTON-SALEM STATE UNIV	U

U = Universities

G = General Government

C = Community Colleges

L = Local Units of Government

EXHIBIT E

SAMPLE AGENCY PARTICIPATION AGREEMENT FOR MERCHANT CARD PROCESSING SERVICES

This Agency Participation Agreement (APA) for Merchant Card Processing Services ("Agreement") is entered into between _____ ("Participating Entity"), the Office of the State Controller, ("OSC"), the Department of State Treasurer (DST) and _____ ("Vendor") as of _____, 20__.

WHEREAS, on _____, 20__ _____ entered into a Master Services Agreement (Contract No. xx-xxxxx) with the State of North Carolina to provide a variety of merchant card processing services to eligible participating entities (hereinafter referred to as "Participants;" and

WHEREAS, the above referenced Participant desires to subscribe to certain services ("Subscribed Services") available under the Master Services Agreement (MSA);

NOW THEREFORE, The parties to this Agreement hereby agree as follows:

1. Vendor hereby agrees to provide Subscribed Services to the Participant pursuant to the terms and conditions of the Master Services Agreement, which are incorporated herein by reference.
2. Participant acknowledges receipt of a copy of the Master Services Agreement and agrees to be bound by the terms and conditions therein.
3. Participant represents that it has obtained approval from the Office of the State Controller (OSC) to enter into this Agreement, as evidenced by the signature of the State Controller or his designee in this Agreement.
4. Participant agrees to abide by all policies promulgated by the Office of the State Controller pertaining to Electronic Commerce, specifically for merchant card processing.
5. Participant agrees to abide by all applicable Card Associations' Rules.
6. Participant and Vendor each agrees to the method of payment for all Subscribed Services provided in accordance with the Master Services Agreement.
7. Either party may terminate this Agreement at any time before the expiration of the Master Services Agreement by giving the other parties one hundred twenty (120) days prior written notice. This agreement shall automatically terminate upon termination of the Master Services Agreement.

To be executed by all related parties.

EXHIBIT F - PARTICIPANT SALES AND TRANSACTIONS CALENDAR YEAR 2022*		
Participant	Total Gross Sales	Total Gross Trans
A&T STATE UNIVERSITY	\$ 8,294,835	126,708
APPALACHIAN STATE UNIVER	\$ 18,936,865	540,179
ASHEVILLE REG AIRPRT AUT	\$ 79,354	812
BLUE RIDGE COMM COLLEGE	\$ 1,310,032	6,001
BRASWELL MEM PUBLIC LIB	\$ 15,385	1,916
CABARRUS COUNTY	\$ 8,760,663	60,948
CALDWELL COMM COLLEGE	\$ 972,303	6,820
CATAWBA COUNTY	\$ 3,142	172
CENTRAL CAROLINA COMM	\$ 112,355	265
CENTRAL PIEDMONT COMM	\$ 24,642,559	45,360
CITY OF ASHEVILLE	\$ 1,713,038	93,168
CITY OF CHARLOTTE	\$ 97,482,442	3,236,488
CITY OF FAYETTEVILLE	\$ 603,121	2,997
CITY OF GREENSBORO	\$ 48,460,934	651,848
CITY OF HAVELOCK	\$ 5,105,100	44,114
CITY OF HICKORY	\$ 154,376	2,951
CITY OF MT AIRY	\$ 694,494	11,105
CITY OF NEWTON	\$ 999,499	5,111
CITY OF RALEIGH	\$ 49,751,831	1,128,678
CITY OF SANFORD	\$ 3,536,935	52,324
CITY OF WILSON	\$ 43,709,045	187,323
CITY OF WINSTON SALEM	\$ 286,345	2,250
COUNTY OF PERSON	\$ 6,242	57
DAVIDSON CO. COMM COLLEGE	\$ 38,611	6,550
EAST CAROLINA UNIVERSITY	\$ 34,019,403	493,413
EDGEcombe COMM COLLEGE	\$ 257,655	1,593
ELIZABETH CTY STATE UNIV	\$ 2,830,948	6,969
FAYETTEVILLE STATE UNIV	\$ 1,622,076	13,279
GASTON COLLEGE	\$ 1,150,075	17,533
GUILFORD CO NC	\$ 1,741,408	27,392
GUILFORD TECH CC	\$ 8,121,963	84,986
ISOTHERMAL CC	\$ 628,016	5,318
LENOIR COMMUNITY COLLEGE	\$ 382,926	1,897
MACON COUNTY	\$ 679,766	2,430
MARTIN COMMUNITY COLLEGE	\$ 204,933	1,237
MCDOWELL TECH COMM COLGE	\$ 30,433	369
N CAROLINA CENTRAL UNIV	\$ 10,313,456	40,843
NC AUCTIONEERING LICENSE	\$ 178,300	1,151
NC BOARD LIC GEOLOGIST	\$ 99,548	1,240
NC BOARD OF BARBER EXMNR	\$ 512,202	8,374
NC BOARD OF COSMETIC ART	\$ 2,847,628	79,274
NC BOARD OF LANDSCAPE ARCH	\$ 181,050	1,588
NC DEPARTMENT OF INSURANCE	\$ 3,380,290	14,166
NC DEPARTMENT OF LABOR	\$ 3,702,066	12,155
NC DEPT OF ADMINISTRATIO	\$ 4,442,843	65,903
NC DEPT OF AGRICULTURE	\$ 17,265,744	323,669

EXHIBIT F - PARTICIPANT SALES AND TRANSACTIONS CALENDAR YEAR 2022		
Participant	Total Gross Sales	Total Gross Trans
NC DEPT OF COMMERCE	\$ 13,754,716	48,749
NC DEPT OF NATURAL RESC-DNCR	\$ 52,202,456	1,150,342
NC DEPT OF NATURAL RES-DEQ	\$ 5,663,708	35,979
NC DEPT OF PUBLIC INSTRU	\$ 3,703,813	53,749
NC DEPT OF PUBLIC SAFETY	\$ 18,472,050	34,929
NC DEPT OF REVENUE	\$ 181,601,804	704,472
NC DEPT OF TRANSPORTATION	\$ 1,017,036,649	9,259,609
NC DHHS	\$ 20,541,511	173,037
NC DOJ	\$ 880,437	3,712
NC GENERAL ASSEMBLY	\$ 275,157	40,497
NC HOUSING FINANCE AGCY	\$ 234,190	2,481
NC IRRIGATION CONTRACTOR	\$ 150,810	1,281
NC PSYCHOLOGY BOARD	\$ 1,263,575	9,482
NC SCHOOL OF THE ARTS	\$ 3,764,808	29,233
NC SEC OF STATE	\$ 80,500,737	558,080
NC ST BOARD OF OPTICIANS	\$ 175,410	2,360
NC STATE HEALTH PLAN	\$ 2,399,855	6,148
NC STATE UNIVERSITY	\$ 120,584,852	1,439,219
NC WILDLIFE RESOURCE COM	\$ 26,388,715	573,660
NORTH CAROLINA EDUCATION LOTTERY	\$ 296,242	4,005
NORTH CAROLINA PARTNERSH	\$ 21,876	205
OFFICE OF ADMIN HEARINGS	\$ 14,675	326
OFFICE OF INFO TECH SERV	\$ 38,401	43
OFFICE OF THE STATE CONTROLLER	\$ 11,670	389
PIEDMONT TRIAD AIRPORT	\$ 7,179,033	177,405
PITT COMMUNITY COLLEGE	\$ 802,823	8,754
RANDOLPH COMMUNITY COLL	\$ 531,853	5,280
RICHMOND COMM COLLEGE	\$ 438,370	2,341
S GRANVILLE WATER & SEWER	\$ 1,130,976	8,202
SOUTH PIEDMONT COMM	\$ 12,231	104
SOUTHEASTERN COM COLLEGE	\$ 201,179	12,994
STATE BRD OF EXAM PLUMBI	\$ 1,895,443	12,570
TOWN OF APEX	\$ 106,638	500
TOWN OF BLOWING ROCK	\$ 103,655	1,412
TOWN OF CARY	\$ 5,270,313	61,934
TOWN OF CHAPEL HILL	\$ 3,205,373	550,010
TOWN OF EMERALD ISLE	\$ 217,265	2,326
TOWN OF MORRISVILLE	\$ 1,736,672	2,167
TOWN OF OAK ISLAND	\$ 836,605	1,225
TOWN OF SPRING LAKE	\$ 2,101,248	29,777
UNC ASHEVILLE	\$ 1,244,720	11,089
UNC AT PEMBROKE	\$ 1,301,962	23,195
UNC CHAPEL HILL	\$ 71,154,646	1,969,307
UNC CHARLOTTE	\$ 148,901,364	403,243
UNC GENERAL ADMIN	\$ 8,547	9

EXHIBIT F - PARTICIPANT SALES AND TRANSACTIONS CALENDAR YEAR 2022		
Participant	Total Gross Sales	Total Gross Trans
UNC GREENBORO	\$ 5,670,730	207,420
UNCW-WILMINGTON	\$ 9,846,046	204,164
UNION COUNTY	\$ 2,069,783	33,178
USS NC BATTLESHIP COMMIS	\$ 3,292,516	91,417
VILLAGE OF PINEHURST	\$ 1,012,746	6,378
WAKE COUNTY	\$ 38,245,693	114,942
WARREN COUNTY	\$ 26,922	174
WAYNE COMMUNITY COLLEGE	\$ 1,781,947	6,686
WESTERN CAROLINA UNIV	\$ 6,529,307	154,562
WESTERN PIEDMONT COM COL	\$ 222,873	1,442
WILKES COMMUNITY COLLEGE	\$ 345,898	8,699
WINSTON SALEM STATE UNIV	\$ 9,184,944	31,568
TOTAL	\$ 2,286,850,673	25,695,385

*Card data only for calendar year 2022.

EXHIBIT G - SOFTWARE AND CORRESPONDING GATEWAY 2022	
Software	Gateway
Card Connect	FDC Nashville
Authorize.net	FDC Nashville
Counterpoint	Cardnet
Payflow Pro	FDC Nashville/Cardnet/NEW COMPASS Front-End (Network)
Cybersource	FDC Nashville/Cardnet/VisaNet
Verisign	FDC Nashville/Cardnet
Yahoo	FDC Nashville/Cardnet
Tender Retail	FDC Nashville
Shift4\$\$\$OnNet GTW	FDC Nashville/Cardnet
NCR Securepay	Cardnet
Plug N Pay	FDC Nashville
Blue Fin Payconex	FDC Nashville/Cardnet
Touchnet	FDC Nashville/Cardnet/NEW COMPASS Front-End (Network)
Bridgepay	FDC Nashville/Cardnet
Mainstreet Monetra	FDC Nashville/Cardnet
Nelnet	FDC Nashville
Freedom Pay	FDC Nashville/Cardnet
Parkmobile	FDC Nashville
Beanstream	FDC Nashville
Payment Express	FDC Nashville/Cardnet
Pay Sentry	FDC Nashville
Element Pmnt	FDC Nashville
Digital Payment Tech	FDC Nashville/Cardnet
USA Epay	FDC Nashville
Comprise Gtw	FDC Nashville
ValuePymtSysGtw	FDC Nashville
Passport Park	FDC Nashville/Cardnet
Advam Gtw	FDC Nashville
Payware Connect	FDC Nashville
PC Charge	FDC Nashville/Cardnet

EXHIBIT H - TERMINALS 2022	
TERMINALS	COUNT
Clover Flex	247
Clover Go	53
Clover Mini	158
Clover Station	100
FD150	213
V400CPLUS	2
V400M	56
FD130 - No Longer Offered	700
Total	1529