

STATE OF NORTH CAROLINA OFFICE OF THE STATE CONTROLLER	REQUEST FOR NEGOTIATION NO. 14-OSC-2023-02-FN	
	Due Date: No later than November 3, 2023, at 2 pm	
	Issue Date: October 26, 2023	
Refer <u>ALL</u> inquiries regarding this RFN to: Jennifer Pacheco Jennifer.Pacheco@osc.nc.gov 919-707-0764	Commodity Number: 432316	
	Description: Foreign Nationals Tax Compliance Software	
	Purchasing Agency: Office of the State Controller	
	Requisition No.: n/a	

OFFER

The State 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 Negotiation, 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 one hundred twenty (120) days from date of offer opening unless.

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 RFN, Specifications of the RFN, 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).

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

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1.0 ANTICIPATED PROCUREMENT SCHEDULE

RESERVED.

2.0 PURPOSE OF RFN

2.1 INTRODUCTION

The purpose of this RFN and any resulting contract award is to solicit offers for 14-OSC-2023-02-FN. This document communicates the specifications and requirements for the Foreign National Tax Compliance Software project underway within the Audit, Risk and Compliance Services division of the Office of the State Controller. OSC will consider commercial-off-the-shelf and software as a service solutions.

2.2 CONTRACT TERM

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

2.2.1 EFFECTIVE DATE

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

2.3 CONTRACT TYPE

Indefinite Quantity Agency Specific Contract – Pursuant to 9 NCAC 6B.0701, this solicitation will establish an indefinite quantity agency specific contract between a Vendor and the State for use by OSC, the Community College System Office and the 58 Community Colleges, the UNC System Office and the 16 University of North Carolina (UNC) Institutions, UNC – Health Care, and the North Carolina Education Lottery. The quantity of Goods or Services that may be used by the State is undetermined. No minimum or maximum purchase quantity is guaranteed.

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 requirements 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 Foreign Nationals Tax Compliance Program is intended to provide North Carolina State employees with a basic understanding of how nonresident alien tax issues apply to their Agency (State Agency, Local Government, University or Community College). The goal of the program is that each agency will be able to identify when the nonresident alien taxation rules apply to specific payment situations; identify appropriate sources for obtaining additional guidance; and understand their reporting and documentation obligations.

To assist the State of North Carolina's compliance with the above-mentioned tax rules and regulations, the Office of the State Controller seeks to negotiate a contract for a Foreign Nationals Tax Compliance Software Solution. The Office of the State Controller is responsible for developing and implementing Statewide policy and procedures that define the State's business practices associated with the processing and payment of employee wages, scholarships, fellowships and grants, payments to independent contractors, and other compensation made by a State entity to a foreign national individual or entity.

The State of North Carolina centrally processes each State Agency’s database, with separate EIN filing capabilities for each agency. The Community College System Office will operate under a similar arrangement, as a central processor for all 58 State Colleges. The State’s 16 Universities, and UNC – Health Care, UNC System Office and NC Lottery operate in a stand-alone environment.

The artifacts below should be referenced to supplement the information above:

Artifact	Location
Policy and Procedures Pertaining to Payments and Compensation of Foreign Nationals, Governments and Corporations	https://www.osc.nc.gov/osc-foreign-national-policies-and-procedures-july-2020/open
IRS Publication 515	https://www.irs.gov/pub/irs-pdf/p515.pdf

3.0 RFN 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.

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.

3.1.3 SITE AND SYSTEM PREPARATION

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

3.1.4 EQUIVALENT ITEMS

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

item named. Equivalent offers must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison.

3.1.5 ENTERPRISE LICENSING

In offering the best value to the State, Vendors are encouraged to leverage the State's existing resources and license agreements, which can be viewed here: <https://it.nc.gov/resources/statewide-it-procurement/statewide-it-contracts>

- a) Identify components or products that are needed for your solution that may not be available with the State's existing license agreement.
- b) Identify and explain any components that are missing from the State's existing license agreement.
- c) If the Vendor can provide a more cost effective licensing agreement, please explain in detail the agreement and how it would benefit the State.

3.2 SECURITY SPECIFICATIONS

3.2.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE

Vendors shall provide a completed Vendor Readiness Assessment Report State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website:

<https://it.nc.gov/documents/vendor-readiness-assessment-report>

The Foreign Nationals Tax Compliance Software Solution will be required to receive and securely manage data that is classified as **HIGH RISK**. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding this 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.

3.2.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The Foreign Nationals Tax Compliance Software Solution will be required to receive and securely manage data that is classified as **HIGH RISK**. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

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

- (a) Vendors shall provide a completed Vendor Readiness Assessment Report Non-State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website: <https://it.nc.gov/documents/vendor-readiness-assessment-report>
- (b) Upon request, Vendors shall provide a current independent 3rd party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors are encouraged to provide a current independent 3rd party assessment report in accordance with subparagraphs (i)-(iii) at the time of offer submission.
 - (i) Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, ISO 27001, or HITRUST are the preferred assessment reports for any Vendor

solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted).

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

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

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

3.3 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 RFN 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

The State desires the flexibility to host Vendor's proposed solution in a virtualized environment, should it determine in the future that virtualized hosting for such solution would be more economical or efficient. The State currently utilizes server virtualization technologies including VMware, Solaris and zLinux. The Vendor should state whether its solution operates in a virtualized environment. Vendor also should identify and describe all differences, restrictions or limitations of its proposed solution with respect to operation, licensing, support, certification, warranties, and any other details that may impact its proposed solution when hosted in a virtualized environment.

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 SOLUTION ROADMAP

- 3.4.1** Vendor must provide a one (1) to three (3) year roadmap for the solution to include:
- a. The vision for the solution,
 - b. a description of how customer feedback is collected and incorporated into solution enhancements,
 - c. a high-level solution timeline for releases, and
 - d. a high-level functionality delivered by each release.

3.5 BUSINESS AND TECHNICAL REQUIREMENTS AND SPECIFICATIONS

- 3.5.1** Refer to the Requirements and Specifications Document (Attachment J) for the requirements and specifications for the solution being procured by this RFN.

4.0 COST OF VENDOR'S OFFER

4.1 SOFTWARE LICENSING OR SAAS ACCESS

Describe the licensing structure of the proposed solution. How will each set of users (actors) be licensed under your proposal? Explain set-up fees, licensing pricing models, license sizes, etc.

4.2 OFFER COSTS

The Vendor must list, itemize, and describe any applicable offer costs which may include the following:

- Cost of the solution to include installation, implementation, configuration, customization, maintenance, hosting, support, etc. for Year 1 and subsequent years. Include any licensing, subscription, or modular breakdown of cost.
- Cost for each potential integration described in section 5.7 of Attachment (J) Requirements and Specifications Document.
- Costs and discounts, if any, for all client training and user training available. Include frequent webinars to educate administrators and the whole community of users.
- Costs and discounts, if any, on published pricing for all training manual resources.
- Costs and discounts, if any, on published pricing for all solution resource manuals.

4.3 PAYMENT SCHEDULE

The Vendor shall propose its itemized payment schedule based on the content of its offer. All payments must be based upon acceptance of one or more Deliverables. The State and Purchasing Agencies cannot pay any fees upon receipt of order.

5.0 EVALUATION

5.1 SOURCE SELECTION

- a) It is the general intent to award this contract to one Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with N.C.G.S. §143B-1350(h), which provides that the offer must be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Any references in an answer to another location in the RFN materials or Offer shall have specific page numbers and sections stated in the reference.
- b) The evaluators 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.

- c) 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

Reserved.

5.3 BEST AND FINAL OFFERS (BAFO)

The State request BAFOs from the Vendor. If negotiations or subsequent offers are solicited, the Vendor shall provide a BAFO 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 RFN, issuance of the RFN 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 RFN;
- d) reject any or all offers received in response to this RFN;
- e) waive any undesirable, inconsequential, or inconsistent provisions of this RFN;
- 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 RFN with anyone other than the State's contact person may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFN with any Vendor may be grounds for cancellation of this RFN.

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 RFN 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 RFN.

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-OSC-2023-02-FN), 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 North Carolina Office of State Controller (“NC OSC”) at the address given on the first page of this document. Protests must be received in NC OSC’s office within fifteen (15) calendar days from the date of this RFN 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 RFN

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.

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 FN Tax Compliance Software” as the subject for the message.

6.2.3 ADDENDUM TO RFN

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 RFN 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 RFN 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 RFN 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 RFN 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 RFN 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 RFN 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 RFN 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 RFN 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/.](https://www.ips.state.nc.us/ips/)

This RFN 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 RFN. The Execution page of this RFN 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 RFN 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 RFN 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 RFN. 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 RFN, 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 RFN 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 RFN. Forms, attachments or exhibits, if any provided in the RFN, 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 Requirements and Specifications (Attachment J)
- 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: It is the Vendor's sole responsibility to ensure its proposal has been received as described in this RFN. 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 requirements.

Vendor's proposals for this procurement must be submitted through the Sourcing Tool. For training on how to use the Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>

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

Tips for Using the Sourcing Tool

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

- a) Contract Performance Security. The State reserves the right to require performance guaranties pursuant to N.C.G.S. §143B-1340(f) and 09 NCAC 06B.1207 from the Vendor without expense to the State.
- b) Project Assurance, Performance and Reliability Evaluation – Pursuant to N.C.G.S. §143B-1340, the State CIO may require quality assurance reviews of Projects as necessary.

7.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS

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 RFN may apply to the extent such terms and conditions do not materially change the terms and conditions of this RFN. In the event of any conflict between the terms and conditions of this RFN and the Vendor's standard agreement(s), the terms and conditions of this RFN 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, termination costs, costs of audits or other similar costs; such terms shall have no force or effect.

The Vendor Standard Agreement consists of the Sprintax License Agreement, and is referred to herein as the "Vendor Agreement". The Vendor Agreement is attached hereto as Attachment K. The Vendor Agreement is incorporated into this RFN No. 14-OSC-2023-02-FN in the manner shown in Exhibit 1.

The terms "Agreement" or "this Agreement" as they are used in the text of the Vendor Standard Agreement shall mean the contract resulting from RFN No. 14-OSC-2023-02-FN.

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 RFN 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 RFN 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

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

7.13 RECYCLING AND SOURCE REDUCTION

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

7.14 SPECIAL TERMS AND CONDITIONS

7.14.1 Contract Administration.

- a) Contract Administrator: NC OSC Contract Administrator will monitor Vendor performance as necessary over the duration of the contract with respect to satisfactory fulfillment of all contractual obligations. Performance assessments may comprise: requirement and specification compliance of deliverables, adequate servicing of contract in any and all aspects which the contract has stipulated, maintaining agreed pricing, and prompt, complete and satisfactory resolution of any contractual discrepancies. Vendor shall provide the NC OSC Contract Administrator with report on contract administration activities, including but not limited to those requirements and specifications described under Section 3.5 of the RFN.
- b) Purchase Activity Report: Vendor shall provide to the NC OSC Contract Administrator reports of purchases under the contract. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Reports shall include the following data elements at a minimum:
 1. Purchasing Agency Name
 2. Purchase Order Number
 3. Invoice Date
 4. Summary of Products and Services Delivered
 5. Purchase Order Cost
- c) Service Level Report: For Service Level Agreement(s) established under this Contract, Vendor shall provide to the NC OSC Contract Administrator a report of Service Level Agreement(s) where Vendor's performance fell below the minimum threshold established in the Service Level Agreement. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Reports shall include the following data elements at a minimum:
 1. Purchasing Agency Name and Number
 2. Service Level Agreement Actual Performance
 3. Number of Instances Below Minimum Threshold During Reporting Period
 4. Explanation for below Minimum Threshold Performance
 5. Vendor's Plan to Address below Minimum Threshold Performance

7.14.2 Vendor Ordering Documents.

Agency Purchase Orders supersede any Vendor Ordering Document. To the extent that any Vendor Ordering Documents are utilized, the terms and provisions of such documents shall be subordinate to the Agreement established by IFB ITS-400277, its terms and conditions shall have no force or effect, and the Ordering Document shall be utilized solely for administrative purposes.

7.14.3 Unilateral Changes

Vendor shall provide State with notice of any changes to the terms of its standard agreement(s), including but not limited to licensing terms, Acceptable Use Policy (AUP), Terms of Use (TOU), Privacy Policies, Terms of Service (TOS), and the obtain the State's agreement to incorporate such changes into the State's agreement. Unilateral change provisions without Vendor notification and the State's agreement are void.

7.14.4 Automatic Renewals

Notwithstanding any term in a Vendor License or Support Agreement providing for automatic renewal, automatic renewals are not permitted under this Agreement.

7.14.5. Third Party Software, Open Source Software, and flow down terms.

Notwithstanding terms and conditions, hyperlinks, or similar references to additional license agreements of third Parties presented in Vendor's License or Support Agreement, the State has no financial obligation or liability to Vendor or such third parties under such additional license agreements. The State will not knowingly violate the licensing limitations stated in such additional license agreements.

7.14.6 Ordering Information

Orders will be placed during the contract period by the Purchasing Agency and will be issued directly to the Vendor.

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) **Community Colleges:** Consisting of 58 state community colleges.
- 3) **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.
- 4) **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.
- 5) **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).
- 6) **NCDIT or DIT:** The NC Department of Information Technology.
- 7) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- 8) **OSC:** Office of the State Controller.
- 9) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- 10) **Request for Negotiation (RFN):** The RFN is a formal, written solicitation document typically used for negotiating offers for more complex services or a combination of goods and services. The RFN is used when the value is over \$10,000. This document contains specifications of the RFN, 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.
- 11) **Security Breach:** As defined in N.C.G.S. §75-61.
- 12) **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 time lines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.

13) Universities: Consisting of 16 state universities.

14) Vendor: Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

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 RFN.

Data includes 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.

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 Purchasing Agency shall mean the Agency purchasing the goods or Services. The Purchasing Agencies in this RFN are the North Carolina Office of State Controller, the North Carolina Community Colleges System Office, State Universities, UNC Healthcare/UNC Hospitals, UNC System Office, and North Carolina Education Lottery. The Purchasing Agency shall have all rights and obligations of the "State" and the "Agency", as appropriate, as those terms are used herein.

Services shall mean the duties and obligations undertaken by the Vendor under, and to fulfill, the specifications, requirements, terms and conditions of the Agreement, including without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.

State shall mean the State of North Carolina, the Department of Information Technology (DIT), or the North Carolina Office of State Controller as an Agency or in its capacity as the Award Authority, as appropriate.

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.

User means anyone who uses Deliverables or accesses Services provided to a Purchasing Agency.

- 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 RFN 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 hourly 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 NC OSC 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 RFN. 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 RFN. 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 CRITERIA:** 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. The notice shall

specify in reasonable detail the reason(s) a 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 Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. 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 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 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 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:
- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
 - b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
 - c) 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:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the 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 State or 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 or the 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.

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 user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the

Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

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 DRO executing a Participating Addendum is the Agency 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 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 Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate 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 Agency before payment will be issued.

- e) The 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 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:** Reserved.
- 3) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency. 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 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 work days 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**: Reserved.

ATTACHMENT C: NC OSC 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 RFN. Contact the North Carolina Office of historically Underutilized Businesses at 919-807-2330 with questions concerning NC HUB certification. <http://ncadmin.nc.gov/businesses/hub>

Respond to the questions below.

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

If so, state HUB classification: _____

ATTACHMENT E: COST FORM

The State encourages the vendor to supply its most competitive prices in its offer. Where necessary, please explain the details of the pricing offered.

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 RFN or other solicitation; the Vendor will be precluded from bidding on the subsequent RFN 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 RFN development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFN 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.

ATTACHMENT H: REFERENCES

Reserved.

ATTACHMENT I: FINANCIAL REVIEW FORM

Reserved.

REQUIREMENTS AND SPECIFICATIONS DOCUMENT

Project: Foreign Nationals Tax Compliance Software

Agency: Office of the State Controller

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1. DOCUMENT OVERVIEW

This document communicates the Requirements and Specifications for the Foreign Nationals Tax Compliance Software project underway within the Audit, Risk and Compliance Services division of the Office of the State Controller. The information used to communicate the Requirements and Specifications in this document include:

- Context Diagram
- Business Process Documentation
- Functional Specifications
- Requirements

The prioritization method used for this collection of Requirements (R), or Specifications (S) are outlined herein below.

Priority	Description
Requirements (R)	As defined in RFN section 3.1.1., “requirement” means, as used herein, a function, feature, or performance that the system must provide. The business will not consider a solution that does not provide the functionality. This functionality cannot be sacrificed.
Specifications (S)	As defined in RFN section 3.1.2., “specification” means, as used herein, a specification that documents the function and performance of a system or system component.

Table 1 Prioritization Scale

1.1. REFERENCE ARTIFACTS

The project artifacts below should be referenced to supplement the information in this document.

Artifact	Location
Policy and Procedures Pertaining to Payments and Compensation of Foreign Nationals, Governments and Corporations	https://files.nc.gov/ncosc/documents/Policies/docs_for_policy_links/OSC_Foreign_National_Policies_and_Procedures.pdf
IRS Publication 515	https://www.irs.gov/pub/irs-pdf/p515.pdf

Table 2 Reference Artifacts

2. PROJECT OVERVIEW

2.1. BUSINESS SERVICE

The solution defined by these Specifications is intended to improve, transform or introduce the business capability listed below.

ID	Business Capability	Description
1	Tax Compliance	Describe your experience in the following areas: Determining tax status, treaty eligibility and producing/submitted information to the tax authorities on time and in the required formats.

Table 3 Business Services

3. SCOPE ANALYSIS

Vendor should use the technical information in Sections 3 and 4 of this Attachment J to respond to Section 5 of Attachment J.

3.1. SOLUTION ACTORS

Solution actors are the people, systems, groups and organizations who are involved in an aspect of the business capability or business process. These actors include both internal and external systems, organizations, and all roles involved.

#	Actor Name	Actor Description
1	Colleague Software	Colleague is ERP Software provided by Ellucian to create an intuitive student experience and helps institutions serve their constituents more effectively.
2	Student and Exchange Visitor Information System (SEVIS)	SEVIS is a web-based system the government uses to maintain information about F and M students, J exchange visitors, and the schools and sponsors that host them. The Student and Exchange Visitor Program is the federal entity tasked with supporting and managing the SEVIS database.
3	PeopleSoft	PeopleSoft is ERP Software to provide companies with a platform to connect various business processes and streamline the work to not only enable better data sharing, but also to be more cost and time efficient. The Finance module is a centralized system to track and record sales and operational information and payroll systems and that has the ability to perform analytics reporting.
4	Lawson ERP	Lawson is a leading enterprise resource planning (ERP) software company. It offers a wide range of ERP applications and industry-specific solutions for small, medium and large enterprises.
5	Oracle Fusion Cloud	Fusion Cloud is ERP cloud financials solution available from Oracle. The State is beginning the transition to this software product.
6	Banner Student Information Systems	Ellucian Banner is the world's leading higher education enterprise resource planning (ERP) system. It is a complete student information system. It includes self-service options that let users access the features they need any time, from any device.
7	SAP Financials	SAP Financials is a core ERP Financial solution.
8	SAP HR/Payroll ERP	SAP HR/Payroll ERP System (SAP ECC 6.0) provides HR (including Organizational Management, Personnel Administration, Time, and Benefits Enrollment) and Payroll functionality. Over 100,000 positions and nearly 90,000 employees are paid through this SAP system.
9	Email	The State uses O365 Services including email, archive, mail DMZ, OneDrive and SharePoint. Other Actors use email like Outlook and Gmail.
10	OSC Audit, Risk, and Compliance Services (OSC ARCS)	OSC ARCS is responsible for the acquisition of the tax compliance software and the administration of the contract. It will manage the initial contract with the vendor. Further OSC ARCs will purchase the software on behalf of all State Agencies and act as the central processor on their behalf.
11	NC Community Colleges System Office	The NC Community College System Office is responsible for oversight of the State's 58 community colleges and the foreign national tax compliance central processor for all 58 community colleges.
12	NC Community Colleges	The NC Community College System consists of 58 colleges. They provide high-quality, accessible educational opportunities that minimize barriers to post-secondary education. The System works to develop a globally and multi-culturally competent workforce and improves the lives and well-being of individuals by providing education, training and retraining for the workforce. This includes basic

#	Actor Name	Actor Description
		skills and literacy education, occupational and pre-baccalaureate programs. A list of colleges can be found at https://www.nccommunitycolleges.edu/about-us/main-campuses
13	State Universities	The University of North Carolina System is a multi-campus university dedicated to serving the state of North Carolina and its people through world-class teaching, research and scholarship, and outreach and service. More than 250,000 students are enrolled in the UNC System's 16 university campuses across the state and the NC School of Science and Mathematics, the country's first public, residential high school for gifted students. These 16 systems will be users of the solution; consisting of Student Services, Accounts Payable, and Payroll Departments. A list of universities can be found at https://www.northcarolina.edu/institutions/
14	State Agencies	The agencies and departments within the State of North Carolina. A list of agencies can be found at https://www.nc.gov/your-government/state-organizations . OSC ARCS will be the central processor for each agency's accounts payable and payroll reportable items.
15	Foreign Nationals	A foreign national is one who owes allegiance to or who is under the protection of a country other than the United States. Foreign nationals include both nonresident aliens and resident aliens for tax purposes.
16	UNC Healthcare/UNC Hospitals	UNC Health Care is a not-for-profit integrated health care system owned by the state of North Carolina and based in Chapel Hill. UNC Health Care currently comprises UNC Hospitals and its provider network, the clinical programs of the UNC School of Medicine, and eleven affiliate hospitals and hospital systems across the state. They are responsible for reporting and withholding of taxes associated with payments made to Foreign Nationals.
17	UNC System Office	The UNC System Office oversees the 16 universities and the NC School of Science and Math. The solution will be used for their corporate office.
18	NC Education Lottery	The NC Lottery is run by state government. The solution will be used for both their corporate office payroll and lottery winners.

Table 4 Solution Actors

3.2. SOLUTION SCOPE - CONTEXT DIAGRAM

This context diagram captures the Foreign Nationals Tax System as a single high-level process and shows the relationship the solution has with other external actors such as systems, organizational groups or external data stores. The associated table provides details about the relationship between the Foreign Nationals Tax System solution and those actors.

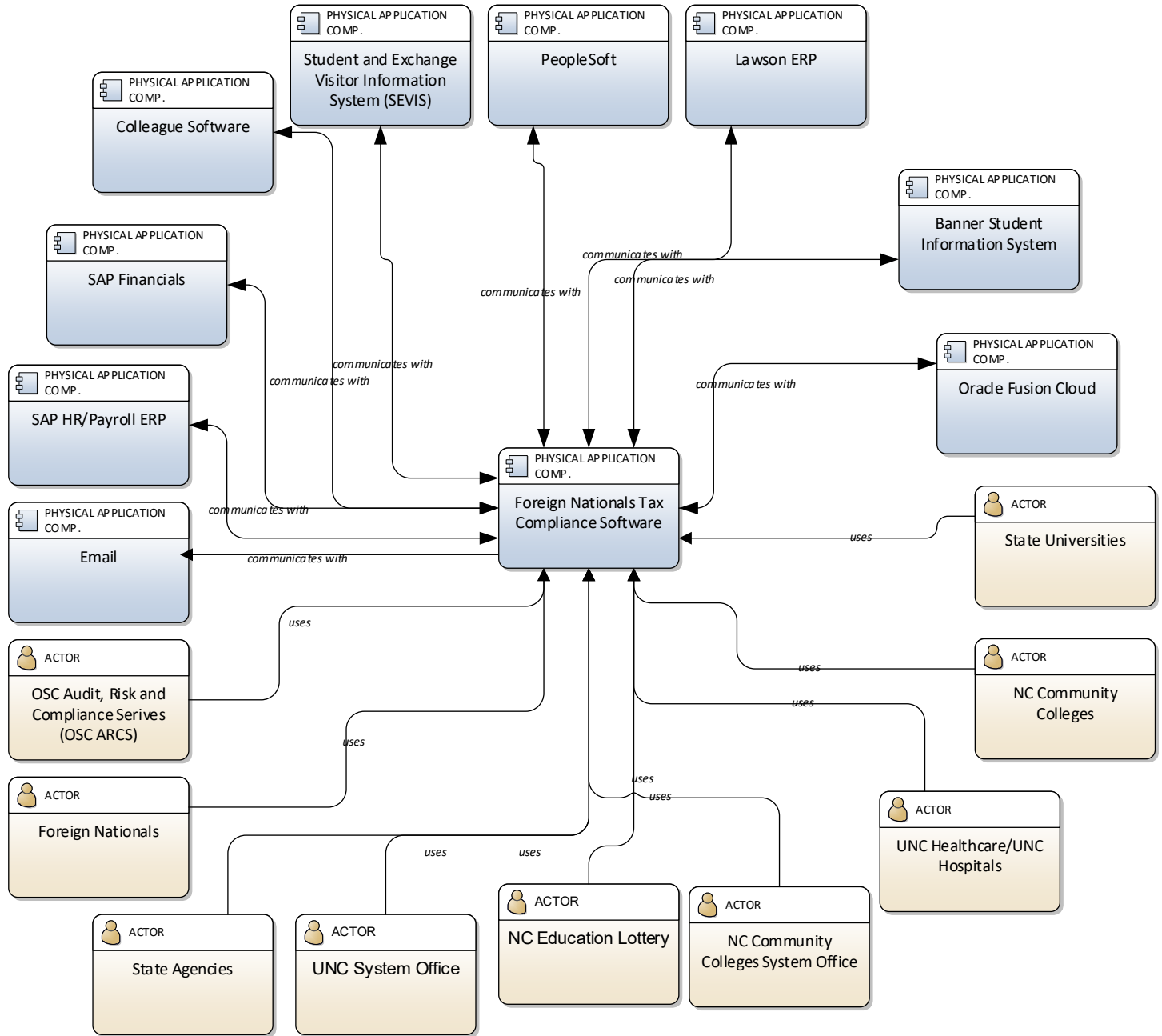


Figure: Foreign Nationals Tax Compliance Software Context Diagram

CONTEXT DIAGRAM RELATIONSHIPS.

#	System	Relationship	Actor	Description
1	Foreign Nationals Tax Compliance Software	To & From	Colleague Software	This is a potential integration for the software. The NC Community Colleges use this ERP system. The State would like the option of this integration.
2	Foreign Nationals Tax Compliance Software	From	Student and Exchange Visitor Information System (SEVIS)	This is a potential integration for the software to download information from SEVIS. The State would like the option of this integration.
3	Foreign Nationals Tax Compliance Software	To & From	PeopleSoft	This is a potential integration for the software. Some of the State Universities use this ERP system. The State would like the option of this integration.
4	Foreign Nationals Tax Compliance Software	To & From	Lawson ERP	This is a potential integration for the software. UNC Healthcare/UNC Hospitals use this ERP system. The State would like the option of this integration.
5	Foreign Nationals Tax Compliance Software	To & From	Oracle Fusion Cloud	This is a potential integration for the software. The State has begun the process of transitioning from legacy software to Oracle Financials. The State would like the option of this integration.
6	Foreign Nationals Tax Compliance Software	To & From	Banner Student Information Systems	This is a potential integration for the software. Some of the State Universities use this ERP system. The State would like the option of this integration.
7	Foreign Nationals Tax Compliance Software	To & From	SAP Financials	This is a potential integration for the software. The Department of Transportation uses this ERP system. The State would like the option of this integration.
8	Foreign Nationals Tax Compliance Software	To & From	SAP HR/Payroll ERP	This is a potential integration for the software. The State uses this HR/Payroll ERP system. The State would like the option of this integration.
9	Foreign Nationals Tax Compliance Software	To & From	Email	This is a potential integration for the software. If the solution will generate email to send with users, it may need to integrate with the State's email services.
10	Foreign Nationals Tax Compliance Software	To & From	OSC Audit, Risk, and Compliance Services	Actor will use the solution as a central processor for all state entities (currently 38 individual EINs) to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.

#	System	Relationship	Actor	Description
11	Foreign Nationals Tax Compliance Software	To & From	NC Community Colleges System Office	Actor will use the solution as a central processor for all state community colleges (currently 58 individual EINs) to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.
12	Foreign Nationals Tax Compliance Software	To & From	NC Community Colleges	Actor will use the solution to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.
13	Foreign Nationals Tax Compliance Software	To & From	State Universities	Actor will use the solution to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.
14	Foreign Nationals Tax Compliance Software	To & From	State Agencies	Actor will use the solution to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.
15	Foreign Nationals Tax Compliance Software	To & From	Foreign Nationals	Users will input data to the system. The system will need to generate completed forms for the user.
16	Foreign Nationals Tax Compliance Software	To & From	UNC Healthcare/UNC Hospitals	Actor will use the solution to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.
17	Foreign Nationals Tax Compliance Software	To & From	UNC System Office	Actor will use the solution to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.
18	Foreign Nationals Tax Compliance Software	To & From	NC Education Lottery	Actor will use the solution to determine the tax status of foreign nationals based on the substantial presence test (SPT) and apply tax treaty benefits based on the type of visa and immigration history. The solution must provide the ability to create the annual tax reporting.

Table 5 Context Diagram Relationships

3.3. PROCESS SCOPE – BUSINESS PROCESS ARCHITECTURE

Process scope has been documented using a business process architecture decomposition. The process has been decomposed from lifecycle phases to activity tasks.

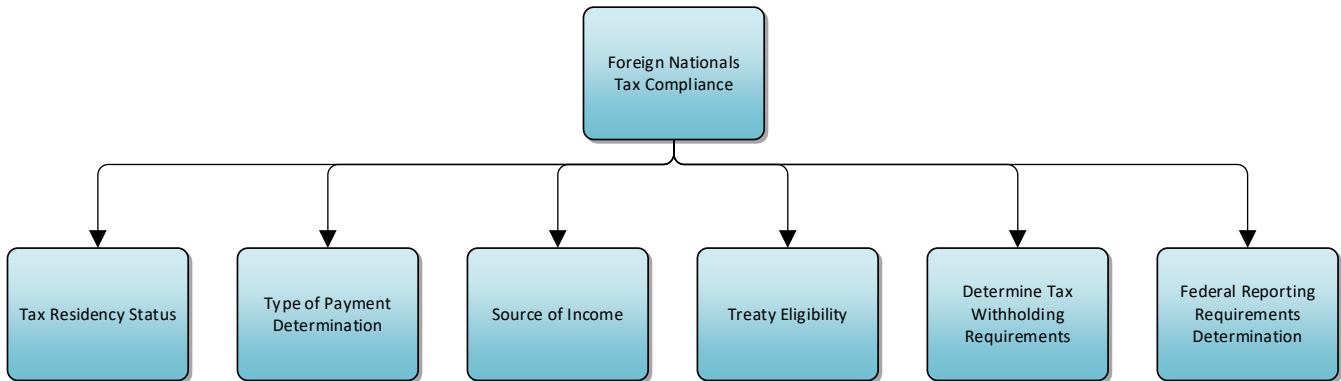


Figure: Business Process Lifecycle

4. PROCESS ANALYSIS

4.1 AS – IS PROCESS DOCUMENTATION

As-Is process documentation can be found in the following document: [Policy and Procedures Pertaining to Payments and Compensations of Foreign Nationals, Governments, and Corporations.](#)

5. FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

Refer to paragraphs 3.1.1. Requirements and 3.1.2. Specifications for definitions of these terms as used herein. Each Requirement or Specification Statement in this section is identified as a requirement (R) or a specification (S) as outlined below.

5.1 SECURITY & ADMINISTRATION FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

5.1.1 Administration Functional Requirements and Specifications

This category defines functions for administering the system (ex. users, system configuration settings, communication configuration settings, template configurations). Anything an Administrator can do would be organized in this category. This category also includes capabilities for providing a user with self-service administration capabilities for managing their account and settings. Please note that the term “users” is intended to represent staff members within the entities purchasing the solution.

For each requirement, Vendor must state whether its proposed solution meets the requirement, “yes” or “no”. For each specification, Vendor should describe its offering in relation to specification. If a specification is not applicable, please explain.

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
ADM_001	The solution shall allow system administrators to create new users.	R	
ADM_002	The solution shall allow system administrators to delete users.	R	

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
ADM_003	The solution shall allow system administrators to manage users.	R	
ADM_004	The solution shall allow users to update their own user profile data.	R	
ADM_005	The solution shall allow a user to change their password.	R	
ADM_006	The solution shall allow system administrators to set up new user id(s) and password(s) for a user.	R	
ADM_007	Describe how the solution system allows administrators to configure standard email templates used to generate email messages.	S	
ADM_008	Describe how the solution allows system administrative users to configure business rules.	S	
ADM_009	Describe how the solution allows system administrators to configure workflows.	S	
ADM_010	The solution shall allow system administrators to assign roles to and remove roles from users.	R	
ADM_011	The solution shall allow users to add additional related Employer Identification Numbers (EINs) after initial set-up.	R	

Table 6 Administration Functional Specifications

5.1.2 Security Functional Requirements and Specifications

This category pertains to governing rights and access of users to data and operates through roles and permissions. This category also includes functions related to user authorization including log in and password requirements, as well as those related to data or document security such as redaction or obfuscation.

For each requirement, Vendor must state whether its proposed solution meets the requirement, “yes” or “no”. For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
SEC_001	The solution shall utilize end-to-end encryption while data is in transit.	R	
SEC_002	The solution shall have configurable role-based security governing the access and use of the system.	R	
SEC_003	Describe how solution allows user accounts to be locked and unlocked.	S	

Table 7 Security Functional Requirements and Specifications

5.2 AUDIT FUNCTIONAL SPECIFICATIONS

This category pertains to auditing to log events that occur in an IT system and to enable the assembly of an audit trail recording events taken on a record.

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specification (S) Statements	Priority
AUD_001	Describe how the solution generates audit log information for events executed by the system and users.	S
AUD_002	Describe how the solution allows users to search the audit log.	S
AUD_003	Describe how the solution exports audit logs in (csv) format.	S

Table 8 Audit Functional Specifications

5.3 COMMUNICATION FUNCTIONAL SPECIFICATIONS

This category pertains to functional communications. Communications are delivered to the user through channels such as email, SMS or online chat.

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specification (S) Statements	Priority
COM_001	Describe how the solution sends email notifications to foreign nationals to enter data.	S
COM_002	Describe how the solution tracks the tax residency of Foreign Nationals and notifies the purchasing agency of impending expiration dates.	S
COM_003	Describe how the solution alerts purchasing agency when a Foreign National has completed the information collection process.	S
COM_004	Describe how the solution notifies foreign nationals when an income tax treaty exemption must be renewed.	S
COM_005	Describe how the solution tracks the treaty rules for a foreign national and notifies the purchasing agency of treaty changes that apply to the foreign national.	S

Table 9 Communication Functional Specifications

5.4 DATA FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

This category pertains to structured data management functions including data entry, data archival, data retention, data restoration, data storage, data backup and data migration. Having the word 'data' in a requirement doesn't make it a data requirement. Online forms and data entry into structure fields goes in this category.

For each requirement, Vendor must state whether its proposed solution meets the requirement, "yes" or "no". For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
DAT_001	The solution shall analyze payments to Foreign Nationals to determine if payments are governed by Federal Regulatory Authorities' (IRS, USCIS, etc.) regulations.	R	
DAT_002	The solution shall calculate the substantial presence of a Foreign National to determine the individual's residency status for tax purposes, residency start date, and residency change data.	R	
DAT_003	The solution shall analyze tax rules for Foreign Nationals to determine tax withholdings.	R	
DAT_004	The solution shall analyze treaty rules for Foreign Nationals to determine tax withholdings.	R	
DAT_005	Describe how the solution allows Foreign Nationals to enter data in the system.	S	
DAT_006	Describe how the solution guides Foreign Nationals through the data entry process.	S	
DAT_007	The solution shall generate summary report(s) for the Foreign Nationals with the results of the residency and tax determinations.	R	

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
DAT_008	The solution shall create summary reports of treaty analysis identifying all limitations.	R	
DAT_009	The solution shall include a test environment (i.e., sandbox environment).	R	

Table 10 Data Functional Requirements and Specifications

5.5 ENTERPRISE CONTENT MANAGEMENT FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

This category pertains to the management (i.e. capture, storage, retrieval, archival, editing) of unstructured foreign entities (i.e. office documents, scanned documents, images, emails, audio files and other documents) created by organizations.

For each requirement, Vendor must state whether its proposed solution meets the requirement, “yes” or “no”. For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
ECM_001	The solution shall produce required IRS withholding certificates.	R	
ECM_002	The solution shall produce completed 1042 tax returns and 1042-S reporting forms with the data entered into the solution.	R	
ECM_003	The solution shall prepare fileable forms 1042 and 1042-S that can interface with the IRS filing system (currently FIRE system).	R	
ECM_004	The solution shall create a file compliant with IRS publication 1187 specifications for electronic filing.	R	
ECM_005	The solution shall complete applicable federal tax forms with Foreign National’s data.	R	
ECM_006	Describe how the solution completes applicable state tax (specifically North Carolina) forms with Foreign National’s data.	S	
ECM_007	The solution shall complete federal year-end tax forms 1042 and 1042s for all Actors and Foreign Nationals.	R	
ECM_008	Describe how the solution completes federal year-end tax form 8843 for Foreign Nationals.	S	
ECM_009	Describe how the solution produces applicable completed withholding certificates (ex - Forms 8233, W-4, W-7, W-8BEN, and W-9).	S	

Table 11 Enterprise Content Management Functional Specifications

5.6 HELP FUNCTIONAL REQUIREMENT

This category pertains to on-screen, or in-system help and user assistance.

Vendor must state whether its proposed solution meets the requirement, “yes” or “no”.

ID	Requirement (R) Statement	Priority	Yes/No
HLP_001	The solution shall have help features.	R	

Table 12 Help Functional Specifications

5.7 INTEGRATION & SYSTEM INTERFACE FUNCTIONAL SPECIFICATIONS

This category pertains to functional integration to support system-to-system data transfers accomplished through methods such as APIs, web services and file transfers. It also includes imports and exports of information that may be initiated by a user through an established import or export format. This category also defines capabilities that display data or components from an external system to the user while in the current system through methods such as an iFrame, portlet or web part.

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specification (S) Statements	Priority
INI_001	Explain whether the solution integrates with PeopleSoft.	S
INI_002	Explain whether the solution integrates with Ellucian Colleague.	S
INI_003	Explain whether the solution integrates with Banner Student Information System software.	S
INI_004	Explain whether the solution integrates with Lawson ERP & Financial Accounting Software.	S
INI_005	Explain whether the solution integrates SEVIS to pull information about foreign nationals.	S
INI_006	Explain whether the solution integrates with Oracle Financials Cloud.	S
INI_007	Explain whether the solution integrates email, which includes email archive, mail DMZ, OneDrive and SharePoint for email notifications.	S
INI_008	Explain whether the solution integrates with the State's SAP HR/Payroll ERP system.	S
INI_009	Explain whether the solution integrates with SAP Financials.	S

Table 13 Integration and Interface Functional Specifications

5.8 REPORTING & ANALYTICS FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

This category defines capabilities needed for reporting.

Vendor must state whether its proposed solution meets the requirement, "yes" or "no". Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Requirement (R) and Specification (S) Statements	Priority	Yes/No
RPT_001	Explain whether the solution contains reports to track the status of foreign national's completion of data entry.	S	
RPT_002	The solution shall contain ad-hoc reporting capabilities.	R	

Table 14 Reporting & Analytics Functional Specifications

5.9 SEARCH FUNCTIONAL SPECIFICATION

This category pertains to searching functions. Search capabilities specific to another category of functionalities would not be in this general category such as searching audit logs or administrators searching user accounts.

Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specification (S) Statements	Priority
SRC_001	Describe the solution's user search functionality.	S

Table 15 Search Functional Specifications

5.10 USER INTERFACE FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

This category pertains aspects of the user-interface or user experience. The user interface (UI) comprises the screen menus and icons, keyboard shortcuts, mouse and gesture movements, command language, as well as physical buttons, dials and levers. Also included are all input devices, such as a mouse, keyboard, touchscreen, remote control, and game controller.

For each requirement, Vendor must state whether its proposed solution meets the requirement, "yes" or "no".

ID	Requirement (R) Statements	Priority	Yes/No
UI_001	The solution shall display the text of the income tax treaty.	R	
UI_002	The solution shall provide a web browser interface to enter foreign nationals' information.	R	

Table 16 User Interface Functional Specifications

5.11 WORKFLOW FUNCTIONAL REQUIREMENTS AND SPECIFICATIONS

This category pertains to facilitating a sequenced business activity where there is an input and an output. Examples include executing approval processes, assigning work tasks, managing status.

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specifications (S) Statements	Priority
WF_001	Explain whether the solution tailors' questions asked of a foreign national based on answers already given.	S
WF_002	Explain whether the solution guides users through the data entry process.	S

Table 17 Workflow Functional Specifications

5.12 GIS FUNCTIONAL SPECIFICATIONS

None

6. QUALITY ATTRIBUTES

Quality attributes, also known as Non-Functional Specifications, specify a quality or criteria that can be used to judge the operation of a system rather than a specific behavior.

6.1 ADAPTABILITY

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specifications (S) Statements	Priority
ADP_01	Explain whether the solution offers flexible deployment options, such as, Vendor solution hosted in the cloud (SaaS model).	S
ADP_02	Explain whether the solution provides a scalable architecture and is adaptable to potential changes in the types of technology requiring scanning. For example: <ul style="list-style-type: none"> • New asset types (mobile, cloud, IoT, etc.) • Personal devices increasing the number of systems with credentials. • Cloud computing and shared environments. 	S

Table 18 Adaptability

6.2.AVAILABILITY

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specifications (S) Statements	Priority
Service Level Agreement (SLA) Specifications		
AVA_01	Describe the Vendor's approach for delivering acceptable response times for all functions including but not limited to: <ul style="list-style-type: none"> • UI response times (e.g., application launch, response to use action, report generation and searches.) • Alerts latency (visible alerts) • Network latency (network latency between the infrastructure components) Response time is measured from the time that the user performs the action until the user receives enough feedback from the computer to continue the task.	S
AVA_02	Describe the solution's availability. The State prefers a solution that is available 24x7.	S
AVA_03	Describe the solution's support capability. The State prefers a solution that supports up to ten (10) concurrent users with no noticeable degradation in response time.	S
AVA_04	Describe the Vendor's product support response times. The State prefers that the Vendor's product support contact point responds within four (4) hours to incidents reported between 8:00am and 5:00pm ET, Monday through Friday.	S
AVA_05	Describe the Vendor's escalation procedure for unresolved support requests that cannot be immediately resolved.	S
AVA_06	Describe the Vendor's logical and physical security measures to ensure that access to the system and its underlying data are protected. Describe any formal security frameworks that are utilized.	S
AVA_07	Describe the Vendor disaster recovery and business continuity capabilities.	S
AVA_08	Explain whether the Vendor will, upon request, provide metrics detailing performance metrics observed during peak and off-peak hours of Solution operation. Describe how the Vendor maintains high uptime for the entire customer base.	S
Recovery		
AVA_09	Explain whether the solution meets the minimum Recovery Point Objective (age of files to be recovered from back up for the solution to resume) of one (1) hour.	S
AVA_10	Explain whether the solution meets the minimum Recovery Time Objective (time the application can be down before resumption of service following a disaster) of eighteen (18) hours.	S

Maintenance		
AVA_11	Describe the Vendor's maintenance schedule. The State prefers that the Vendor schedules maintenance, when possible, during evening and weekend hours.	S
AVA_12	Describe the Vendor's change management processes and the customer interaction expected.	S
AVA_13	Describe the customer interaction expected with regards to Vendor's support request management processes. For example, the purchasing agency will call and/or email and receive a response within four (4) hours.	S

Table 19 Availability

7.0 ADDITIONAL SPECIFICATIONS

For each specification, Vendor should describe its proposed solution in relation to the specification. If a specification is not applicable, please explain.

ID	Specifications (S) Statements	Priority
AS_01	Describe the training options available, such as webinars, to educate administrators and the whole community of users and the frequency of the availability of the training options.	S
AS_02	Describe the Vendor's plan (including the timeline) for completing the work required by this RFN.	S
AS_03	Describe the process for transitioning from an unrelated software solution to the Vendor's solution.	S
AS_04	Describe the process for transitioning at the end of the contract term. <ul style="list-style-type: none"> a. Describe how data stored within the software will be archived. Describe the format in which the data stored will be released to the actor? b. Describe the process for preparing the final tax return (IRS 1042) in the final year of renewal. 	S

EXHIBIT 1: RFN 14-OSC-2023-02-FN SPRINTAX STANDARD AGREEMENT

- 1) The following sections as modified, or as unmodified, shall supersede DIT's Terms and Conditions:
 - a. 1. License Grant, 1.1, 1.2, 1.3, 1.4, 1.5
 - b. 2. Obligations of Subscriber and Sprintax, 2.1, 2.4
 - c. 2. Obligations of Subscriber and Sprintax, 2.2 is modified as follows: Each Authorized Third Party's use of the Software is subject to the terms of a this "End User License Agreement" ~~between Sprintax and each Authorized Third Party accessing the Software. Sprintax reserves the right in its discretion to modify the terms of its End User License Agreement with Authorized Third Parties from time to time.~~
 - d. 5. Disclaimers; Indemnity; Limitation of Remedies, 5.1 is modified as follows: Sprintax shall provide access to the Software to authorized End Users pursuant to the terms of this Sprintax License Agreement ~~a "End User License Agreement" between Sprintax and each End User accessing the Software. Sprintax reserves the right in its discretion to modify the terms of its End User License Agreement with End Users from time to time.~~
 - e. 5. Disclaimers; Indemnity; Limitation of Remedies, 5.3 is modified as follows: ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, ~~OR NON-INFRINGEMENT~~, ARE HEREBY DISCLAIMED BY SPRINTAX. SPRINTAX DOES NOT WARRANT THAT THE SOFTWARE IS FREE OF BUGS, INTERRUPTIONS, ERRORS, OR OTHER SYSTEM LIMITATIONS.
- 2) The following sections as modified, or as unmodified, shall be superseded by DIT's Terms and Conditions:
 - a. Obligations of Subscriber and Sprintax, 2.3
 - b. 4. Term & Termination, 4.4
 - c. 6. Miscellaneous, 6.5 Independent Contractors; 6.6 No Third Party Beneficiaries; 6.7 Force Majeure
- 3) The following sections shall have no force or effect and shall be superseded by DIT's Terms and Conditions:
 - a. 1. License Grant, 1.6
 - b. 3. Pricing, 3.1, 3.2, 3.3, and 3.4
 - c. 4. Term & Termination, 4.1, 4.2, 4.3, and 4.5
 - d. 5. Disclaimers; Indemnity; Limitation of Remedies, 5.2 and 5.4
 - e. 6. Miscellaneous, 6.1 Governing Law; Venue; 6.2 Survival; 6.3 Notices; 6.4 Assignment; 6.8 Entire Agreement; 6.9 Counterparts

ATTACHMENT K: SPRINTAX LICENSE AGREEMENT

SECTION 1: LICENSE GRANT

1.1 Subject to the terms and conditions of this Agreement, Sprintax hereby grants Subscriber the right to use the Software. Sprintax will provide Subscriber and Withholdees with access to the Software.

1.2 For purposes of this Agreement, “Authorized Third Parties” means (i) one designated representative of the Subscriber designated as the Administrator, (ii) employees and officers of the Subscriber who have responsibility for collecting information or processing payments to non-resident aliens (e.g., payroll personnel, accounts payable, financial aid, human resources, tax department, and foreign student advisors), and (iii) Withholdees.

1.3 Subject to the terms and conditions of this Agreement, Sprintax hereby grants to Subscriber a limited, non-exclusive, non-transferable right during the Term to use such trademarks, logos, and designs, copyrights, and documentation relating to the Software (“Sprintax IP”) owned by Sprintax relating to the Software solely in conjunction with Subscribers rights and duties under this Agreement. Subscriber shall comply with any guidelines concerning the use of the Sprintax IP provided by Sprintax, including using appropriate trademark notices. Upon termination of this Agreement, Subscriber shall cease immediately to use any Sprintax IP. Subscriber shall have the right to develop and use its own advertising, promotional, and marketing materials using the Sprintax IP, provided that such materials do not alter the Sprintax IP, are otherwise in compliance with any guidelines concerning the use of the Sprintax IP provided by Sprintax, and Sprintax shall have the right to require Subscriber to cease using the Sprintax IP in any such materials in Sprintax’s discretion.

1.4 The Subscriber may not copy, distribute, transfer, sub-contract, or otherwise provide access to the Software by any means, electronic or otherwise, to parties other than Authorized Third Parties. Subscriber shall not modify, change, decipher, reverse translate, decompile, disassemble, reverse engineer, reconstruct, or discover any source code, underlying ideas, algorithms, file formats, programming or interoperability interfaces of the Software, by any means whatsoever, or attempt or permit third parties to do so. The Subscriber shall not use information concerning the proprietary functionality of the Software to create or enter into an agreement with another person or entity to create a software program similar in nature and purpose to that of the Software.

1.5 Sprintax owns or licenses all rights in the Software and the Sprintax IP. All use of the Software and the Sprintax IP shall inure to the benefit of Sprintax.

1.6 If Sprintax brings an action at law or equity to enforce the provisions of this Section 1, Sprintax shall be entitled to recover reasonable attorneys’ fees and expenses from Subscriber if it is the prevailing party in such action.

SECTION 2: OBLIGATIONS OF SUBSCRIBER AND SPRINTAX

2.1 Subscriber understands that the Software is designed for the purposes described on page 1 of this Agreement.

2.2 Each Authorized Third Party’s use of the Software is subject to the terms of a “End User License

Agreement” between Sprintax and each Authorized Third Party accessing the Software. Sprintax reserves the right in its discretion to modify the terms of its End User License Agreement with Authorized Third Parties from time to time.

2.3 During the Term of this Agreement, Sprintax agrees to provide reasonable customer support and technical assistance to Subscriber and Withholdees relating to the Software. Sprintax will provide assistance regarding use and standard operation of the Software. Sprintax will provide such assistance remotely via live chat, e-mail, or by phone during the hours designated by Sprintax in its sole but reasonable discretion. *Under no circumstances will Sprintax provide tax consulting, tax advice, or tax guidance.*

2.4 Subscriber shall take reasonable precautions to limit access to the Software to the Authorized Third Parties, including protecting passwords.

SECTION 3: PRICING

3.1 In exchange for the license grant hereunder, Subscriber shall pay to Sprintax the agreed price set forth on page 1 of this Agreement as such price may be adjusted as provided in Section 3.2 and Section 3.3, plus all applicable taxes. The price is based on the number of Withholdee records created during a tax filing period. Each Withholdee for whom information is submitted on the Software is considered a record, regardless of whether such Withholdee is determined by the Software to be a resident or non-resident for tax purposes. Subscriber shall pay the subscription fee within thirty (30) days of the applicable invoice date. Subscription fees do not include any use, sales, property or other taxes or duties. Any such taxes, duties, and other fees are the responsibility of Subscriber.

3.2 If the Term of the Agreement extends beyond the Initial Term, Sprintax shall have the right to adjust the subscription fee set forth on page 1 of this Agreement by providing Subscriber with thirty (30) days prior written notice of such change. Upon such increase in subscription fees, Subscriber shall have the right not to renew this agreement by providing written notice within sixty (60) days prior to the start of a Renewal Term. Any additional subscription fee is due prior to the beginning of such Renewal Term.

3.3 If the Subscriber wishes to increase the number of Withholdee records included under this Agreement, Sprintax will provide an invoice reflecting the additional subscription fee for such increased Withholdee records. Sprintax reserves the right to increase its subscription fees and other fees or administrative costs at any time.

3.4 If stated on page 1 of this Agreement, a one-time set up fee may be applicable depending on the Subscriber’s needs. This fee will be invoiced upon execution of this Agreement and will not be refundable under any circumstances.

SECTION 4: TERM & TERMINATION

4.1 This Agreement shall remain in effect for a period of five (5) years from the Effective Date set forth on the front cover of this document (the “Initial Term”). The Agreement shall automatically renew for three (3) year periods (each, a “Renewal Term,” together with the “Initial Term,” the “Term”) on payment of the applicable fees unless otherwise agreed by both parties.

4.2 Subject to the conditions and limitations of this Agreement, Subscriber may terminate this Agreement without cause by providing written notice to that effect at least thirty (30) days prior to the beginning of a Renewal Term.

4.3 Sprintax may terminate this Agreement (a) upon 15 days written notice to Subscriber in the event of any payment default if such default is not cured within that period (b) immediately, in the discretion of Sprintax, in the event of any breach involving the improper and unauthorized use of the Software or any other breach arising under this Agreement, to the extent such breach is not reasonably capable of being cured, all of which as determined in the discretion of Sprintax; or (c) upon 30 days written notice to Subscriber. In the event of any such termination by Sprintax, Subscriber shall destroy or return immediately all Sprintax proprietary or confidential information in its possession, and all copies thereof. Sprintax's inaction shall not be considered a waiver of any right accruing to Sprintax under this section.

4.4 In the event of termination of the Subscription Agreement, all Subscriber data entered or uploaded into the Software and stored on Sprintax's secure servers will be made available to Subscriber via secure download from the Software or other acceptable means until thirty (30) days after the end of the year of termination.

4.5 Once setup of the Software has been conducted and the Software is accessible by the Subscriber, the initial subscription fee and all associated fees will be due and payable in full, and no refunds will be made for any reason. No refunds will be made in the event the Subscriber or any Withholdees choose not to access or use the Software during the Term of the Agreement.

SECTION 5: DISCLAIMERS; INDEMNITY; LIMITATION OF REMEDIES

5.1 Sprintax shall provide access to the Software to authorized End Users pursuant to the terms of a "End User License Agreement" between Sprintax and each End User accessing the Software. Sprintax reserves the right in its discretion to modify the terms of its End User License Agreement with End Users from time to time.

5.2 Subscriber shall indemnify, defend, and hold harmless Sprintax and its officers, directors, owners, employees, agents, affiliates, successors, and permitted assigns against any and all claims, losses and expenses of any kind, including reasonable attorney fees, resulting from (i) Subscriber's breach or non-fulfilment of any obligation stated in this Agreement; (ii) Subscriber's negligence, recklessness or intentional or wilful misconduct relating to its obligations under this Agreement; or (iii) any claim or damages alleging any injury of a Authorized Third Party or damage to real or tangible personal property caused by a negligent, reckless or intentional act or omission of Subscriber.

5.3 ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ARE HEREBY DISCLAIMED BY SPRINTAX. SPRINTAX DOES NOT WARRANT THAT THE SOFTWARE IS FREE OF BUGS, INTERRUPTIONS, ERRORS, OR OTHER SYSTEM LIMITATIONS.

5.4 SUBJECT TO THE TERMS OF THIS AGREEMENT, SPRINTAX WILL NOT BE LIABLE TO SUBSCRIBER FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS, ADDITIONAL TAX LIABILITY, OR DIMINUTION IN VALUE, ARISING FROM OR RELATED TO THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE

FORESEEABLE; (B) WHETHER OR NOT SPRINTAX WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED. IN NO EVENT SHALL SPRINTAX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID BY SUBSCRIBER TO SPRINTAX WITHIN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THE DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY AND REMEDY REFLECT RISKS ASSUMED BY SPRINTAX IN ORDER FOR SPRINTAX TO PROVIDE THE SOFTWARE AS SET FORTH IN THIS AGREEMENT.

SECTION 6: MISCELLANEOUS

6.1 Governing Law; Venue. This Agreement, and all amendments thereof, shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflicts of law principles. Venue for any proceeding, judicial or otherwise, instituted by either party, shall be in applicable state or federal courts located in or governing the county in which Sprintax's principal place of business is then located, and each party hereby irrevocably accepts and submits to the exclusive *in personam* jurisdiction of such court with respect to any such action, suit, or proceeding.

6.2 Survival. The provisions of Sections 1.3, 1.4, 5.2, 5.3, 5.4, and 6 of this Agreement shall survive the termination or expiration of this Agreement.

6.3 Notices. Any notice, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes upon: (i) the actual receipt by the recipient, if notice is given by personal delivery or any method not described below; (ii) one business day after deposit of notice, if notice is given by reputable overnight commercial courier service for next day delivery; (iii) four business days after mailing, if notice is given by U.S. certified mail (return receipt requested, postage prepaid), and delivery is confirmed; and (iv) when sent, if notice is given by facsimile or e-mail and a confirmation copy of such notice is simultaneously sent by personal delivery, U.S. certified mail (return receipt requested, postage prepaid) or reputable overnight commercial courier service. Unless another address is provided in advance in writing by the recipient, notices shall be addressed at the addresses on the cover page of this Agreement.

6.4 Assignment. This Agreement may not be assigned by Subscriber without the prior written consent of Sprintax.

6.5 Independent Contractors. Subscriber and Sprintax are independent contractors, and nothing in this Agreement creates, and the parties do not intend to create, a partnership, joint venture, agency, franchise, sales representative, or employment relationship. Subscriber is not authorized to make representations or warranties concerning the Software or to assume or create any liability or other obligations on behalf of Sprintax.

6.6 No Third Party Beneficiaries. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights, remedies, or benefits to, or be enforceable by, any person other than the parties hereto.

6.7 Force Majeure. Sprintax shall not be responsible or liable for its failure to perform any provision of this Agreement or for any delay in its performance of any provision of this Agreement as a result of (a) acts of God, (b) the adoption or enactment of any law, ordinance, regulation, ruling, or order directly or indirectly interfering with the production or delivery of any Product, (c) any interruptions (with Internet access or otherwise) with Sprintax's ability to host its website, (d) fires, floods, explosions, or other casualties, (e) strikes, lockouts, or labor unrest, (f) war or acts of terrorism, (g) extraordinary currency devaluation, taxes, customs duties, or other similar charges or assessments, or (h) other events or contingencies beyond Sprintax's control.

6.8 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and contains all the agreements among such parties with respect to the subject matter hereof and supersedes any and all other agreements, either oral or written, between such parties with respect to the subject matter hereof.

6.9 Counterparts; Facsimiles. The parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one and the same instrument. A facsimile of any executed counterpart transmitted electronically by e-mail or fax shall be as binding as an original signature.