

<b>STATE OF NORTH CAROLINA</b>  <b>Department of Information Technology</b> <b>Statewide IT Procurement (NCDIT)</b>	<b>REQUEST FOR PROPOSAL NO. 41-2026-02LB</b>
	Offers will be publicly opened: 03/05/2026 Issue Date: 02/05/2026
<b>Refer <u>ALL</u> inquiries regarding this RFP to:</b>  Name: La-Tisha Byrd Email: La-Tisha.Byrd@nc.gov	Commodity Number: 811620
	Description: Website Accesibility Improvement
	Purchasing Agency: Department of Information Technology
	Requisition No.: N/A

**OFFER**

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

**EXECUTION**

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

**Failure to execute/sign offer prior to submittal shall render offer invalid. *Late offers will not be accepted.***

OFFEROR:		
STREET ADDRESS/ P.O. BOX:		
CITY, STATE & ZIP:		TELEPHONE NUMBER:
PRINT NAME & TITLE OF PERSON SIGNING:		
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for two hundred eighty (280) days from date of offer opening unless otherwise stated here: \_\_\_\_ days

**ACCEPTANCE OF OFFER**

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

<p><b><u>FOR DEPARTMENT OF INFORMATION TECHNOLOGY USE ONLY</u></b></p> <p>Offer accepted and contract awarded this date _____, as indicated on attached certification, by  (Authorized representative of the <b>NC Department of Information Technology</b>).</p>
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# 1.0 PROCUREMENT SCHEDULE

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

Action	Responsibility	Date
RFP Issued	Agency	02/05/2026
Written Questions Deadline	Potential Vendors	02/19/2026
Agency's Response to Written Questions/ RFP Addendum Issued	Agency	02/23/2026
Offer Opening Deadline	Vendors	03/05/2026
Estimate Contract Award	Agency	04/15/2026

Bid opening is scheduled for March 05, 2026 at 2:00 PM Est at the below teams link:

<https://teams.microsoft.com/meet/2285834936799?p=k1vOYGE78549IF7ept>

## 2.0 PURPOSE OF RFP

### 2.1 INTRODUCTION

The purpose of this Request For Proposal (RFP) is to solicit Offers for various Software and Professional Services to assist any State entity to improve the Accessibility of their websites, apps, and other digital contracts for accessibility issues.

The awarded Vendors will perform the tasks and goals for this project and shall be expected to work closely with designated agency personnel. Deliverables shall be considered those resulting work products that are to be delivered to the agency, such as reports, project documents, training materials, meeting presentations and customer service-based assistance.

Proposed solutions are to be managed by the Vendors. The technical and professional activities required for establishing, managing and maintaining the solutions will also be the responsibilities of the Vendors. It is anticipated that Vendors will provide all the necessary configurations to enable the features needed to support the scope. The State does not anticipate agencies performing any configuration for setup.

Vendors are cautioned that the State cannot, does not, and will not guarantee purchase quantities to be made under this contract pursuant to 9 NCAC 06B.0701.

NCDIT may make multiple awards by category of this RFP. See Section 2.3, Contract Order and Administration.

### 2.2 CONTRACT TERM

A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The initial contract term will be for two (2) years unless terminated earlier. The State retains the option to extend the Agreement for one (1) one (1) year period at its sole discretion.

#### 2.2.1 EFFECTIVE DATE

This solicitation, including any Exhibits, or any resulting contract or amendment(s) 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 ORDERING AND ADMINISTRATION**

Any State Agency, local government entity and educational institution, current or future, within the State of North Carolina (the State) is authorized to participate in this agreement during the life of the contract.

While this clause in no way commits NCDIT to purchase from the awarded vendor(s), nor does it guarantee any additional orders will result, it does allow State Agencies, local government entity and educational institution, at its discretion, to make use of State's competitive process (provided said process satisfies their own procurement guidelines) and purchase directly from the awarded vendor(s).

All purchases made by any State Agency, local government entity and educational institution must reference this **NCDIT contract (RFP number) and its terms and conditions when obtaining quotes and placing orders**. Awards will be understood to be transactions (ERP purchase method) between that State Agency, local government entity and educational institution and the awarded vendor(s); NCDIT will not be responsible for any such purchases.

## **2.4 AGENCY BACKGROUND**

The North Carolina Department of Information Technology (NCDIT) is the primary technology advisor to state agencies and operates as a central IT service provider. NCDIT's mission is to deliver secure, reliable technologies to help agencies serve citizens in the digital age. NCDIT oversees state IT projects and manages contracts for goods and Services related to information technology. As part of its responsibilities, NCDIT ensures that state agencies have access to cost-effective, high-quality IT solutions.

## **2.5 OPEN ENROLLMENT**

To ensure the contract remains current and inclusive of the Accessibility Software and Services, the State may, in its discretion, periodically conduct open enrollment of the contract for the consideration of new Vendors and the expansion of offerings by existing Vendors.

# **3.0 RFP REQUIREMENTS AND SPECIFICATIONS**

## **3.1 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 - RESERVED**

### **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 Accessibility Improvement SW and Svcs will be required to receive and securely manage data that is classified as low. 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.

**OR – Vendor to make selection**

### **3.2.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE**

The digital communications management, media monitoring and related solutions will be required to receive and securely manage data that is classified as low risk. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

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

(a) It is preferred that Vendors 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>. If it is not supplied at offer submission, the State may ask you for this documentation and/or others mentioned prior to an award. If any security documentation is not returned to the State within seven (7) business days, the Vendor's offer will be rejected.

(b) Upon request, Vendors shall provide a current independent 3<sup>rd</sup> party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors are encouraged to provide a current independent 3<sup>rd</sup> 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 3<sup>rd</sup> 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, including VRARs as the State deems necessary.

### **3.3 ENTERPRISE REQUIREMENTS AND SPECIFICATIONS**

#### **3.3.1 ARCHITECTURE DIAGRAMS**

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

It is preferred that Vendors provide these two diagrams at offer submission. The State may ask for this documentation and/or others mentioned prior to an award. If any diagram(s) is not returned to the State within seven (7) business days, the Vendor's offer will be rejected.

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.

### **3.3.2 SOLUTION ROADMAP**

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

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

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

### **3.3.3 IDENTITY AND ACCESS MANAGEMENT**

The proposed solution must externalize identity and access management. The protocols describing the State's Identity and Access Management can be found at the following link:

<https://it.nc.gov/services/vendor-engagement-resources#Tab-IdentityAccessManagement-1241>

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

### **3.3.4 INTEGRATION APPROACH**

Describe proposed solution capabilities to interoperate with other solutions. Identify the standards supported, integrations platforms, adaptors, APIs, and the like.

### **3.3.5 DISASTER RECOVERY AND BUSINESS CONTINUITY**

Describe the proposed solution capabilities related to the following areas:

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

System Backup – describe backup plan capabilities.

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

### **3.3.6 DATA MIGRATION**

Describe approaches available for data conversion and/or data migration to load current data into proposed solution.

### **3.3.7 APPLICATION MANAGEMENT**

Describe how the proposed solution monitors and reports the metrics on system performance.

Describe how the proposed solution manages user administration.

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

### **3.3.8 ACCESSIBILITY**

Describe how the proposed solution complies with industry accessibility standards.

Provide product documentation that demonstrates how the proposed solution is digitally accessible or if not fully accessible, provide the roadmap with timeline for remediation.

Standards include:

- State of North Carolina Digital Accessibility & Usability Standard  
<https://it.nc.gov/documents/digital-accessibility-usability-standard/open>
- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1 Level A & AA: <https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®):  
<https://www.itic.org/policy/accessibility/vpat>

### **3.3.9 ENTERPRISE, SERVICES, AND STANDARDS**

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

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

### **3.4 BUSINESS AND TECHNICAL REQUIREMENTS.**

### **3.5 BUSINESS AND TECHNICAL SPECIFICATIONS**

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**Accessibility Improvement Service Categories**

## A. Website and Digital Content Accessibility Audit and Remediation Services.

Vendor to describe how they will audit test the specified State external and internal layouts and content on including website pages, web applications, social media content, web forms, iframe and dashboards, documents, links, images, and buttons to identify potential barriers for users with sensory, physical, cognitive, and other disabilities.

Vendor to describe how Audits will be based on the Specifications - [State of North Carolina Accessibility and Usability Standard](#). These standards are subject to change during the life of the contract and successful bidders will test using the most current standards posted at the time a Project Statement of Work ("SOW") is signed.

**Services Specifications; Accessibility Audit Services.** Deliverables will include but are not limited to the following:

### 1. Audit Plan.

- The Vendor to meet with the State to determine the specific items to be audited for compliance, such as structure and content.
- State will provide a detailed list of items for audit testing, screenshots, links to the items, website URLs, and required credentials and permissions to the websites.
- Based on the items to be audited the Vendor shall provide an Audit Plan. This plan will include such items as:
  - List of Accessibility Standards that will be used to determine compliance to ensure accurate audit testing findings, and to meet any other business or legal requirements that may have been determined.
  - Methodology that will be taken to perform the audit for each type of content or website structure to be tested, such as using automated testing tools, code inspection, assistive technology, and manual testing by individuals.
  - Schedule that aids in the timely review of each item to be audited by listing each audit item and the timeline for the audit process. This schedule will take into consideration the pre-determined priorities of the Department or Agency, such as a focus first on Internet websites (public websites) and content, and then Intranet websites (internal websites.) and content.
  - Provide anticipated level of Agency participation in the audit process.

## 2. Audit Testing Types.

The Vendor shall use the following Audit Testing Types when performing audit testing:

- Automated Scanning.
  - This is intended to identify accessibility-related problems on websites that can be found through the limitations of an automated scan. Recommendations for fixing these identified problems in the automated scan are only the first steps for eliminating website accessibility barriers. Further remediation needs will be identified using Manual Auditing and User Experience Testing.
- Manual Auditing.
  - This is intended to find the majority of website accessibility issues during manual Web Content Accessibility Guidelines (WCAG) 2.1 Level A & AA audits. Recommendations for fixing these identified problems in the manual audits are expected to result in an improved experience for users with a disability.
- User Experience Testing.
  - This is intended to have assistive technology users, that regularly utilize assistive technology, test, and verify that the modified websites create a usable and excellent digital website experience for people with disabilities.
    - Test using assistive technology, such as screen readers and screen magnification to test the functionality of the website and documents.
    - Provide information about the type of tests and results that are expected and acceptable. Provide information outlining suggested remediations to improve the experience of the various users.
    - Retest once the remediations have been incorporated to confirm the improved user experience.

## 3. Audit Findings Report – Initial Report.

Vendor to describe in their offer how they will provide a written report that identifies potential barriers for users with sensory, physical, cognitive, and other disabilities based on the applied Accessibility Standards during audit testing. The report is to be provided in electronic format; preferably a web-based view of results with the option to download reports.

- The report must include:
  - Specific elements that are not in compliance including written descriptions of issues, illustrative screenshots, and references to the State and WCAG Standards in violation.
  - Recommendations for remediation of items found to be non-compliant.
- Vendor to describe in their offer how they will provide a demonstration of the types of errors determined during the audit testing to enable State content owners to better understand the accessibility errors and the need for remediation.

#### 4. Remediation Plan.

- Vendor to describe in their offer how they will provide a Remediation Plan to the State that addresses any accessibility deficiencies. The following elements should be a part of the Remediation Plan:
  - Outline of recommended remediation steps.
  - Estimated time to correct issues.
  - The level of acceptable accessibility standards the content will meet.
  - Anticipated level of Agency participation in the remediation of the determined errors.
  - Process for retesting of corrected content or websites to ensure full compliance with Accessibility Standards as noted in this RFP.
  - Other directly related activities.
- The Remediation Plan will take into consideration Agency priorities. State and Vendor will prioritize the accessibility defects and recommend resolutions to ensure the remediation of the most critical defects first.
- The Vendor to work with Agency content owners to correct errors.

#### 5. Audit Retesting.

Vendor to describe in their offer how they will provide Remediation of the accessibility defects including those that require one or more cycles of re-testing after preliminary remediations have been implemented. Re-testing will be included as part of the **Website and Digital Content Accessibility Audit and Remediation Services**.

- Following each re-test, the Vendor to submit an updated written Audit Finding Report documenting the detailed audit findings. This Audit Findings Report must include:
  - Specific elements that are not in compliance including written descriptions of issues, illustrative screenshots, and references to the State and WCAG Standards in violation.
  - Recommendations for remediation of items found to be non-compliant.

#### B. Multimedia Transcription, Captioning, and Description Services Audit and Remediation Services.

**1. Audit Testing.**

- The Vendor to describe in their offer how they will provide audit testing of the transcription, captioning, video description for audio and/or video content. Content may be in any number of commonly used formats, including but not limited to aiff, avi, flv, m4a, wmv, mov, mp3, mp4, mpeg, wav, and wma.
- The Vendor to describe in their offer how they will be able to validate:
  - Transcribed auditory information presented in provided audio and video content has 99.5% or better accuracy when delivered as a text file.
  - Captioning for audio and video content has a 99.5% accuracy or better for spoken words to caption words.
  - Videos that include descriptions of the visual information in audio have a 99.5% accuracy or better when representing video content.

**2. Deliverables.**

The Vendor to describe in their offer how they will provide the same deliverables as indicated in Section A, 1-5. Website and Digital Content Accessibility Audit and Remediation Services.

**C. Accessibility Consulting Services.**

The Vendor to describe in their offer how they will provide professional services specific to IT accessibility in the areas of planning, Quality Assurance (QA) testing, application design, remediation, help desk services, and other professional services. Services must pertain only to IT accessibility.

**1. Planning Strategy.**

Describe how Vendor will provide professional services in support of such items as, but not limited to, accessibility planning efforts. Examples may include conducting assessments of accessibility policies and procedures, developing enterprise or agency accessibility improvement strategies, and advising on integrating accessibility requirements and best practices in development projects.

**2. Development, Quality Assurance Testing**

Describe how Vendor will provide testing services during development of Information and Communication Technology (ICT), such as suggesting testing tools, producing test scripts, performing tests, conducting Assistive Technology (AT) user testing, tracking accessibility defects, and producing test results reports.

**3. Web and Web Application Design, Development, and Remediation.**

Describe how Vendor will provide technical services to provide accessible ICT, including advising on the strengths and limitations of solutions set, analyzing external accessibility reports, identifying accessibility problem solutions, and producing or editing markup or code. Provide IT, Application, and Web Developer accessibility support and IT Development Accessibility Checklists.

**D. Document Remediation Services (Non-Website and Digital Content).**

The Vendor to describe in their offer how they will provide accessibility testing and remediation of binary file format content, including but not limited to Microsoft Word, Excel, or PowerPoint files, Portable Document Format (PDF) files, and eBook formats (e.g., ePub, Daisy). Documents can vary in size from 1 page to multiple pages and content can include but not a limited to text, tables, graphics, and fillable forms.

Vendors to indicate in their offer which of the following electronic document formats they provide remediation services for:

- Microsoft Word: .doc, .docm, .docx, .dot, .dotm, .dotx.
- Microsoft Excel: .xls, .xlsx, .xlsm, .xlt, .xltx, .xltn.
- Microsoft PowerPoint: .ppt, .pptx, .pptm, .pot, .potx, .potm.
- Google Docs, Google Slides, Google Sheets
- Portable Document Format: .pdf.

Vendors may list additional electronic document formats in their offer that they provide remediation services for, such as formats used for eBooks or other products.

The Vendor will provide in their offer the estimated cost per page to remediate documents. The costs offered will remain fixed for the duration of the resulting Contract, but using entities can retain the right to negotiate a lower price with Vendor.

**1. Testing and Remediation Plan**

The Vendor to describe in their offer how they will review the items to be analyzed and provide a Testing and Remediation Plan.

- The Testing and Remediation Plan must be agreed upon by the State.
- The Vendor shall provide a sample of a Testing and Remediation Plan.

## **E. Document Remediation Software**

The Vendor will provide software to Agencies for self-service final manual remediation of documents. The software needs to be capable of addressing various electronic document formats, enhancing accessibility, and ensuring compliance with [State of North Carolina Accessibility and Usability Standard](#). The Vendor should include detailed descriptions of the software's capabilities, integration processes, and user support services. Additionally, the Vendor will specify the costs associated with the software, including any licensing fees, maintenance costs, and support charges. The offered costs will remain fixed for the duration of the resulting Contract, but Agencies retain the right to negotiate a lower price with the Vendor.

## **F. Accessibility Training Services**

The Vendor to describe in their offer how they will provide services to train Agency staff in accessibility requirements and techniques. Training options may include classroom sessions, remote sessions (e.g., including webinars, distance learning) and on-demand eLearning. Training services may also include custom courses to meet specific needs.

The Vendor to describe in their offer how they will provide that all learning materials, handouts, physical spaces, and presentations for training are accessible to attendees with disabilities. Any training materials (e.g., handouts, guides, PowerPoint presentations) are to be provided in formats to meet specific individual accessibility needs and are to be provided at a minimum of 5 business days prior to any training. Information on learning facilities will be provided at a minimum of 5 business days prior to the training and in a format acceptable to everyone. The State and Vendor will review accessibility needs for everyone to ensure their accessibility needs are met. Webinar and electronic-based courses must follow State Accessibility Standards - State of North Carolina Accessibility Standards, and be on an approved State software platform that is compatible with State network and equipment.

Agencies may require that course registration and completion information be handled through the State's Learning Management System-LMS (FIORI State of NC LMS). The State and Vendor will review this option if the State determines it is viable for the type of training to be provided in that manner. If the State determines the State of NC LMS is a viable platform for OnDemand training, the Contractor will provide Training in SCORM format in a .zip file for inclusion in the State's Learning Management System.

The Vendor to describe in their offer how they will provide predefined courses, custom training services, or both.

### **1. Custom Training Services.**

The Vendor to describe in their offer how they will provide Custom Training Services to meet specific needs of the State. Custom Training Services include activities including but not limited to curriculum development, customization of predefined courses, development of course materials, development of electronic on-demand courses, and classroom delivery of custom courses.

Vendors to provide in their offer the hourly rate and daily rate it will charge to provide Custom Training Services. Vendor to include all training materials. Any trainer travel expenses should be included in the offer. The costs offered will remain fixed for the duration of the resulting Contract, but using entities can retain the right to negotiate a lower price with Vendor.

All Custom Training will comply with all standards set forth in this section.

## **2. Accessibility Orientation Training Services.**

The Vendor to describe in their offer how they can provide training to help State Employees/End Users understand accessibility, disability, and inclusion through OnDemand or Live training to enhance workforce skill levels in and understanding of accessibility.

This training will be for management, leadership, direct service workers, field office staff, website content managers, and others.

The Vendor to describe in their offer how they will supply the training to:

- Provide individuals with a broader awareness of accessibility, disability, and inclusion.
- Increase the knowledge and skill level of the individuals with learning opportunities to fully understand what makes documents, digital content, informational resource materials, general day-to-day correspondences, and website content accessible for people with disabilities. How to evaluate existing items (e.g., documents, digital content, informational resource materials) accessibility and how to correct non-accessible elements to ensure accessibility.

## **4.0 COST OF VENDOR'S OFFER**

### **4.1 OFFER COSTS**

Vendors are not required to provide offers for every product or service category.

The Vendor must list, itemize, and describe all applicable offer costs.

See Attachment E: Cost Table

### **4.2 PAYMENT SCHEDULE - RESERVED**

## **5.0 EVALUATION**

N.C.G.S §143B-1350(h): All offers are subject to evaluation of the most advantageous offer to the State. Evaluation shall include best value, as the term is defined in N.C.G.S. 143-135.9(a)(1), compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.

### **5.1 SOURCE SELECTION**

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

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

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

## **5.2 EVALUATION CRITERIA**

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

- 1) How well the Vendor's offer conforms with the specifications.
- 2) How each Vendor's offer compares with other Vendors' offers.
- 3) Cost Table (Attachment E).
- 4) Strength of references (Attachment H)
- 5) Risks associated with incorporating Vendors agreements and/or errata and exceptions taken to the terms and conditions

## **5.3 BEST AND FINAL OFFERS (BAFO)**

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

## **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.

## **5.5 PAST PERFORMANCE**

The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.

## **6.0 VENDOR INFORMATION AND INSTRUCTIONS**

### **6.1 GENERAL CONDITIONS OF OFFER**

#### **6.1.1 VENDOR RESPONSIBILITY**

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

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

#### **6.1.2 RIGHTS RESERVED**

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

- a) waive any formality;
- b) amend the solicitation;
- c) cancel or terminate this RFP;
- d) reject any or all offers received in response to this RFP;
- e) waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
- f) if the response to this solicitation demonstrates 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. Vendors contact regarding this RFP with anyone other than the State's contact person may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.

### 6.1.5 E-PROCUREMENT

**This is an E-Procurement solicitation.** (Services are NOT subjected to E-Procurement fees) See Attachment B, paragraph #38 of the attached North Carolina Department of Information Technology Terms and Conditions.

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

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

Vendor is and shall remain responsible for paying the transaction fee on behalf of its authorized reseller in the event that the authorized reseller defaults.

### 6.1.6 ELECTRONIC VENDOR PORTAL (EVP)

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

### 6.1.7 PROTEST PROCEDURES

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

## 6.2 GENERAL INSTRUCTIONS FOR VENDOR

### 6.2.1 SITE VISIT OR PRE-OFFER CONFERENCE. - Reserved.

### 6.2.2 QUESTIONS CONCERNING THE RFP

All inquiries regarding the solicitation specifications or requirements are to be addressed to the contact person listed on Page One of this solicitation via the provided email address. 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 the Vendor's offer.

Written questions concerning this Solicitation will be received until **02/19/2026, 2:00PM** Eastern Time.

They must be submitted to the contact person listed on Page One of this Solicitation via [**EMAIL ADDRESS**]. Please enter “Questions Solicitation [**SOLICITATION NUMBER**]” as the subject for the message.

Questions should be submitted in the following format:

REFERENCE	VENDOR QUESTION
RFP Section, Page Number	

**6.2.3 ADDENDUM TO RFP**

If written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State shall become an Addendum to this RFP and provided via the State’s Ariba Sourcing Tool.

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

**6.2.4 COSTS RELATED TO OFFER SUBMISSION**

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

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

**6.2.5 VENDOR ERRATA AND EXCEPTIONS**

Any errata or exceptions to the State’s requirements and specifications may be presented on a separate page labeled “Exceptions to Requirements and Specifications”. Include references to the corresponding requirements and specifications of the Solicitation. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable.** If a Vendor materially deviates from RFP specifications, its offer may be determined to be non-responsive by the State.

**6.2.6 ALTERNATE OFFERS**

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

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

**6.2.7 MODIFICATIONS TO OFFER**

An offer may not be unilaterally modified by the Vendor.

**6.2.8 BASIS FOR REJECTION**

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

**6.2.9 NON-RESPONSIVE OFFERS**

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

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

**6.2.10 VENDOR REGISTRATION WITH THE SECRETARY OF STATE**

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

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

**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] [STREET ADDRESS] [CITY, STATE, ZIP] Attn: Assigned Contract Manager	[NAME OF VENDOR] [STREET ADDRESS] [CITY, STATE, ZIP] Attn: Assigned Technical Lead

**6.3 INSTRUCTIONS FOR OFFER SUBMISSION**

**6.3.1 GENERAL INSTRUCTIONS FOR OFFER**

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

- a) Organize the offer in the exact order in which the specifications are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP specification and the specific page of the response in the Vendor's offer.
- b) Provide complete and comprehensive responses with a corresponding emphasis on being concise and clear. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.

**DO NOT SUBMIT MARKETING MATERIALS IN LIEU OF PROVIDING SPECIFIC ANSWERS TO SPECIFICATIONS. MARKETING MATERIALS WILL NOT BE ACCEPTED NOR EVALUATED.**

- c) Clearly state your understanding of the problem(s) presented by this RFP including your proposed solution's ability to meet the specifications, including capabilities, features, and limitations, as described herein, and provide a cost offer.
- d) Supply all relevant and material information relating to the Vendor's organization, personnel, and experience that substantiates its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If relevant and material information is not provided, the offer may be rejected from consideration and evaluation.
- e) Furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with its offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. Proposals that do not comply with these instructions may be rejected.
- f) Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
- g) **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.

### **6.3.2 OFFER ORGANIZATION**

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

The offer should be organized and indexed.

### **6.3.3 OFFER SUBMITTAL**

Due Date: **March 05, 2026**

Time: **2:00 PM** Eastern Time

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

***Only one consolidated response and one consolidated redacted, if applicable, response should be submitted.***

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

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

- a) Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
- b) The Ariba Sourcing Module document number is: **WS1972246088**
- c) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor's response. For example, files should be named as follows: Vendor Name-your file name.
- d) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .DOC or .XLS format, and shall be capable of being copied to other sources. *Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as non-responsive.*
- e) *If the vendor's proposal contains any confidential information (as defined in Attachment B, Section 1, Paragraph #18), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.*

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

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

## **7.0 OTHER REQUIREMENTS AND SPECIAL TERMS**

### **7.1 VENDOR UTILIZATION OF WORKERS OUTSIDE OF U.S.**

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

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

### **7.2 FINANCIAL STATEMENTS**

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

- a) For a publicly traded company, Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, the Vendor must explain the reason why they are not available.

- b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.
- c) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of this RFP award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

***Complete ATTACHMENT I – Financial Review Form.***

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

**7.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS**

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

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

**7.5 USE OF RESELLERS**

If the Offer is made by a Reseller that purchased the offered items for resale or license to the Agency, or offered based upon an agreement between the Offeror and a third party, and that the proprietary and intellectual property rights associated with the items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third Party items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency. The State reserves all rights to utilize existing agreements with such Third Parties or to negotiate agreements with such Third Parties as the State deems necessary or proper to achieve the intent of this RFP.

**7.6 CONTRACT ADMINISTRATION - RESERVED**

**7.7 ABNORMAL QUANTITY REQUESTS. RESERVED**

**7.8 DISCLOSURE OF LITIGATION - RESERVED**

**7.10 CRIMINAL CONVICTION - RESERVED**

**7.11 SECURITY AND BACKGROUND CHECKS - RESERVED**

**7.12 ASSURANCES - RESERVED**

**7.13 CONFIDENTIALITY OF OFFERS**

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

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

**7.14 PROJECT MANAGEMENT - RESERVED**

**7.15 MEETINGS. - RESERVED**

**7.16 RECYCLING AND SOURCE REDUCTION - RESERVED**

**7.17 SPECIAL TERMS AND CONDITIONS - RESERVED**

*(The remainder of this page is intentionally blank)*

**ATTACHMENT A: DEFINITIONS**

- 1) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- 2) **Cybersecurity Incident (GS 143B-1320):** An occurrence that:
  - a. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or

- b. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
- 3) **Deliverables:** Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software, SaaS and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include “Work Product” and means any expression of Licensor’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information but not source and object code or software.
- 4) **Distributor:** Distributor, as used herein means the business or individual that buys products or Services from an OSM and sells those products or Services to one or more Resellers.
- 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) **Original Software Manufacturer (OSM):** The phrase Original Software Manufacturer (“OSM”) is used in this RFP and designated by the acronym “OSM,” to mean the **Original Licensor**, which is the entity that owns the Intellectual Property and licenses or grants access rights to the Software, Services and other Deliverables acquired under this Agreement. Intellectual Property as used herein covers copyright, trademark, and patents. Services include Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS).
- 9) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- 10) **Request for Proposal (RFP):** The RFP is a formal, written solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services. The RFP is used when the value is over \$10,000. This document contains specifications of the RFP, instructions to bidders and the standard IT Terms and Conditions for Goods and Related Services. User should add Supplemental Terms and Conditions for Software and Services, when applicable.
- 11) **Reseller:** Reseller means a business or individual that routinely buy an OSM’s products or Services for the purpose of selling the products or Services to the Reseller’s own customers.
- 12) **Security Breach:** As defined in N.C.G.S. §75-61.
- 13) **Significant Security Incident (GS 143B-1320):** A cybersecurity incident that is likely to result in demonstrable harm to the State’s security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
  - a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
    - i. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or
    - ii. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.

- b. Incidents that involve information that is not recoverable or cannot be recovered within defined timelines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
- 14) Single Authorized Reseller:** The only entity designated by an OSM to bid in the OSM's stead. See also the Definition of Reseller.
- 15) Sub-reseller:** Sub-reseller means the Resellers that a Distributor may designate pursuant to 7.5 Original Software Manufacturer's ("OSM") Bidding Options, subparagraph c.
- 16) Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.
- 17) Domain-based Message Authentication, Reporting a Conformance ("DMARC"):** Domain-based Message Authentication, Reporting and Conformance (DMARC) is an [email authentication](#) protocol. It is designed to give email domain owners the ability to protect their domain from unauthorized use, commonly known as [email spoofing](#). The purpose and primary outcome of implementing DMARC is to protect a domain from being used in [business email compromise attacks](#), [phishing](#) email, [email scams](#) and other [cyber threat](#) activities.

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# ATTACHMENT B: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

## SECTION 1. GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL PURCHASES

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

Agreement means the contract awarded pursuant to this RFP.

Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Section 2, Paragraph 2 of these Terms and Conditions, or Section 7(c) of the Software as a Service terms, unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.

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

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

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

- 2) **STANDARDS:** Any Deliverables shall meet all applicable State and federal requirements, such as State or Federal Regulation, and NC State Chief Information Officer's (CIO) policy or regulation. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender or provide to the State only those Deliverables that have been inspected and found to conform to the RFP specifications. All Deliverables are subject to operation, certification, testing and inspection, and any accessibility specifications.
- 3) **WARRANTIES:** Unless otherwise expressly provided, any goods Deliverables provided by the Vendor shall be warranted for a period of 90 days after acceptance.
- 4) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third-party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 5) **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.
- 6) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the

Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate the Agreement and compensate Vendor for sums then due under the Agreement.

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

Should a Service or Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. Services or Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors contained in the Services or Deliverables or non-compliance with the specifications were not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Services or Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.

**10) PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 7) Acceptance Process (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. Payments are subject to any retainage requirements in the Agreement. 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.

- a) Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency 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 Contract obligations.
- b) For any third-party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- c) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon Vendor's receipt of a disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software, Deliverables, or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services and Deliverables provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- d) The Purchasing State Agency shall release any amounts held as retainages for Services or Deliverables completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services or Deliverables identified or associated with such invoices.
- e) **Supplemental Payment Terms Applicable to Software as a Service.** 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. Initial payments are to be made after final acceptance of the Services. Subscription fees for term years after the initial year shall be as

quoted under State options herein but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing.

- f) **Supplemental Invoicing and Payment Terms Applicable to Software and Software Support Service:** The total License Fee and the Support Service or Maintenance Fee (if applicable and provided the State subscribes or purchases such Services) for the first year shall be invoiced upon delivery of the Software. The Support Service or Maintenance Fee for subsequent contract years, if any, will be invoiced annually sixty (60) days prior to the anniversary date beginning each subsequent year. Increases in pricing for Support Services or Maintenance shall not exceed five percent (5%) per year following the first Contract year. Payment terms for Support Services are due and payable the month following the month for which charges accrue, or in accordance with the contract payment schedule.
- 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 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. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.
- 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;

- 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);
  - 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;
  - d) **Cyber Insurance Errors & Omission** - The Vendor shall provide and maintain Cyber Insurance for Cloud and SaaS product offerings which shall include but is not limited to the following: (i) Coverage for unauthorized access to and unauthorized use of computer systems. (ii) Coverage for regulatory proceedings alleging violation of privacy laws, whether common law or statutory law. (iii) Coverage for business interruption and extra expense caused by a cyber event. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy. Not less than \$2,000,000 for each occurrence. The State reserves the right to request higher minimum limits for cybersecurity insurance for procurement requests or SOWs that may interact with sensitive data such as personally identifiable information (PII); and
  - e) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.
- 17) **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 18) **CONFIDENTIALITY:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor

in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

- a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.
- b) Vendor warrants that all its employees and any approved third-party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 *et seq.* The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.
- d) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
- e) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the State or are not proprietary to the Vendor are the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

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

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice

require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.

- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- d) If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 9) of the DIT Terms and Conditions is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract.

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

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

- a) The parties may mutually terminate the Agreement by written agreement at any time.
- b) The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
  - i) **Termination for Cause:** In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
  - ii) **Termination For Convenience Without Cause:** The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

- iii) **Consistent failure to participate in problem resolution meetings, two (2) consecutively missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.**

**22) LIMITATION OF VENDOR'S LIABILITY:**

- a) Where Deliverables/Services are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables/Services and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables/Services. 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/Services, 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. The value of the contract is defined as two times the value of the purchase order for the equipment, software, SaaS or two times the value of Statement of Work (SOW), whichever is applicable.
- 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, 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 - **CHANGES**) 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, requirements, 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. Vendor is and shall remain responsible for paying the transaction fee(s) on behalf of its authorized reseller in the event that the authorized reseller or sole authorized representative of an original equipment manufacturer defaults.
  - c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Services. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the

solicitation, offers received, evaluation of offers received, award of Contract, and the payment for goods delivered.

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

**39) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general-purpose consulting and software tools, utilities and routines (collectively, the "Vendor technology"). To the extent that any Vendor technology is contained in any of the Services or Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor technology in connection with the Services or Deliverables for the State's purposes.
- b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential deliverables first originated and prepared by the Vendor for delivery to the State.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or other Deliverables supplied by the Vendor, or the operation of such pursuant to a current version of vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or other Deliverables supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the Services or Deliverables, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or

Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

- e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded Service or Deliverable, or (ii) results from the continued use of the good(s) or services and other Services or Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

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

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

- d. The State will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

**41) STOP WORK ORDER. RESERVED.**

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

**43) CLICKWRAP** Services or Software 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 for the Software or for access to the Services. All terms and conditions of any clickwrap agreement provided with any Software or 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 Software or Services.

## SECTION 2: TERMS AND CONDITIONS APPLICABLE TO SOFTWARE AS A SERVICE

### 1) DEFINITIONS:

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

### 2) ACCESS AND USE OF SAAS SERVICES:

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq.*
- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS tenants for similar Services. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) 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.
- f) 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.
- g) 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.
- h) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

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

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

**4) ACCESS AVAILABILITY; REMEDIES:**

- a) The Vendor warrants that the Services will be in good working order and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services.

- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State.

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

1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.

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

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

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

**5) EXCLUSIONS:**

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

**6) PERFORMANCE REVIEW AND ACCOUNTABILITY: RESERVED.**

- 7) 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.

**8) TRANSITION PERIOD:**

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

section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.

- f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.

**9) ACCEPTANCE CRITERIA:**Reserved.

- a) .
- b) .

**10) SECURITY OF STATE DATA:**

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at 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/documents/statewide-data-classification-and-handling-policy> that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- e) The Vendor shall certify to the State:
  - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
  - ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid 3rd party security certification not to exceed 1 year and is consistent with the data classification level and a security control appropriate for low or moderate information

system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4The 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.

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

g) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected

by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.

- h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
  - (1) The scale and quantity of the State Data loss;
  - (2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
  - (3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
  - (4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

Vendor shall investigate of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.

- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
  - o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.
- 11) ACCESS TO PERSONS AND RECORDS:** The Vendor shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days' advance written notice and shall not unreasonably interfere with the Service Provider's business.

### **SECTION 3: Supplemental TERMS AND CONDITIONS APPLICABLE TO ARTIFICIAL INTELLIGENCE ("AI")**

The following terms ("**AI Terms**") are hereby added to and become part of the Agreement as Additional Terms. Capitalized terms not defined in these AI Terms have the meanings given in the Agreement.

#### **Definitions:**

**"AI Features"** means large language models (LLMs) or other machine learning (ML) or artificial intelligence (AI) features of the Software or Service. AI Features may include or be in addition to AI Tools.

**"AI Tools"** means any and all deep learning, machine learning, and other artificial intelligence technologies, including any and all (i) algorithms, heuristics, models, and methodologies, whether in source code, object code, human readable form or other form, (ii) proprietary algorithms, software or other IT Systems that make use of or employ expert systems, natural language processing, computer vision, automated speech recognition, automated planning and scheduling, neural networks, statistical learning algorithms (like linear and logistic

regression, support vector machines, random forests, k-means clustering), or reinforcement learning, and (iii) proprietary embodied artificial intelligence and related hardware or equipment.

**1) AI Prohibited Absent Authorization.** Except as expressly disclosed and described by Vendor and expressly approved in writing by the State, Vendor represents and warrants that it will not provide any Software or other Deliverables, or perform any Services that use or incorporate, in whole or in part, any AI Features or AI Tools (or depends in any way upon any AI Features or AI Tools), including without limitation, any collection or processing of any the State's Data using any AI Features or AI Tools.

**2) AI Warranties.** With respect to all AI Features or AI Tools (collectively "AI") described by the Vendor and approved for use by the State, Vendor warrants that:

- (a) Vendor has accurately identified and fully described all AI for use by the State;
- (b) the AI will (i) perform with a high degree of accuracy in accordance with the Specifications and (ii) not produce materially inaccurate results when used in accordance with the Documentation.
- (c) Vendor will monitor the performance of the AI to ensure continued accuracy in accordance with the Specifications, including processes and policies for the regular assessment and validation of the AI's outputs.
- (d) Vendor has obtained, and is in compliance with, all rights and licenses necessary to use all AI as described in Vendor's proposal;
- (e) Vendor has complied with all the Laws and industry standards applicable to (i) Vendor's development and provision of all AI as described in Vendor's proposal and (ii) the State's use of all AI as described in the Vendor's proposal;
- (f) Vendor specifically represents and warrants that Vendor has complied with all applicable data privacy laws, rules, and regulations, including but not limited to, the training of the AI algorithms and the data used in that training.
- (g) Vendor will comply with all State policies and procedures relating to the use of AI;
- (h) Vendor will notify Customer at least sixty (60) days prior to any material changes pertaining to the AI (in whole or in part);
- (i) Vendor will cooperate and comply with the State's privacy, security, and proprietary rights questionnaires and assessments concerning all AI and all proposed changes thereto;
- (j) Vendor will, upon the State's request, allow the State (or its agent) to audit or review all Software, Deliverables, or Services for usage of AI and will provide the State with all related necessary assistance;
- (k) there have been no interruptions in use of Vendor's AI in the past six (6) months;
- (l) Vendor (i) retains and maintains information in human-readable form that explains or could be used to explain the decisions made or facilitated by the AI, and (ii) maintains such information in a form that can readily be provided to the State upon request;
- (m) Vendor maintains or adheres to industry standard policies and procedures relating to the ethical or responsible use of AI at and by Vendor, including policies, protocols and procedures for
  - (i) developing and implementing AI in a way that promotes transparency, accountability and human interpretability;
  - (ii) identifying and mitigating bias in training data or in the algorithmic model used in AI Tools, including without limitation, implicit racial, gender, or ideological bias; and
  - (iii) management oversight and approval of employees' use or implementation of AI (collectively, "Vendor AI Policies");
- (n) there has been
  - (i) no actual or alleged non-compliance with any such Vendor AI Policies;
  - (ii) no actual or alleged failure of any AI to satisfy the requirements or guidelines specified in any such Vendor AI Policies;
  - (iii) no claim alleging that any training data used in the development, training, improvement or testing of any AI was falsified, biased, untrustworthy or manipulated in an unethical or unscientific way; and no report, finding or impact assessment by any employee, contractor, or third party that makes any such

allegation; and

(iv) no request from any Governmental Authority concerning any Vendor AI.

**3) Use of AI.** The State may submit Data (including in the form of prompts or queries) to the AI (“Inputs”) and receive outputs from the AI (“Outputs”).

**4) Training.** Vendor may not use Inputs or Outputs to train or otherwise improve AI Features, except solely for the benefit of the State. Notwithstanding the foregoing, Vendor may use Inputs or Outputs to train or otherwise improve the AI Features, but only if (a) such Inputs and Outputs have been (i) de-identified so that they do not identify the State, its Users or any other person; (ii) aggregated with data across Vendor’s other customers; and (b) such use is approved in advance by the State Chief Information Officer or the Using Agency. For these purposes (and without limiting other obligations with respect to the State’s Data generally), such Data is provided by the State to the Vendor strictly “AS IS”.

**5) Intellectual Property:**

(a) Inputs. Except for Vendor’s express rights in the Agreement, as between the parties, the State owns Inputs as the State’s Data and retains all intellectual property and other rights in the Inputs.

(b) Outputs. Outputs are deemed to be State Data, subject to these AI Terms.

**6) Infringement by Outputs.** With respect to infringement or misappropriation of third-party intellectual property rights by Outputs, should any Outputs become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor at its own expense, shall defend any action brought against the State. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following: i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and, ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

**7) Special Restrictions on Use of AI Features.** The State will not and will not permit anyone else to:

(a) use the AI Features or any Output to infringe any third-party rights,

(b) use the AI Features or any Output to develop, train or improve any AI or ML models (separate from authorized use of the Software or Services under this Agreement),

(c) represent any Output as being approved or vetted by Vendor,

(d) represent any Output as being an original work or a wholly human-generated work,

(e) use the AI Features for automated decision-making that has legal or similarly significant effects on individuals, unless it does so with adequate human review and in compliance with laws applicable to the State, or

(f) use the AI Features for purposes or with effects that are discriminatory, harassing, harmful or unethical.

**8) Limitation of Liability Modifications.** The Limitation of Vendor’s Liability in Section 1 of the NCDIT Terms and Conditions shall not apply to claims for data privacy or intellectual property infringement arising from Vendor’s AI.

**9) Updates.** Vendor’s AI has a data cutoff date of [Fill in date]. The State has the right to receive updates to the dataset, notification of those updates, and delivery of those updates made generally available to Vendor’s Customers receiving similar AI Services.

**10) Confidentiality.** Vendor will ensure that the Services and Software, provided via a third-party cloud (“Cloud Service Provider”) and AI environment (“Cloud AI Service Environment”), shall maintain strict confidentiality and

security of the State's Data. The State's Data will be securely retained within the specific, dedicated Cloud AI Service Environment allocated for the Vendor, and will not contribute to the training of the Vendor's or the Cloud Service Provider's AI models, nor be utilized by any third party outside of the State's express approval (in writing). Upon receipt of a notice from the State, Vendor will remove all State Data from the Cloud AI Service Environment. Vendor will ensure that the governing contractual terms (e.g. terms of service) issued by the Cloud Service Provider include provisions materially consistent with this provision and will identify the forgoing to the State. Vendor will allow Customer to first approve in writing a given Cloud Service Provider and its Cloud AI Service Environment, such approval not to be unreasonably withheld or delayed. If there is any conflict or ambiguity between this provision and the rest of the Agreement, this provision governs and controls

## ATTACHMENT C: DESCRIPTION OF OFFEROR

Provide information about the offeror.

Offeror's full name	
Offeror's address	
Offeror's telephone number	
Offeror's email address	
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	
Number of full-time employees on January 1 <sup>st</sup> 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	
2022 Sales Volume ( <b>Attach supporting sales documentation</b> )	\$
2023 Sales Volume ( <b>Attach supporting sales documentation</b> )	\$

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## ATTACHMENT D

### HISTORICALLY UNDERUTILIZED BUSINESSES

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

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

#### **Respond to the questions below.**

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

If Yes, state HUB classification and provide a copy of Vendor’s North Carolina HUB Certification Letter:

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# ATTACHMENT E: COST TABLE

Vendor to indicate which of the following electronic document formats they provide (with an “X”) remediation services for. Vendor shall also list additional electronic document format offerings and pricing, below.

<u>Electronic Doc Format</u>	A. Website and Digital Content Accessibility Audit and Remediation <u>Services</u>	Cost	B. Multimedia Transcription, Captioning, and Description Services Audit and Remediation <u>Services</u>	Cost	C. Accessibility Consulting <u>Services</u>	Cost	D. Document Remediation Services (Non-Website and Digital <u>Content</u> )	Cost	E. Document Remediation <u>Software</u>	Cost	F. Accessibility Training <u>Services</u>	Cost
<u>Microsoft Word</u> : .doc, .docm, .docx, .dot, .dotm, .dotx.												
<u>Microsoft Excel</u> : .xls, .xlsx, .xlsm, .xlt, .xltx, .xltm.												
<u>Microsoft PowerPoint</u> : .ppt, .pptx, .pptm, .pot, .potx, .potm.												
<u>Google Docs</u> , <u>Google Slides</u> , <u>Google Sheets</u>												
<u>Portable Document Format</u> : .pdf.												

eBook formats (e.g., ePub, Daisy)												
Cost per page to remediate documents												
Custom Training (Hourly Rate)												
E. Document Remediation Software for manual remediation												

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## ATTACHMENT F: VENDOR CERTIFICATION FORM

### 1) ELIGIBLE VENDOR

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

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

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

### 2) CONFLICT OF INTEREST

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

### 3) E-VERIFY

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

### 4) CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA

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

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

[Click here to enter text.](#)

- a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States.
- b. The corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other subcontractors.

[Click here to enter text.](#)

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

[Click here to enter text.](#)

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

Click here to enter text.

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

YES

NO

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

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# ATTACHMENT H: REFERENCES

## CUSTOMER REFERENCE FORM

<b>Vendor Name:</b>	
<b>CATEGORY</b>	

Vendor shall submit **two (2) different** customer references (**per category**) using this form. Vendors should copy this form as required to meet the reference submission requirements (one form per reference).

References should demonstrate experience providing services the same, or similar to, those specified in the category for which Vendors are submitting them for consideration. The provided reference contact should have been in a leadership role in the project at the functional and/or technical levels. References should be recent, i.e. for work performed within the past three (3) years.

You may use the same reference for more than one category, if appropriate and applicable, but *do not use a reference more than once within the same category*. If you are using the same reference for more than one category, you must still provide the complete Customer Reference Form for that customer for each category.

**Note:** References will initially be evaluated based solely on the information provided in this form and will be part of the "Experience and Qualifications" evaluation criteria. Responses should be detailed and are not limited in size. Use additional pages if necessary to provide a complete and detailed response.

**The state must be able to directly contact Vendor references. Vendor statements that references cannot be contacted or that contact with references must be initiated through the Vendor will be considered non-responsive.**

Vendor evaluations will not be considered complete until two (2) complete references are returned to the state by the named references. Vendors without two completed and returned references will not be considered for contract award.

The state will notify the Vendor if any of the Vendor's customer references do not respond to the state's reference check request. The Vendor will have only one opportunity to provide replacement reference(s). Vendors will be required to provide a replacement reference(s) within five (5) calendar days from notification by the state.

Failure of Vendor to provide the requested reference(s) or failure of Vendor's customer to complete and return the reference form will result in the termination of Vendor's consideration for contract award.

**SECTION I: CUSTOMER REFERENCE INFORMATION** (All information requested below is required.)

Company/Organization Name:	
Customer Address:	
Contact Name and Title:	
Contact Phone Number:	
Contact Email Address:	

**SECTION II: CONTRACT DETAILS**

Contract Name:	
Value of Contract:	
Term of Contract:	
Date Service Began:	
Date Service Ended: (if applicable)	
If contract was terminated, please indicate the circumstances.	
Did the project(s) stay on schedule? If not, what was the nature and cause of the delay(s)?	
Was training provided? If yes, please describe the length, type, and format.	
Did you provide any software tools to the customer? If so, what?	

<p>List all subcontractors, if any, who participated in the project(s), including the extent of their participation.</p>	
<p>Please provide a <u>detailed</u> description of all service provided, including any software that may have been involved.</p>	

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## ATTACHMENT I: FINANCIAL REVIEW FORM

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

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

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## ATTACHMENT K: GENERATIVE ARTIFICIAL INTELLIGENCE (GENAI)

For Vendor solutions incorporating or utilizing GenAI, please respond to the following specifications. Vendors are requested to respond for each subcategory for which Vendor has provided a response. Vendors may include additional information if applicable to the response as an Attachment to this RFP titled "Additional Information to ATTACHMENT K: GENERATIVE ARTIFICIAL INTELLIGENCE (GENAI)". The item number that collates to the additional response is to be identified.

No.	Response Request	Vendors Response - Comments/Description Vendor's response should be supplied in a detailed submittal/attachment OR the allotted space.
1)	Describe how the Vendor's proposed GenAI solution meets the State's definition of GenAI: "A kind of artificial intelligence capable of generating new content such as code, images, music, text (Ex: ChatGPT), simulations, 3D objects, videos, and so on. It is considered an important part of AI research and development, as it has the potential to revolutionize many industries, including entertainment, art, and design. (NIST Glossary of AI Terms, March 2023)"	
2)	Describe the Vendor's resources to support risk and compliance during product development.	
3)	Describe how the Vendor handles development, testing, and management of the product.	
4)	Describe how the Vendor's AI is being or was trained.	
5)	Describe what AI training and validation practices the Vendor employs to meet responsible AI objectives.	
6)	Describe the sources of data used in AI training.	
7)	Describe how the Vendor's AI practices, training, and testing methods align with U.S. AI frameworks and guidance (e.g., The White House Blueprint for an AI Bill of Rights, NIST AI Risk Management Framework 1.0) to mitigate ethical and moral risks (e.g., bias, algorithmic discrimination protections, data privacy, safe and effective systems, notice and explanation, human alternatives, consideration, and fall back).	
8)	Describe the options that users have to control the activation of AI capabilities within applications (or within Vendor's proposed solution).	

9)	Describe the configurable settings for the user to enable or disable AI functionalities within the applications (or within Vendor's proposed solution).	
10)	Describe how the Vendor integrates data governance into sourcing, managing, and overseeing training data as part of Vendor's AI model development process.	
11)	Describe how the Vendor safeguards the State's data.	
12)	Describe the standards the Vendor follows for safeguarding The State's data.	
13)	Describe how the Vendor operationalizes the standards.	
14)	Describe Vendor's data governance practices employed in the development and delivery of AI applications.	
15)	Describe Vendor's approach to responsible use of AI.	
16)	Describe the ethical principles, guidelines, or requirements that the Vendor has adopted to ensure responsible use of AI and data governance.	
17)	Describe whether the Vendor or a third-party designed, developed, deployed, and/or maintains the GenAI system.	
18)	Describe the mechanisms used to test a GenAI solution residing on state infrastructure.	
19)	Describe how the mechanisms tests how the AI interacts with all systems.	
20)	Describe the access the Vendor provides system owners to the GenAI/AI.	
21)	Describe the type of model(s) and/or network(s) (e.g., artificial neural networks, large language models (LLMs) used in the GenAI system. Please reference all and explain their specific applicational use and purpose.	
22)	Describe the mechanisms that are used to audit the system and its data.	
23)	Describe who will have access to audit logs.	
24)	Describe whether access will be role-based and authenticated.	

25)	Describe the mechanism used to detect and correct an output error (e.g. automated, service support center, etc.).	
26)	Describe how errors and level or risk of errors are ranked (e.g., high, medium, low).	
27)	Describe how Vendor's proposed solution accommodates the State of North Carolina's ownership of all rights and intellectual property of data outputs.	
28)	Describe how Vendor's proposed solution accommodates the following statement concerning ownership: Vendors are to release all ownership of data generated by the AI. Identify the Level of GenAI Autonomy: a. <input type="checkbox"/> System operates automatically with no human intervention. b. <input type="checkbox"/> System operates automatically with occasional retrospective reviews by humans. c. <input type="checkbox"/> System produces recommendations but cannot act without human intervention.	
29)	Describe how the Vendor will identify and mitigate hallucinations and ensure that GenAI data outputs are accurate and factual.	
30)	Describe how the Vendor monitors GenAI to ensure continued accurate performance over the lifetime of the contract.	
31)	Describe whether logs will be available in a non-proprietary format and the process of log ingestion into a Security Information and Event Management (SIEM) tool.	