| STATE OF NORTH CAROLINA<br>**North Carolina Department of Public Instruction**<br>Division of Standards, Accountability, and Research | **REQUEST FOR PROPOSAL NO. 24-RQ150385-KR** |
|---|---|
| | Contract Name:<br>College Readiness Assessments |
| | Bid Opening Date: October 7, 2026 |
| **Refer ALL inquiries regarding this RFP to:**<br><br>Krystle Rice<br>procurement@dpi.nc.gov | Issue Date: September 4, 2026 |
| | Commodity Code:811620-Cloud-based software as a service |
| | Purchasing Agency: Department of Public Instruction |
| | Requisition No. RQ150385 |

## OFFER

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

## EXECUTION

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

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

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

Offer valid for three hundred sixty (360) 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 Purchasing Agency **Krystle Rice** 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, Agency terms and conditions, 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).

**FOR DEPARTMENT OF PUBLIC INSTRUCTION USE ONLY**

Offer accepted and contract awarded (Effective Date)

By: ________________________
Maurice Green, Superintendent of Public Instruction
(Authorized representative of NC Department of Public Instruction),

By: ________________________
Alexis Schauss, Chief Financial Officer of Public
Instruction (Authorized representative of NC
Department of Public Instruction)

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# 1.0 ANTICIPATED PROCUREMENT SCHEDULE

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

| Action | Responsibility | Date |
|---|---|---|
| RFP Issued | Agency | September 4, 2026 |
| Written Questions Deadline | Potential Vendors | September 14, 2026 |
| Agency's Response to Written Questions/<br>RFP Addendum Issued | Agency | September 21, 2026 |
| Offer Opening Deadline | Vendor(s) | October 7, 2026<br>**Microsoft Teams meeting**<br>**Join:** https://teams.microsoft.com/meet/217441239975977?p=ujblUX23WJCxhPj5KS<br>Meeting ID: 217 441 239 975 977<br>Passcode: uT6Zj6Nx<br><br>Need help? \| System reference<br>**Dial in by phone**<br>+1 919-230-4058,,326008272# United States, Cary<br>Find a local number<br>Phone conference ID: 326 008 272#<br>For organizers: Meeting options \| Reset dial-in PIN |
| Offer Evaluation | Agency | TBD |
| Selection of Finalists | Agency | TBD |
| Oral Presentations and/or Product Demonstrations by Finalists *(Optional)* | Selected Vendors | TBD |
| Negotiations with Finalists | Agency designees and selected Vendor(s) | TBD |
| Best and Final Offers Deadline from Finalists | Selected Vendors | TBD |
| Contract Award | Agency | TBD |
| Protest Deadline | Responding Vendors | 15 days after award |

# 2.0 PURPOSE OF RFP

## 2.1 INTRODUCTION

The purpose of this RFP is to solicit offers through a competitive bid process as required by North Carolina General Statutes (NCGS) for a nationally norm-referenced college admissions test for all students in the eleventh grade (§ 115C-174.11(c)(4)), a diagnostic test in the tenth grade that aligns to the nationally norm-referenced college admissions test (§ 115C-174.22), and a diagnostic test in the eighth grade that aligns to the nationally norm referenced college admissions test adopted by the State Board through the competitive bid process pursuant to § 115C-174.22. The nationally normed test of college readiness contributes to school level achievement scores in the State's accountability model (§ 115C-83.15(b)(2)e). As such, the requirements and specifications set forth in this RFP contemplate the use of these scores to determine school-level performance grades as part of the State's accountability model as well as individual student performance.

Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

## 2.2 AGENCY BACKGROUND

The North Carolina Department of Public Instruction (NCDPI) is charged with implementing the State's public-school laws for pre-kindergarten through 12th grade public schools at the direction of the State Board of Education and the Superintendent of Public Instruction.

The Offices of Accountability and Testing promote the academic achievement of all North Carolina public school students and assist stakeholders in understanding and gauging this achievement against state and national standards. The purpose of this mission is three-fold: the design and development of reliable and valid assessments, uniform implementation of and access to suitable assessment instruments for all students, and the provision of statistically accurate reports.

## 2.3 SUMMARY OF PROBLEM STATEMENT

Schools and students need the ability to determine if they are on track to be remediation-free at a community college or university. The NCDPI is seeking assessment tools that will allow students and schools to make that determination. The NCDPI seeks vendors who can provide (through a Software-as-a-Service solution) a nationally norm-referenced college admissions test to all students in the eleventh grade, a diagnostic test for students in the tenth grade that aligns to the nationally norm-referenced college admissions test to help assist with their community college or university readiness determination and a diagnostic test in the eighth grade that aligns to the nationally norm-referenced college admissions test.

For the purpose of this RFP, an assessment is defined as the tests (paper or online) and platform for operation, delivery and reporting.

## 2.4 CONTRACT TERM

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

## 2.5 EFFECTIVE DATE

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

## 2.6 CONTRACT TYPE

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

The State reserves the right to make partial, progressive or multiple awards where it is advantageous to award separately by functional areas, where more than one supplier is needed to best meet the State's overall needs.

# 3.0 RFP REQUIREMENTS AND SPECIFICATIONS

## 3.1 GENERAL REQUIREMENTS AND SPECIFICATIONS

### 3.1.1 REQUIREMENTS

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

### 3.1.2 SPECIFICATIONS

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

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

### 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 modifications in site preparation, which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

### 3.1.4 EQUIVALENT ITEMS

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

### 3.1.5 ENTERPRISE LICENSING

In offering the best value to the State, Vendors are encouraged to leverage the State's existing resources and license agreements, which can be viewed here:

https://it.nc.gov/resources/statewide-it-procurement/statewide-it-contracts

a) Identify components or products that are needed for your solution that may not be available with the State's existing license agreement.

b) Identify and explain any components that are missing from the State's existing license agreement.

c) If the Vendor can provide a more cost-effective licensing agreement, please explain in detail the agreement and how it would benefit the State.

## 3.2 SECURITY SPECIFICATIONS

### 3.2.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE

**RESERVED**

### 3.2.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

NCDPI has designated this solicitation to receive and securely manage data that is classified as:

☒ **Restricted** - Restricted data represents the highest risk to the State, State Agencies, and constituents if it is disclosed or compromised. This information is likely to be regulated by State or Federal law, and access to it is restricted to a limited audience (e.g., State and Federal Tax Information [FTI], Payment Card data, Protected Health Information [PHI], Criminal Justice Information [CJI], Social Security Administration provided information, etc.)

☐ **Confidential** - Includes information that is limited to a small audience with a need-to-know or legitimate business case (e.g., State employee personnel records, trade secrets, student records, sensitive public security information, etc.). If exposed to unauthorized parties, data from this category will cause high impact consequences such as regulatory fines, inability to recruit talent, loss of confidence, and/or damage to vendor relationships. This is not a complete list and is subject to legislative changes.

☐ **Internal** - This is information typically used within the agency and not for public sharing. Most documents are classified as Internal within the organization, and most State employees would have access. This type of data, if exposed to unauthorized parties, would have a very limited impact on an agency's reputation, compliance requirements or ability to achieve strategic goals. Internally classified data does not contain direct identifiers. Often, the effects of the loss of data can be recognized in very subtle ways and may not lead to clear negative consequences causing confusion due to lack of context or minor reputational harm.

☐ **Public** - Data that is open to public inspection according to state and federal law, or readily available through public sources.

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 Internal, Confidential, or Restricted.

(a) To comply with the State's Security Standards and Policies, cloud products are required to comply with applicable FedRAMP or GovRAMP security requirements, including but not limited to, continuous monitoring, incident response, and data classification as outlined in GovRAMP documentation.

(b) To streamline and standardize this requirement the State has adopted GovRAMP which is a Risk and Authorization Management Program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. GovRAMP's security verification model is based on NIST 800-53 Rev. 5 (or current).

(c) The required GovRAMP verified status will depend on the sensitivity of the data and processes supported by the solution as defined in the Statewide Data Classification and Handling Policy.

(d) For purposes of this solicitation, in accordance with the North Carolina Department of Information Technology Statewide Information Security Manual, a GovRAMP verified status of Restricted is required. At offer submission, if the protected system does not currently hold a validated GovRAMP status, the Vendor will be required to provide their GovRAMP Security Snapshot Score and upon request, the complete Snapshot Matrix. If awarded the contract, Vendor shall have an interim period from the effective date of the contract to achieve the verified GovRAMP status outlined above. The interim time periods for each data classification that requires a verified status are further described below. The Vendor shall provision access to the State to their continuous monitoring packages at a standard access level within fourteen (14) days of contract award, and seven (7) days of any subsequent GovRAMP status changes

   a. Public - For third-party cloud services where the highest category of information to be processed is Public data, the Vendor must submit an updated score for the product annually throughout the contract duration that meets or exceeds the original score at time of contract award. Products with GovRAMP Core, Ready, Authorized or Provisionally Authorized statuses or FedRAMP Rev. 5 authorization also satisfy the security requirement.

   b. Internal - For third-party cloud services where the highest category of information to be processed is Internal data, the Vendor must either achieve the status of GovRAMP Core prior to award, or agree to achieve GovRAMP Core status within an interim time period, no later than twelve (12) months from the effective date of the contract.

c. Confidential - For third-party cloud services where the highest category of information to be processed is Confidential data, the Vendor must either achieve a status of GovRAMP Ready, or agree to achieve GovRAMP Ready status no later than fifteen (15) months from the effective date of the contract.

d. Restricted - For third-party cloud services where the highest category of information to be processed is Restricted Data, the Vendor must either achieve a status of GovRAMP Authorized, or agree to achieve GovRAMP Authorized status no later than twenty-one (21) months from the effective date of the contract.

Upon contract award, Vendors who submitted a GovRAMP Security Snapshot Score will be required to enroll in the GovRAMP Progressing Snapshot program prior to any data being transferred, stored or processed. The Vendor must complete their first Progressing Snapshot within ninety (90) days of award, with the expectation that progress will be made on a quarterly basis and access to progress reports must be provisioned to the State. Products must maintain their participation in the Progressing Snapshot program and continued access to progress reports must be provisioned to the State until such time that they have achieved the minimum verified status outlined above. The State will review the Vendor's progress on a quarterly basis and, in its sole discretion, may determine that the Vendor is not making satisfactory progress in the Progressing Snapshot program. Satisfactory progress shall be a material requirement of the contract.

(e) If the Vendor holds a FedRAMP Rev. 5 authorization at time of award, this authorization can be accepted in lieu of a GovRAMP authorization. Authorizations obtained via the FedRAMP 20x Pilot Program will not be permitted.

If the Vendor's cloud product currently holds a FedRAMP Authorized designation, at the time of award, the State may require the Vendor to initiate and actively pursue, within thirty (30) days of award, the GovRAMP Fast Track Process, to achieve a GovRAMP Provisionally Authorized or Authorized status in order to satisfy Statewide continuous monitoring requirements.

(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 additional security documentation upon request by the State during the term of the contract.

Refer to: https://it.nc.gov/documents/statewide-glossary-information-technology-terms for descriptions of the Application Criticality categories.

Refer to: http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.199.pdf for descriptions of NIST system confidentiality, integrity, and availability categories.

## 3.3 ENTERPRISE SPECIFICATIONS

Agencies and vendors should refer to the Vendor Resources Page for information on North Carolina Information Technology enterprise services, security policies and practices, architectural requirements, and enterprise contracts. The Vendor Resources Page can be found at the following link: https://it.nc.gov/vendor-engagement-resources. This site provides vendors with statewide information and links referenced throughout the RFP document. Agencies may request additional information.

### 3.3.1 ARCHITECTURE DIAGRAMS

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

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

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

### 3.3.2 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, and how scalability of solution is planned.

### 3.3.3 IDENTITY AND ACCESS MANAGEMENT

Describe how the proposed solution can integrate with NCDPI's Identity and Access Management (IAM) Service. Here is a brief description of the integration methodology using NCEdCloud.

#### 3.3.3.1 Provisioning.

Authorized user is expected to have an account in a system to login and use that system. The NCEdCloud IAM Service supports two methods of implementing automated lifecycle management of accounts for both provisioning and de-provisioning.

##### 3.3.3.1.1 Provisioning via SAML

The first method for target application account provisioning is via SAML. This method requires the target system to use a SAML Service Provider (SP), and it must support the on-demand creation (auto- provisioning) of user accounts via this method. Not all systems that provide SP capability may support this method.

##### 3.3.3.1.2 Provisioning via Data Synchronization

The second method for target application account provisioning is via data synchronization. One component of the NCEdCloud IAM service is Identity Automation's DSS product. Using DSS adapters, the IAM service will communicate directly with the target system in order to provision accounts. This process occurs in near real-time as user accounts are created and updated in the Central Directory. Depending on the integration path for SSO/RSO, this provisioning process may include synchronization of user credentials.

#### 3.3.3.2 Authentication

The NCEdCloud IAM Service will support three methods of implementing a simplified authentication service for end users accessing target application systems. The term "simplified authentication" refers to the concept that users won't have to keep track of multiple credentials when accessing the different target systems. From the end user perspective, this could be either an SSO or an RSO experience, depending on the method used to provide the authentication integration.

The term single logout is the counter solution to SSO. For example, if you log in to five applications via SSO, you could log out of all sessions with a single logout link. The NCEdCloud IAM service will provide a single logout capability for SAML-enabled target systems but cannot enforce its implementation by all target systems. So, if an end-user clicks on the single logout option of an application, it would log them out of all sessions that were accessed using SAML. Unfortunately, only closing the browser application itself can guarantee that all sessions are absolutely ended.

#### 3.3.3.2.1 SAML Authentication

The first (and preferred) method for target system authentication integration is via SAML. This method requires the target system to use a SAML Service Provider (SP). Once integrated, the login page for every target system using SAML will be the NCEdCloud IAM login page (branded to illustrate the use of the NCEdCloud Username and Password). The first application accessed will require the user to authenticate (via the IAM Service Login), however, each subsequent SAML-enabled application the user accesses will provide an SSO experience (no additional login required).

#### 3.3.3.2.2 Native Authentication

The second method for target system authentication would be native authentication. With this method the user will access the target system and will login with credentials that have been synchronized to that system (See 1.2. Provisioning via Data Synchronization). In this case, the application is storing the user account credentials locally, thus it is using native authentication. This method will provide an RSO experience because the credentials used will be the same credentials as the NCEdCloud.

#### 3.3.3.2.3 LDAP Authentication

The third method for target system authentication integration is via LDAP. This method requires the target system to support an option to use LDAP for authentication as an alternative to local/native authentication. The NCEdCloud IAM Service will provide a load balanced, fault tolerant LDAP endpoint for target systems for authentication. This method will provide an RSO experience because the credentials used will be the same credentials as the NCEdCloud.

### 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:

**3.3.5.1** Define the solution's Service Level Objective (SLO) and Service Level Agreement (SLA)

**3.3.5.2** Disaster Recovery Plan (DRP)

Describe how proposed solution supports Recovery Point Objectives (RPO) and Recovery Time Objectives (RTO) metrics.

**3.3.5.3** System Backup

Describe backup plan capabilities.

**3.3.5.4** 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.

**3.3.5.5** Describe how the proposed solution ensures resilient continuous operation.

**3.3.5.6** Describe the strategies employed to protect active and backup data from malicious software.

**3.3.5.7** Describe the capabilities for automated rollback to know-good states, include front facing application, data tier, and infrastructure.

### 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 DATA EXCHANGE

**3.3.7.1** Describe approaches available for data exchange and ingestion into the proposed solution.
**3.3.7.2** Describe the methods available for data exchange from the proposed solution to the State.

### 3.3.8 APPLICATION MANAGEMENT

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

**3.3.8.2** Describe how the proposed solution manages user administration.

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

### 3.3.9 ACCESSIBILITY

**3.3.9.1** Describe how the proposed solution ensures that the digital platforms and paper materials related to each assessment comply with industry accessibility standards and the ADA title II rule. Include an Accessible Conformance Report (ACR) using the most current version of the Voluntary Product Accessibility Template (VPAT).

Provide product documentation that demonstrates how the proposed solution is both digitally accessible and accessible via paper format. If not fully accessible, provide the roadmap with timeline for remediation.

Standards include:

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

**3.3.9.2** For the assessment in this proposal, describe how the proposed solution is inherently designed to provide access for all students across digital and paper test formats; specifically, accommodations for students with disabilities (including, but not limited to, individuals who have visual, auditory, motor, or cognitive impairments) and supports for English learners.

## 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 TECHNICAL SPECIFICATIONS

### 3.4.1 Assessment

#### 3.4.1.1 Platform

**3.4.1.1.1** Describe how your solution's online testing delivery platform is compatible and meets industry technology standards.

**3.4.1.1.2** Describe your solution's technology-readiness certification process (i.e. how does the solution validate that schools or districts have the required technology to conduct the assessments?).

**3.4.1.1.3** Provide an overview of the solution's technology guidelines to include: an introductory section describing the navigation and structure of the secure web-based application, technical specifications for the system, help desk information, system troubleshooting and contingency plans, optimal network bandwidth requirements for the testing sites, resources required to properly utilize the system, accessibility features and accommodations, and guidelines for the use of one-to-one device scenarios, computer labs, or bring-your-own student devices.

#### 3.4.1.2 Content Alignment

Describe how your solution provides purpose and benefit of the proposed college admissions test and the other proposed assessments. Include in the description how the assessments' content aligns to expectations of student success in post-secondary education settings. Include evidence of validity and reliability of the proposed assessment for measuring college-readiness.

#### 3.4.1.3 State-specific website

Describe how your solution creates and manages a North Carolina-specific website dedicated only to district and school test coordinators.

#### 3.4.1.4 Configurations

Describe how your solution allows for configuration of tests and/or assessments by means of limiting/hiding features, questions, or content (generally termed "non-test" or "demographic information") or resources related to the solution.

#### 3.4.1.5 Technology Readiness

**3.4.1.5.1** When schools are unable to meet the solution's technology requirements, describe the alternate options provided to schools including a paper test administration.

#### 3.4.1.6 Test registration system

Describe how your solution, enables testing staff at the school, district, regional, and state level to effectively manage organizational and testing related data including site information, students, users, test administration details, etc. Explain the tools, features and support resources available to help users efficiently perform testing administrative tasks, maintain accurate data, manage access and permissions, monitor testing activities and support successful test administration.

## 3.4.2 Assessment Administration

### 3.4.2.1 Student Registration

**3.4.2.1.1** Describe how the proposed solution registers students.

**3.4.2.1.2** Describe how the proposed solution collects basic student information and what information is collected.

**3.4.2.1.3** Describe assessment safeguards or test administration processes that are available to validate student identity.

### 3.4.2.2 Testing Mode

The Grade 11 test scores are used in the State's accountability reporting. Therefore, it is necessary that all eligible students [as defined by statute G.S. § 115C-174.11(4)] are provided with a testing opportunity. Describe your solution's ability to make assessments available to all North Carolina public schools online. Also include a detailed description of accessibility supports and accommodations that are available to students to support access beyond the standard assessment (i.e. paper test, screen reader etc.).

### 3.4.2.3 Proctoring

Describe proctoring formats and guidelines related to all assessments in this proposal.

### 3.4.2.4 Testing Windows

Describe how your solution establishes testing windows (as defined by NCDPI) that ensure the State fulfills the legislated requirement of administering the assessments to all eligible students either online or in a paper format.

**3.4.2.4.1.** For each test format, describe the number of available testing windows for standard and accommodated test administrations.

**3.4.2.4.2** Describe how the solution provides a state-specific and state-approved test material ordering window.

**3.4.2.4.3** For all provided assessments, describe the number of state-specific test material ordering platform(s) available.

**3.4.2.4.4** Describe how the solution allows the State to select testing windows.

**3.4.2.4.5** Describe how schools can utilize all available testing windows at their discretion.

### 3.4.2.5 Unforeseen Event

An unforeseen event or emergency (as determined by NCDPI in its discretion) delays school from opening on time, results in closing school for the day, or otherwise affects the planned test administration on the regularly scheduled administration opportunities.

In the event a district or school experiences an unforeseen event, describe whether your solution provides a consistent and equitable testing solution to complete testing. Also include in the description the processes for amending testing windows to accomplish this purpose. Describe examples of how this has been addressed in previous implementations. Also include a description of the solution's assessment failover process and procedures for unforeseen outages.

#### 3.4.2.5.1 Paper Test Administrations

**3.4.2.5.1.2** Describe the process for paper test administrations in the event of an unforeseen event.

**3.4.2.5.1.3** Describe how schools are notified of additional testing opportunities and describe the process for ordering test materials.

#### 3.4.2.5.2 Online Test Administrations

**3.4.2.5.2.1** Describe the solution's process for online test administrations in the event of an unforeseen event.

**3.4.2.5.2.2** Describe how schools are notified of additional testing opportunities and describe the process for ordering test materials.

### 3.4.2.6 Double testing

Describe the process to protect assessment integrity by ensuring that a student who takes an online test does not take a paper test or vice versa.

When a student inadvertently tests multiple times, describe your proposed steps to ensure only one score will be reported to colleges or universities and that the State will only be charged for one test per student.

### 3.4.2.7 Retesting opportunity

Describe the process for State-level approval of retake opportunities, including but not limited to how the solution will remedy a situation when a student is interrupted during an online administration and retakes the assessment on a different day.

### 3.4.2.8 Materials delivery and return

Describe how paper materials are delivered to the school at least seven (7) days before the test administration date. Describe how pre-scheduled pick-ups may be facilitated for all tests that require materials to be returned to the Vendor.

### 3.4.2.9 Homebound Testing

Describe how the solution will support testing of homebound students. In North Carolina, students who receive hospital and homebound services participate in all State-required test administrations. For accountability purposes, the test results of a hospital- or homebound-student must be included in the accountability results at the student's base school. Describe how assessment integrity will be maintained and materials will be secured in these testing environments.

### 3.4.2.10 Home School Testing

Describe how the solution facilitates testing within NC public schools for home school students per N.C.G.S. § 115C-565.1(a). Describe the mechanism in place to prevent home school students from being added to or included in the State-contract test administration, data and reporting.

### 3.4.3 Security

#### 3.4.3.1 Student-level personally identifiable information

Describe how the solution secures and purges student-level personally identifiable information based on the State's data and privacy requirements to include the following: student-level personally identifiable information, non-demographic test information, and/or survey questions collected from, but not limited to: student answer documents, testing platforms, test information sites (score report portals, student portals/websites, etc.), or student responses to any State-approved surveys.

#### 3.4.3.2 Security Breach

Describe how the solution will address security breaches, as defined in N.C.G.S. § 75-61.

#### 3.4.3.3 Significant Security Incident (GS 143B-1320)

Describe how the solution will address significant cybersecurity security incidents as described in N.C.G.S. § 143B-1320.

A significant cybersecurity incident is determined by the following factors:

1. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
    a. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or
    b. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
2. Incidents that involve information that is not recoverable or cannot be recovered within defined 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.

#### 3.4.3.4 Cybersecurity Incidents

Describe how the solution will address a cybersecurity incident as defined in Attachment A: Definitions, Paragraph 2.

### 3.4.4 Access

#### 3.4.4.1 User Roles

3.4.4.1.1 Describe role-based security and permissions at the State, District, and Local School level, including the ability to create and manage user-defined roles and assign permissions based on user responsibilities and levels of access.

**3.4.4.2** Describe in detail the role-based access controls for reporting (and how it aligns with the information provided in response to the Reporting and Analytics section below).

### 3.4.5 Reporting and Analytics

#### 3.4.5.1 Student Identification Number

Describe how Vendor's proposed solution will ensure student test records (answer documents, printed score reports, and online test records) are identified with the State-assigned unique student identification number. Also describe how the Vendor's solution allows schools to resolve incorrect State assigned IDs.

#### 3.4.5.2 Analytics

Describe what types of diagnostic feedback and method of delivery are available to students, districts, and schools for the assessments in this proposal.

#### 3.4.5.3 Reports

**3.4.5.3.1** Describe the solution's procedures, in collaboration with the NCDPI, to give districts and schools the opportunity to reconcile discrepancies in the collected student information system before the release of reports.

**3.4.5.3.2** Describe how the solution ensures that all students are accounted for and with the correct information, specifically during testing, post-testing, and prior to consolidation of scores.

**3.4.5.3.3** Describe how the solution collaborates with the NCDPI on final review and approval of the score files for all assessments prior to acceptance by the State. Also include in the description the solution's available file formats.

**3.4.5.3.4** Describe how the solution provides test results to schools and districts on a rolling timeline.

**3.4.5.3.5** Describe how the student score results are reported in a user-friendly format.

**3.4.5.3.6** Describe the solution's ability to provide individual student reports including the ability to configure report content and format based on State requirements and approval. Identify what information is included, and how the unique state-assigned student identification number is incorporated into the report.

**3.4.5.3.7** Describe the solution's ability to provide digital, dashboard-level aggregated student performance data to the State, districts, and schools.

**3.4.5.3.8** Describe the solution's ability to include the name of the State-parent organization (district for schools within a district or state for charter schools), state school code, and regional accountability office staff members' names on all operational reports including missing materials lists, call logs from the Help Desk, technology readiness reports, and testing irregularity reports or investigation reports and files needing reconciliation of student data or scores.

**3.4.5.3.9** Describe the solution's ability to provide information to the State, upon request, for user changes and actions made within the application, to include time stamp and user information, for investigative and troubleshooting purposes.

### 3.4.6 Data Management

**3.4.6.1** Describe the various scenarios for how the proposed solution validates data in real-time throughout all points of entry, including manual screen entry and bulk file upload.

**3.4.6.2** Describe how data integrity is maintained.

**3.4.6.3** Describe how data quality is ensured, and master data is managed and updated in the Vendor's proposed solution.

**3.4.6.4** Describe how the proposed solution handles scenarios like duplicate student IDs and a single ID for multiple students.

Also, elaborate on how data validation and other safeguards are used to mitigate student ID issues.

**3.4.6.5** Explain how the proposed solution will prevent unauthorized changes to data.

**3.4.6.6** Describe the data retention and archival process.

**3.4.6.7** Describe how the proposed solution aggregates data for statewide reporting and analytic purposes.

**3.4.6.8** Describe the solution's default backup and restore capabilities, including how data is backed up, protected and restored across multiple locations while maintaining operational independence and ensuring integrity and consistency of State's data. Describe the controls, settings, features and configuration options available to NCDPI for managing backup and restore processes including any capabilities related to backup frequency, retention, recovery, monitoring and data validation.

### 3.4.7 Service Level

**3.4.7.1** Describe the proposed solution's Service Level Agreement (SLA), detailing how the architecture delivers 99.9% availability.

Describe the Service Level Objectives and corresponding Service Level Credits.

**3.4.7.2** Describe how the proposed solution scales without impacting performance.

**3.4.7.3** Describe how the proposed solution monitors performance, including information specific to monitoring the usability of the solution's features and functions with reasonable response times to ensure availability and responsiveness.

Explain how this information aligns with the way the proposed solution scales without impacting performance and data processing model and how it manages load and latency during non-peak and peak-usage times.

**3.4.7.4** Describe the proposed solution's process for role-based alerts of outage and performance degradations to ensure appropriate notification across all user classes.

**3.4.7.5** Describe the proposed solution's system management processes, frequency of server patches, version or patch management process, and how those processes do not compromise 99.9% availability.

Describe the solution's general server or systems management, operating system, and security level version or patch application, and solution version or patch application.

Describe how the solution will be hosted in the continental United States, with no data leaving the country. Include in your response the following:

a. An overview of general hosting capabilities;

b. Hosting provider information;

c. Primary site location and TIER level;

d. Secondary or disaster recovery site location and TIER level; and,

e. Statement indicating compliance with the North Carolina State Security Manual and Policies.

Information may be found on the 'Security' tab at: [Vendor Engagement Resources | NCDIT](Vendor Engagement Resources | NCDIT) resources.

NOTE: It is the responsibility of each responding vendor to read, be aware of, and where necessary, comply with the information contained on the 'Vendor Engagement Resources' link provided.

**3.4.7.6** Describe in detail the Disaster Recovery Plan/incident management for the proposed solution and include tested and verifiable Recovery Time Objective (RTO) and Recovery Point Objective (RPO) times for comparable statewide implementations of this proposed size.

Describe how the RTO and RPO align with your SLA.

**3.4.7.7** Additionally describe performance monitoring and reporting, availability, customer support, technical environment management, scalability, and recoverability.

### 3.4.8 User Experience

**3.4.8.1 User and organizational data.**

Describe what user and organizational interface can be configured (by schools, districts, and the state) to manage testing registration and customize user experience.

Describe configurations that may include, but are not limited to, customizing features within the application that can be turned off, hidden, or locked down, preventing local users from editing data uploaded by the NCDPI or providing data to the Vendor that is not permitted under the State's data and privacy laws.

**3.4.8.2 Test Interruptions**

Describe how the solution will mitigate test interruptions, recover data from any unforeseen test interruption, and return the test-taker to the point of interruption.

### 3.4.9 Quality Assurance

**3.4.9.1** Describe the Quality Assurance (QA) process that will be followed. Describe the software delivery process including the types of testing undertaken and test environment management practices used.

**3.4.9.2** Describe the measures previously taken by Vendor to ensure quality control of all aspects of test administrations, specifically in other districts and states comparable to the State of North Carolina.

**3.4.9.3** The NCDPI expects that all products and services developed and used under this contract shall be defect-free. Errors in materials or quality assurance, failures in development, administration, scoring or reporting for any assessment component will not be accepted and/or utilized by the State. Inaccuracies include, but are not limited to, grammar, content, format, or directions in any printed or online material or posted materials. If the NCDPI reviews materials, these reviews do not absolve the Vendor of this requirement. Describe the steps followed to ensure that all products developed and used will be defect-free and describe the corrective action plan to remedy errors or defects.

**3.4.9.4** Only one scored assessment per student for each applicable Grade 11 , Grade 10 , or Grade 8 assessment will be eligible for inclusion in the on the State's invoice. Describe how the solution ensures quality assurance for scoring, reconciliation of multiple test attempts, and audit process used to support accurate scoring and billing.

## 3.4.10 Project Management

Describe a proposed schedule and work breakdown structure for a statewide implementation (either in narrative form or you can include as a separate attachment if desired). A final schedule and work breakdown structure will be established within sixty (60) days after contract award. Describe in detail your implementation methodologies.

## 3.4.11 Artificial Intelligence (AI)

**3.4.11.1** Describe whether and how the solution uses artificial intelligence (AI) in relation to student data and detail the measures you have in place to ensure compliance with FERPA and other applicable privacy laws.

**3.4.11.2** Describe the safeguards in place to protect student data when using AI technologies, including data minimization, transparency, and access controls.

**3.4.11.3** The proposed solution shall not use NCDPI's data to train or refine AI and/or machine language (ML) models without explicit written approval.

1. Describe all areas where AI and/or ML functionality is used within the proposed solution. Identify the specific features where AI and/or ML is used and describe the purpose, scope, and data inputs in all those areas.
2. Describe all third-party AI and/or ML service providers engaged as part of the service and the types of customer data shared with them.
3. Explain how the NCDPI will have the option to opt out of non-essential AI and/or ML features.
4. Explain how AI is used in resource creation, training materials, etc. and the quality assurance process.

**3.4.11.4** Describe if there are (additional) AI and/or ML features planned on your roadmap. Describe the features in detail and how NCDPI data will be used.

## 3.4.12 Training

### 3.4.12.1 Training platform

Describe, in detail, the test and production environments to support configuration and testing for the proposed solution. Describe how these environments will be delivered and used.

### 3.4.12.2 Resource Materials

**3.4.12.2.1** Describe the solution's available digital preparation materials and resources that will be available to all students in the State. These materials and resources should include, but are not limited to, practice test questions, practice tests, and communications to students and families. These digital resources must not include creation of a student account or entry of any student demographic information to access and must preserve anonymity.

**3.4.12.2.2** Describe the post-assessment student resources available for student score analysis, progress indicators, and recommendations for improvement.

**3.4.12.2.3** Describe the solution's resource materials that assist all testing staff with test administration operations but is not limited to: user test administration guides and/or manuals, frequently asked questions (FAQ) documents, administration supplements, in service email communications, tutorials, demonstration videos, etc. Additionally, describe the solution's resource materials for school counselors, teachers, and families to aid in ensuring student readiness for testing.

#### 3.4.12.3 Training plan

**3.4.12.3.1** Describe a training plan for district and school test coordinators, test administrators, proctors, technology staff members, and accommodations coordinators on all aspects of the testing program, and how this plan will be implemented.

**3.4.12.3.2** Describe steps taken to ensure that all training documentation, plans, and resources are free of typographical, format, and content errors before they are submitted to the NCDPI for review.

#### 3.4.12.4 Training maintenance

Describe initial and ongoing refresher training available to various roles for the proposed solution. Elaborate on logistics, form, length, and test data used for training.

**3.4.12.4.1** Describe how training effectiveness is evaluated and adapted to meet improvement goals.

If proposing online training, describe feedback methodologies and strategies for enhancing training offerings for school staff based on solution trained or credentialed users across various roles.

### 3.4.13 Customer Support

**3.4.13.1** Describe how support is provided and the tools used to manage administrative testing tasks.

**3.4.13.2** Describe the operational reports and/or tools available to manage test administration tasks (i.e. shipment tracking information, rosters, testing status, accommodations, etc.).

**3.4.13.3** Describe the multi-channel support options available to end users to report issues in the proposed solution.

Describe the similarities and differences in how support via electronic communication (i.e., chat, email, telephone support, etc.) is provided. Elaborate on which user roles, and how many users within each PSU, may utilize a support channel at any given time.

**3.4.13.4** Describe whether the proposed solution supports conversational AI or a chatbot component. If so:

a. Describe the functions performed by the chatbot.

b. Describe what data the chatbot can access.

c. Describe if and how the chatbot logs conversations.

d. Describe whether and how the chatbot feature can be disabled for the NCDPI contract.

**3.4.13.5** Describe the customer support management process for the proposed solution. Minimally, include details such as:

a. The type and nature of the ticketing system, and if it is internal or hosted;

b. If the ticketing system is hosted, describe its resiliency to failure or disaster in your managed support to NCDPI;

c. Viewing, tracking, and interacting with the ticketing process;

d. The depth of a self-service knowledge base;

e. Prioritization of incidents based on SLA;

f. Reports and dashboard on key support metrics, to include static and dynamic date ranges for;

(i) First call resolution;

(ii) Number of tickets submitted by SLA severity;

(iii) Number of tickets resolved by SLA severity;

(iv) Number of open tickets by SLA severity, with age analysis; and,

(v) Open tickets by creation date and last-touched date;

g. Online access to, and description of, standard and available support reports; and,

h. Other capabilities identified as either part of the standard support offering or associated with higher level subscriptions or contract customizations.

**3.4.13.6** Describe the self-service problem resolution capabilities available to customers.

**3.4.14 Change Management**

**3.4.14.1** Describe how the proposed solution is kept up to date with federal or state legislation, guidelines or standard changes, and software upgrades or updates.

Describe a typical timeline from a notice-of-change to when the system will be enhanced or modified.

**3.4.14.2** Describe the practices used to communicate and train appropriate role-based users to work with applied change management processes for the proposed solution.

**3.4.14.3** Describe the available configuration options to adapt functionality to meet user needs within the proposed solution, to include content configuration by user role.

**3.4.15 Collection of Demographic Data**

**3.4.15.1** Describe how your solution can purge any non-testing student data collected by Vendor or provided by students, testing staff, or schools to Vendor through avenues such as, but not limited to: survey questions, non-required demographic information entered via answer documents, apps., testing platforms, student account platforms, etc., that are restricted by the State's data and privacy requirements.

**3.4.15.2** Describe how the above data collected as described above can be purged from the Vendor's database within 7 days of the collection.

**3.4.15.3** Describe how data purge logs are documented and how Vendor will provide the information to the state on a bi-weekly basis.

**3.4.15.4** Describe how the vendor will identify, document and report any collection of non-permitted data to the State to understand the incident including the source from which the data was collected, date of collection, affected school(s) and district(s), type(s) of data collected, number of students impacted, and any other analysis or information requested by the State.

**3.4.16 Confidentiality**

**3.4.16.1** Describe a plan for providing security and confidentiality of (1) all testing materials, (2) student responses, training procedures, and scoring processes, and (3) program results, both throughout the term of this contract (particularly during the scoring process) and afterward.

**3.4.17 Reporting testing irregularities and/or security breaches**

**3.4.17.1** Describe a process for districts and schools to report testing irregularities or security breaches, which are then reported to the State.

**3.4.17.2** Describe a process to share and communicate all evidence of testing irregularity or security breach with the State.

**3.4.18 Online testing delivery platform**

**3.4.18.1** Describe how the online testing platform is compatible and provides consistent functionality across supported devices, operating systems and platforms including Windows, macOS, ChromeOS, iOS/IPadOS and Android.

**2** Describe additional software or equipment necessary to support or augment the delivery of the online testing delivery platform.

**3.4.18.3** Describe the technology used to provide a readiness certification process to facilitate online testing for all North Carolina districts and schools prior to the assessment window, including a certification process that measures the following: network connectivity to the testing platform from within school buildings, capacity of hardware for online testing including workstation or device compatibility, sufficient bandwidth and access point, practice or mock administration features to simulate the standard and accommodated online testing experience, additional technology infrastructure requirements for number of concurrent users and load testing to determine maximum users.

**3.4.18.4** Describe how your solution can assess schools that have not met the technology readiness certification expectations (before the last test date) as soon as possible on a rolling basis leading up to the first test date.

**3.4.18.5** Describe the technical assistance provided to schools that need additional support preparing for technical readiness prior to testing.

**3.4.18.6** Using graphics, photos, diagrams, text, and screenshots as needed, describe how technology guidelines that document an overview of the system, an introductory section describing the navigation and structure of the secure web-based application, technical specifications for the system, help desk information, suggestions for optimal network bandwidth for testing sites, resources required to properly utilize the system, accessibility features and accommodations, and guidelines for the use of one-to-one device scenarios, computer labs or bring-your-own student devices are provided. (The audience for the technology guidelines document is district and school technology coordinators.)

**3.4.18.7** Describe your ability to ensure that the technology guidelines proof is free of typographical and format errors before it is submitted to the NCDPI for review. Describe how the document will be made available to district and school technology coordinators as a training resource, and how technical updates can be made available to the State as needed.

**3.4.18.8** Describe the communication protocol for alerting end-users to system issues or latency and next steps to fix system issues.

**3.4.18.9** Describe sample communications and messaging sent to communicate systems issues.

### 3.4.19 Grade Eight Diagnostic Test

3.4.19.1 Describe how your solution offers a diagnostic test in the eighth grade that aligns to the nationally norm-referenced college admissions test adopted by the State Board through the competitive bid process pursuant to N.C.G.S. § 115C-174.11(c)(4).

3.4.19.2 Describe how your solution's results are used to diagnose student learning, and provide students with an indicator of whether they are on track to be remediation-free at a community college or university.

# 4.0 COST OF VENDOR'S OFFER

## 4.1 OFFER COSTS

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

## 4.2 PAYMENT SCHEDULE

The Vendor shall propose its itemized payment schedule based on the content of its offer. All payments must be based upon acceptance of one or more Deliverables. Invoices and payments shall be subject to retainage as provided in this Section 4 and the Paragraph 10 of Terms and Conditions attached to this RFP.

# 5.0 EVALUATION

## 5.1 SOURCE SELECTION

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

a) Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
b) To be eligible for consideration, Vendor's offer <u>must</u> substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State. Offers that do not meet the full intent of all specifications listed in this RFP may be deemed deficient. Further, a serious deficiency in the offer to any one (1) factor may be grounds for rejection regardless of overall score.
c) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to *Raleig*h, North Carolina, to discuss technical and contractual aspects of the offer.
d) Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.

## 5.2 EVALUATION CRITERIA

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

1) How well the Vendor's offer conforms with the specifications.

2) How each Vendor's offer compares with other Vendors' offers.

3) Total Cost of Ownership.

4) Risks associated with Vendor's offer, including but not limited to financial stability (Section 7.2 Financial Statements and Attachment H - Financial Review Form).

5) Vendor Schedule / Timeline for completing work.

6) Vendor Past Performance and Reference Checks (including but not limited to information provided pursuant to Attachment G - References).

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

## 5.3 BEST AND FINAL OFFERS (BAFO)

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

## 5.4 POSSESSION AND REVIEW

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

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

# 6.0 VENDOR INFORMATION AND INSTRUCTIONS

## 6.1 GENERAL CONDITIONS OF OFFER

### 6.1.1 VENDOR RESPONSIBILITY

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

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

### 6.1.2 RIGHTS RESERVED

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

a) waive any formality;

b) amend the solicitation;

c) cancel or terminate this RFP;

d) reject any or all offers received in response to this RFP;

e) waive any undesirable, inconsequential, or inconsistent provisions of this RFP;

f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;

g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or

h) if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.

### 6.1.3 SOLICITATION AMENDMENTS OR REVISIONS

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

### 6.1.4 ORAL EXPLANATIONS

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

### 6.1.5 E-PROCUREMENT SYSTEM

The State utilizes the NC eProcurement (NCEP) system to process requisitions and issue purchase orders. See http://eprocurement.nc.gov/ and General Terms and Conditions of this RFP, Electronic Procurement for more information.

a) It is the Vendor's responsibility to read these provisions carefully and to consider them in preparing the response. By signature, the Vendor acknowledges acceptance of all provisions related to NCEP.

b) The transaction fee addressed in General Terms and Condition, Electronic Payment (currently at 1.75%) applies to the purchase of goods only. It does <u>not</u> apply to Vendor Hosted

Solutions, IaaS, PaaS, SaaS, software maintenance/support services, or any other type of services.

c) If not already registered in NCEP, the Vendor must register within two (2) days after notification of contract award.

d) The Vendor must be current on all NCEP fees prior to submitting a response. Otherwise, the State may disqualify the Vendor from participating in this solicitation.

### 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 by Solicitation Number or agency name. This information may not be available for several weeks' dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.

### 6.1.7 PROTEST PROCEDURES

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

## 6.2 GENERAL INSTRUCTIONS FOR VENDOR

### 6.2.1 SITE VISIT OR PRE-OFFER CONFERENCE

**RESERVED**

### 6.2.2 QUESTIONS CONCERNING THE RFP

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

Written questions concerning this Solicitation will be received until September 14, 2026 at 10am Eastern Time.

They must be submitted to the contact person listed on Page One of this Solicitation via the Ariba Sourcing Tool's message board. Please enter "Questions Solicitation RQ150385 College Readiness Assessments" as the subject for the message.

| REFERENCE | VENDOR QUESTION |
|---|---|
| RFP Section,<br>Page Number | |

### 6.2.3 ADDENDUM TO RFP

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

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

### 6.2.4 COSTS RELATED TO OFFER SUBMISSION

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

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

### 6.2.5 VENDOR ERRATA AND EXCEPTIONS

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

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

### 6.2.6 ALTERNATE OFFERS

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

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

### 6.2.7 MODIFICATIONS TO OFFER

An offer may not be unilaterally modified by the Vendor.

### 6.2.8 BASIS FOR REJECTION

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

### 6.2.9 NON-RESPONSIVE OFFERS

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

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

### 6.2.10 VENDOR REGISTRATION WITH THE SECRETARY OF STATE

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

### 6.2.11 VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM

The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available 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.

## 6.3 INSTRUCTIONS FOR OFFER SUBMISSION

### 6.3.1 GENERAL INSTRUCTIONS FOR OFFER

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

a) Organize the offer in the exact order in which the specifications are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP specification and the specific page of the response in the Vendor's offer.

b) Provide complete and comprehensive responses with a corresponding emphasis on being concise and clear. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.

c) Clearly state your understanding of the problem(s) presented by this RFP including your proposed solution's ability to meet the specifications, including capabilities, features, and limitations, as described herein, and provide a cost offer.

d) Supply all relevant and material information relating to the Vendor's organization, personnel, and experience that substantiates its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If relevant and material information is not provided, the offer may be rejected from consideration and evaluation.

e) Furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with its offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. Proposals that do not comply with these instructions may be rejected.

f) Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.

g) **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.

### 6.3.2 OFFER ORGANIZATION

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

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

a) Signed Execution Page AND all pages of this solicitation document in ONE (1) PDF. This includes:
   - Attachments A and B
   - Completed Description of Vendor Submitting Offer Form (Attachment C)
   - Completed Cost Form of Vendor's Offer (Attachment D)
   - Completed and Signed Vendor Certification Form (Attachment E)
   - Completed Location of Workers Utilized by Vendor Form (Attachment F)
   - Completed References (Attachment G)
   - Completed Financial Statements (Attachment H)

b) Vendor Response to Specifications and Requirements

c) Security Vendor Readiness Assessment Report (VRAR)

d) Architecture Diagrams

e) Detailed Project Timeline

f) Errata and Exceptions if any

g) Vendor's License and Maintenance Agreements (if any)

h) Vendor may attach other supporting materials that it feels may improve the quality of its response. These materials should be included as items in a separate appendix.

### 6.3.3 OFFER SUBMITTAL

| | |
|---|---|
| Due Date: | October 7, 2026 |
| Time: | 10:00 AM ET |

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

**Sealed offers,** subject to the conditions made a part hereof, will be received until 10:00 AM 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: WS1934246538
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, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor's files may result in the Vendor's offer(s) being rejected as Non-Responsive.
e) If the vendor's proposal contains any confidential information (as defined in Attachment B, Section 2, Paragraph #17), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

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

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

# 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 F** - Location of Workers Utilized by Vendor and submit with your offer.

## 7.2 FINANCIAL STATEMENTS

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

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

b) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.

c) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of this RFP award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

## 7.3 FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY

a) Contract Performance Security. The State reserves the right to require performance guaranties pursuant to N.C.G.S. §143B-1340(f) and 09 NCAC 06B.1207 from the Vendor without expense to the State.

b) Project Assurance, Performance and Reliability Evaluation – Pursuant to N.C.G.S. §143B-1340, the State CIO may require quality assurance reviews of Projects as necessary.

## 7.4 VENDOR'S LICENSE OR SUPPORT AGREEMENTS

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

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

## 7.5 RESELLERS

RESERVED

## 7.6 DISCLOSURE OF LITIGATION

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

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

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

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

## 7.7 CRIMINAL CONVICTION

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

## 7.8 SECURITY AND BACKGROUND CHECKS

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

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

## 7.9 ASSURANCES

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

a) the ability of the Vendor or its subcontractor to continue to perform the Agreement in accordance with its terms and conditions, or

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

## 7.10 CONFIDENTIALITY OF OFFERS

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

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

## 7.11 PROJECT MANAGEMENT

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

## 7.12 MEETINGS

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

**a.** Post award management review meetings. The NCDPI shall schedule a meeting (either in the NCDPI Education Building in Raleigh, North Carolina or via an NCDPI approved meeting platform) for all pertinent Vendor personnel as soon as possible after the contract has been awarded. The meeting shall include NCDPI personnel and other designees, as determined by the NCDPI, to discuss the required services, review the Vendor's work plan and implementation schedule, and obtain specific information, data, criteria, and/or instructions necessary to finalize the Vendor's work plan as submitted in the Vendor's awarded proposal.

## 7.13 RECYCLING AND SOURCE REDUCTION

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

Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.

## 7.14 SPECIAL TERMS AND CONDITIONS

**RESERVED**

## 7.15 AGENCY TERMS AND CONDITIONS

### 7.15.1 Parental consent

The Vendor shall not ask students to sign any type of agreement, authorization, or statement https://studentprivacy.ed.gov/faq/what-ferpa

### 7.15.2 Contacting media

The Vendor shall not contact the media regarding assessment results, including North Carolina testing data in any public release from the Vendor, or profit in any way from North Carolina student test data. Any contact with the media concerning the state test administration, students, or student information shall be made by the NCDPI.

### 7.15.3 Testing windows

All testing windows shall be approved by the State. Proposed testing windows shall allow for and support testing sessions to accommodate unforeseen events and circumstances that include, but are not limited to inclement weather events, widespread technology outages, the ability to extend a testing window, etc.

### 7.15.4 Materials delivery

All secure and non-secure testing materials for all tests will arrive in schools no later than one week prior to all scheduled test dates. The Vendor shall build an additional ordering window into the test administration schedule to allow for unforeseen circumstances. All material shipments will be designated as "inside delivery required" and should be delivered during regular school day hours to an individual who can provide a signature of receipt. Signatures of receipt will provide proof of delivery and allow the Vendor's Contractor, districts, and schools to track all shipments. In collaboration with the NCDPI, the Vendor shall establish and implement a protocol for unsuccessful material deliveries to mitigate late or lost test materials.

### 7.15.5 Data management and final score file

The Vendor's delivery of the test data files to the State shall occur no later than June 1 of each year, and if June 1 is a Saturday or Sunday, the directly preceding Friday.

### 7.15.6 Online testing delivery platform

**7.15.6.1** The online testing delivery platform shall meet the NCDPI's privacy and security requirements and industry security standards for delivering a secure assessment.

**7.15.6.2** Test Interruptions and Notifications. The Vendor shall mitigate test interruptions; the system shall recover data from any unforeseen test interruption and return the test-taker to the point of interruption.

The Vendor shall provide direct notification to the NCDPI Contract Lead of any testing delivery platform downtime, defects, or bugs in an efficient and timely manner. All testing delivery platform errors shall be reported to the NCDPI within 24 hours of detection. During active testing windows, the response time for reporting any such defect is expected to be shorter (i.e., no longer than 15 minutes). When contacting the State, the Vendor shall also include an estimated time for testing to resume. The Vendor shall keep a log of downtime, defects or bugs and provide this to the NCDPI in a root cause analysis. The log shall include the problem, solution, start date and time, and end date and time. Defects or bugs which have been identified and not resolved shall stay open on the monthly log until the issue(s) have been resolved. The Vendor shall also provide a contingency plan to NCDPI in the event of prolonged testing interruptions.

#### 7.15.7 Resources review and rollout.

Resource materials to assist each level of testing staff with all areas of test administration operations to include, but not limited to: user test administration guides and manuals, frequently asked questions (FAQ) documents, administration supplements, email communications, tutorials, demonstration videos, etc., shall be available to the NCDPI for review no later than 90-days prior to the first day of the assessment window(s) and available to schools and district no later than 60-days prior to the first day of the assessment window. The NCDPI must review and approve all resources for testing staff before resources are published and disseminated. The State requires a minimum two-week review period of all training resources and materials prior to the training date. Resources shall be finalized no later than 60 days prior to the first day of the assessment window(s).

#### 7.15.8 Training plan

Both in-person and online training and support for the tests shall be developed and provided by the Vendor to North Carolina educators as needed for each testing component.

All resources for each assessment shall be finalized no later than 30 days prior to the NCDPI training dates; the Vendor shall provide a minimum two-week review period to the NCDPI.

Webinars/Test Administration trainings shall be finalized and scheduled no later than 60 days prior to the first day of the assessment window(s).

## 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 (N.C.G.S. § 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.

    c. 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.

3) **Deliverables**: Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include “Work Product” and means any expression of Licensor’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information, but not source and object code or software.

4) **Goods**: Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).

5) **NCDIT or DIT:** The NC Department of Information Technology.

6) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.

7) **Reasonable, Necessary or Proper**: as used herein shall be interpreted solely by the State of North Carolina.

8) **Request for Proposal (RFP): The** RFP is a formal, written solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services. The RFP is used when the value is over $10,000. This document contains specifications of the RFP, instructions to bidders and the standard IT Terms and Conditions for Goods and Related Services. Users should add Supplemental Terms and Conditions for Software and Services, when applicable.

9) **Security Breach:** As defined in N.C.G.S. §75-61.

10) **Significant Security Incident (N.C.G.S. § 143B-1320):** A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:

    a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:

        i. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or

        ii. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.

    b. Incidents that involve information that is not recoverable or cannot be recovered within defined time lines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.

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

# ATTACHMENT B: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

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

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

   Agreement means the contract awarded pursuant to this RFP.

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

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

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

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

   State Data means any data, information, or materials provided to Vendor by or on behalf of the State or any authorized user, or otherwise stored, maintained, processed, or transmitted by Vendor for the State or any authorized user in connection with this Agreement, including any copies, backups, metadata, logs, identifiers, or extracts of such data. State Data does not include Deliverables or outputs, except to the extent they contain, disclose, incorporate, or can reasonably be used to identify or reconstruct State Data.
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)** **<u>PAYMENT TERMS</u>:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 9 (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq*. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:

a) Retain 20% (twenty percent) of each invoice amount until final acceptance of the Deliverable is completed.
b) Retain additional sums from invoiced or contracted amounts equal to 15% (fifteen percent) of such amounts for failure to deliver documentation including but not limited to end-user documentation and/or resources not delivered on time to the State for review, end-user documentation and/or resources not finalized according to the timelines specified in this agreement, and/or end-user documentation and/or resources required changes to documentation after being published and disseminated to end users.
c) Retain additional sums from invoiced or contracted amounts equal to 10% (ten percent) of such amounts for errors in grammar, content, consistency across publications, and/or incorrect information.
d) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
e) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
f) 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.
g) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as the Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

**11)** **<u>EQUAL EMPLOYMENT OPPORTUNITY</u>:** 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)** **<u>ADVERTISING/PRESS RELEASE</u>:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

13) **LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.

14) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation. 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; and
    b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of $2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
    c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be $500,000.00 bodily injury and property damage; $500,000.00 uninsured/under insured motorist; and $5,000.00 medical payment; and
    d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.

17) **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for

decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

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

a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.
b) Vendor warrants that all its employees and any approved third-party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 *et seq*. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

d) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.

e) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the State or are not proprietary to the Vendor are the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

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

a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.

b) Malfunctions and/or Interruptions to Testing Software Infrastructure. For instances where testing software does not perform or function appropriately to provide Deliverables as scheduled (i.e., test dates, test windows, open/close dates for documentation submission, etc.) the Vendor shall forfeit 10% (ten percent) of the retainage for such Deliverables.

c) 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.

d) 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.

e) 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 services or Software, cancel the portion of the Contract that relates to the unaccepted services or 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 services or Software and take action to procure substitute services or Software. If the failed services or Software (or the substituted services or 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. Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.

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

a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.

b) The Vendor's liability for damages to the State arising under the contract shall be limited to two (2) times the value of the Contract.

c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and

Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

23) **VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
   a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
   b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, Services, materials or supplies in connection with the performance of the Agreement, whether tangible or intangible, arising out of the ordinary negligence, wilful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors.
   c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

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

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

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

27) **TRANSPORTATION:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

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

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

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

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

32) **GOVERNING LAWS, JURISDICTION, AND VENUE:**

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

b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

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

**36)** **<u>CHANGES</u>:** 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)** **<u>FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT</u>:** 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)** **<u>ELECTRONIC PROCUREMENT</u> (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) **RESERVED**

b) **RESERVED**

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

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

**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 non-infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded Service or Deliverable, or (ii) results from the continued use of the good(s) or services and other Services or Deliverables after receiving notice they infringe a trade secret of a third party.

f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

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

a) It is understood and agreed by both parties that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.

b) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by the Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to the Vendor's personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.

c) All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the State prior to beginning work.

d) The State has the right to require the Vendor to stop or suspend performance under the "Stop Work" provision of the North Carolina Department of Information Technology Terms and Conditions.

e) The Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:

   a. Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or

   b. Terminate the work authorization, or

   c. Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.

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

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

a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

    i) Cancel the Stop Work Order, or

    ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:

    i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of the Agreement, and

    ii) The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon an offer submitted at any time before final payment under the Agreement.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

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

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

## General Terms and Conditions Applicable to Software as a Service (SaaS)

### 1) DEFINITIONS

a) "State Data" means any data, information, or materials provided to Vendor by or on behalf of the State or any authorized user, or otherwise stored, maintained, processed, or transmitted by Vendor for the State or any authorized user in connection with this Agreement, including any copies, backups, metadata, logs, identifiers, or extracts of such data. State Data does not include Deliverables or outputs, except to the extent they contain, disclose, incorporate, or can reasonably be used to identify or reconstruct State Data.

b) "Deliverable/Product Warranties" shall mean and include the warranties provided for products or deliverables licensed to the State as included in Paragraph 7) c) of these Terms and Conditions unless superseded by the Vendor's Warranties pursuant to the Vendor's License or Support Agreements.

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

d) "State" shall mean the State of North Carolina, the NC Department of Information Technology as an agency, or the agency identified in this solicitation as the Purchasing State Agency and Award Authority.

e) "Support" includes provision of ongoing updates and maintenance for Vendor online software applications and, as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

### 2) ACCESS AND USE OF SAAS SERVICES

a) The Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein) 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 the 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. The Vendor has a limited, non-exclusive license to access and use the State Data as provided to the Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.

c) The Vendor or its suppliers shall, at a minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). The Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to the Vendor's SaaS tenants for similar Services. The Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. The Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.

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

e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.

f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services so long as non-public State Data is not removed from the United States per paragraph 18) b). The Vendor shall identify all of its strategic business partners related to Services provided under this Agreement 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 or will be involved in any application development and/or operations.

g) The Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner, and in accordance with the Services documentation and this Agreement.

h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.

i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided unless otherwise agreed in writing by the parties.

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

a) The Vendor warrants to the best of its knowledge that:

i) The Services do not infringe any intellectual property rights of any third party; and

ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Should any Services supplied by the Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor shall, at its option and expense, either procure for the State the right to continue using the Services or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in the Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected Services and refund any sums the State has paid the Vendor and make every reasonable effort to assist the State in procuring substitute Services. If, in the sole opinion of the State, the cessation of use by the State of any such Services due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge and the Vendor agrees to refund any sums the State paid for unused Services.

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 supplied by the Vendor, their use, or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. 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.

d) The 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 results from the State's material alteration of any Vendor-branded Services, or from the continued use of the good(s) or Services after receiving notice they infringe on a trade secret of a third party.

**4) ACCESS AVAILABILITY; REMEDIES**

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

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

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

1. A 10% service credit applied against future fees if the Vendor does not reach 99.9% availability.
2. A 25% service credit applied against future fees if the Vendor does not reach 99% availability.
3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if the 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 prorated one-day of the monthly subscription Services fee against future Services charges. Such credit(s) shall be applied to the bill immediately following the month in which the Vendor failed to meet the performance requirements or other service levels, and the credit will continue to be deducted from the monthly invoice for each prior month that the 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 (12)-month period, the State may also terminate the Agreement for material breach in accordance with the Default provisions hereinbelow.

c) Support Services. If the Vendor fails to meet Support Service response times as set forth herein or in an SLA for a period of three (3) consecutive months, a ten percent (10%) service credit will be deducted from the invoice in the month immediately following the third month, and the ten percent (10%) service credit will continue to be deducted from the monthly invoice for each month that the Vendor fails to meet the support response times for the remainder of the duration of the Agreement.

**5) EXCLUSIONS**

a) Except as stated above in Paragraphs 3 and 4, the 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 the Vendor's written instructions relating to the Services provided to the State;

iii) Force Majeure conditions set forth hereinbelow; or

iv) The State's sole misuse of, or its own inability to use, the Services.

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

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

RESERVED

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

RESERVED

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

**10) TRANSITION PERIOD -RESERVED**

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

**12) TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses specifically agreed to in writing and arising under the performance of this 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. The Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt, and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

**13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:**

**RESERVED**

**14) AVAILABILITY OF FUNDS**

**RESERVED**

**15) PAYMENT TERMS**

**RESERVED**

**16) ACCEPTANCE CRITERIA**

a) Initial acceptance testing is required for all Vendor supplied Services before going live 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 the Vendor's technical representations. Acceptance of Services may be controlled by additional written terms as agreed by the parties.

b) After initial acceptance of Services, the State shall have the obligation to notify the Vendor in writing and within ten (10) days following provision of any Deliverable described in the Agreement if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice has been successfully corrected.

**17) CONFIDENTIALITY**

**Reserved**

**18) SECURITY OF STATE DATA**

a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event or other eventuality. Proprietary Vendor materials shall be identified to the State by the Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts or State Data except (i) during data center operations; (ii) in response to service or technical issues; (iii) as required by the express terms of this Agreement; 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 the Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.

b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.

c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (https://it.nc.gov/document/statewide-data-classification-and-handling-policy), that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by the Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within twenty-four (24) hours of confirmation as required by N.C.G.S. § 143B-1379.

d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, and 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) The Vendor shall ensure that each system used to provide Services under this Agreement meets the applicable GovRAMP requirements based on the data classification level, as defined in the SISM and associated policies. For data classified as Public, the requirement shall be satisfied through a current GovRAMP Security Snapshot Score. For data classified as Internal, Confidential, or Restricted the Vendor shall achieve, or agree to achieve within the required timeframe, the applicable GovRAMP verified status. A FedRAMP Rev. 5 authorization may be accepted in lieu of a GovRAMP verified status, where applicable.

iii) That the Services will comply with the following:

(1) Any NCDIT security policy regarding Cloud Computing and the NCDIT 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 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 Agreement, 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 the 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 the Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.

g) Breach Notification. In the event the Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall, at its own expense (1) immediately notify the State's Contract Administrator of such Security Breach and perform a root cause analysis thereon; (2) investigate such Security Breach; (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.

h) Notification Related Costs. The Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach including, but not limited to (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall immediately notify the State of such Security Breach and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

i) The Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.

j) In the course of normal operations, it may become necessary for the Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.

k) Remote access to Data from outside the continental United States including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Purchasing State Agency.

l) In the event of temporary loss of access to Services, the Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.

m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, the Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the Purchasing State Agency. The Vendor shall provide such notification within twenty-four (24) hours after the Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, the Vendor shall inform the State of:

(1) The scale and quantity of the State Data loss;

(2) What the 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 the Vendor has taken or will take to prevent future State Data and Services loss.

(4) If the Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

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

n) In the event of termination of this Agreement, cessation of business by the Vendor or other event preventing the Vendor from continuing to provide the Services, the Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, and promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of the Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), the Vendor will also provide the State any data maps, documentation, software, or other materials necessary including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.

o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, 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.

**19) ACCESS TO PERSONS AND RECORDS**

Reserved

**20) ASSIGNMENT**

Reserved

**21) NOTICES**

Reserved

**22) TITLES AND HEADINGS**

Reserved

**23) AMENDMENT**

Reserved

**24) TAXES**

Reserved

**25) GOVERNING LAWS, JURISDICTION, AND VENUE**

Reserved

**26) DEFAULT**
Reserved

**27) FORCE MAJEURE**
Reserved

**28) COMPLIANCE WITH LAWS**
Reserved

**29) TERMINATION**
Reserved

**30) DISPUTE RESOLUTION**
Reserved

**31) SEVERABILITY**
Reserved

**32) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT**
Reserved

**33) ELECTRONIC PROCUREMENT**
Reserved

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

1) **VENDOR'S REPRESENTATION:** Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not

limit Vendor's obligations hereunder. Such third-party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

a) Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
b) Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.
c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.

**2) SERVICES PROVIDED BY VENDOR:** Vendor shall provide the State with implementation Services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The Services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement"). (Reserve if not needed)

**3) PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be noticed to the Agency's Contract Administrator in writing accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.

a) Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
b) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
c) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
   i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
   ii) Such use does not conflict with any procurement law, regulation or policy, or
   iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.
d) Unless otherwise provided by the Agency, the Vendor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the

accomplishment of the tasks specified in the Agreement. The Vendor shall be legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. The Vendor shall be solely responsible for acquiring any equipment, furniture, and office space not furnished by the State necessary for the Vendor to comply with the Agreement. The Vendor personnel shall comply with any applicable State facilities or other security rules and regulations.

4) **PERSONAL SERVICES**: The State shall have and retain the right to obtain personal Services of any individuals providing Services under the Agreement. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal Services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor to ensure continuity of Services provided under the Agreement. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal Services due as all or part of any performance due under the Agreement.
   a) RESERVED
   b) The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under the Agreement. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ best commercial efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.
   c) Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.
   d) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
      i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
      ii) Such use does not conflict with any procurement law, regulation or policy, or
      iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel

## ATTACHMENT C: DESCRIPTION OF OFFEROR

Provide the information about the offeror.

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

## ATTACHMENT D: COST FORM

Include the description, details on pricing, billing/invoicing, how home school tests and/or assessments will be differentiated from public school tests and/or assessments, details of administration sites and online accessibility, and ordering and reporting (separate from state's contract) details.

The Vendor ensures that the state is only charged once if a student tests twice.

**Retesting opportunity**

When a student is interrupted during an online administration and retakes the assessment on a different day, describe if there will be fees and to whom.

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

Note: For the matrices below, Vendors should imbed any potential Travel and Living costs for meetings into lump sum pricing below otherwise, standalone travel and living costs will be audited by the Agency and must be in accordance with state rates. See Section 5 of Attachment B for further details.

Also, shipping fees cannot be a standalone cost line item per the NCDIT Terms and Conditions. Shipping is to be FOB Destination. See Clause 27 of Attachment B for further details.

**Assessments**

| ITEM | Approximate Number of Students to be Tested (# of Students) | DESCRIPTION | UNIT PRICE (per student test scored) | EXTENDED PRICE (Unit Price x Number of Students) |
|---|---|---|---|---|
| Test One (Grade 11 College Admissions Test) | 125,000 | | $__________ | $__________ |
| Test Two (Grade 10 Diagnostic Test)* | 125,000 | | $__________ | $__________ |
| **Totals** | 250,000 | | $__________ | $__________ |

*The Grade 8 and the Grade 10 Diagnostic tests are dependent upon funding and may not be included in the final contract award.

**Optional Assessments or Assessment Configurability (3.4.15)**

| ITEM | Approximate Number of Students to be Tested (# of Students) | DESCRIPTION | UNIT PRICE (per student test scored) | TOTAL PRICE (Unit Price x Number of Students) |
|---|---|---|---|---|
| Test Three (Grade 8 Diagnostic Test)* | __125,000________________ | | $_________________ | $_________________ |
| Totals | ____125,000______________ | | $_________________ | $_________________ |

## ATTACHMENT E: VENDOR CERTIFICATION FORM

1) **ELIGIBLE VENDOR**

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

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

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

2) **CONFLICT OF INTEREST**

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

3) **E-VERIFY**

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

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

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

Signature: ______________________________________________ Date:

Printed Name: ______________________________________ Title:

## ATTACHMENT F: LOCATION OF WORKERS UTILIZED BY VENDOR - DISCLOSURE STATEMENT

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:

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.

| |
|---|
| Click here to enter text. |

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 G: REFERENCES

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

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

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

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

## ATTACHMENT H: FINANCIAL REVIEW FORM

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

1. Vendor Name:

2. Company structure for tax purposes (C Corp, S Corp, LLC, LLP, etc.):

3. Have you been in business for more than three years? ☐ Yes ☐ No

4. Have you filed for bankruptcy in the past three years? ☐ Yes ☐ No

5. In the past three years, has your auditor issued any notification letters addressing significant issues? If yes, please explain and provide a copy of the notification letters. ☐ Yes ☐ No

6. Are the financial figures below based on audited financial statements? ☐ Yes ☐ No

7. Start Date of financial statements:

   End Date of financial statements:

8. Provide a link to annual reports with financial statements and management discussion for the past three complete fiscal years:

9. Provide the following information for the past three complete fiscal years:

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