

STATE OF NORTH CAROLINA DEPARTMENT OF REVENUE Information Technology Division	INVITATION FOR BIDS NO. 45-RQ255223
	Description: BeyondTrust Privileged Access Management
	Issue Date: 24 June 2026
<i>Refer <u>ALL</u> inquiries regarding this IFB to:</i> Justin Stringfield, Contract Specialist Justin.Stringfield@ncdor.gov 919-215-5229	Bid Opening Date: 8 July 2026 at 10:00 am ET
	Commodity Number: 811118
	Using Agency: Revenue
	Requisition No. RQ255223

OFFER AND ACCEPTANCE

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

EXECUTION

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

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

OFFEROR		
STREET ADDRESS		PO BOX, ZIP
CITY, STATE, ZIP		TELEPHONE NUMBER
NAME & TITLE OF PERSON SIGNING		
AUTHORIZED SIGNATURE	DATE	E-MAIL

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

ACCEPTANCE OF OFFER

If any or all parts of this solicitation are accepted, an authorized representative of the NC Department of Revenue (NCDOR) shall affix a signature hereto. A copy of this acceptance will be forwarded to the Vendor.

<u>FOR STATE USE ONLY:</u> Offer accepted and Contract awarded as indicated on the attached certification by	
_____	_____
Authorized representative of NC Department of Revenue	Date

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1.0 **INTENT, USE, DURATION AND SCOPE**

The purpose of this solicitation is to obtain pricing for and procure a turnkey BeyondTrust Privileged Access Management (“PAM”) solution, implementation services, and training for the North Carolina Department of Revenue (“NCDOR”).

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

2.0 **GENERAL INFORMATION**

2.1 **VENDOR QUESTIONS**

All inquiries regarding this IFB must be emailed to Justin.Stringfield@ncdor.gov.

Written questions will be received until 2 July, 2026 at 5 pm Eastern Time.

Please put “Questions – IFB 45-RQ255223” in the subject line of the email. Questions should be submitted in the following format:

REFERENCE	VENDOR QUESTION
IFB Section, Page Number	

Vendor communications with anyone other than the person named above may be grounds for rejection of said Vendor’s offer.

2.2 **ADDENDUM**

The Agency will issue an Addendum to provide a response to all questions received in accordance with Section 2.1 above.

The Agency may issue additional Addenda as needed to modify the specifications, requirements, terms and conditions, etc.

All Addenda will be posted on the electronic Vendor Portal (eVP) website at <https://evp.nc.gov> and will become Addenda to this IFB.

Critical information may be included in these Addenda. It is important for Vendors to periodically check the website for any and all Addenda that may be issued prior to the bid opening date.

2.3 **OFFER SUBMITTAL**

Due Date: 8 July, 2026

Time: 10:00 am Eastern Time

Sealed offers, subject to the conditions made a part hereof, will be received until the time and date specified above and then opened for furnishing and delivering the commodity as described herein. It is the Vendor’s sole responsibility to submit its offer by the specified time and date of opening. The 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.

- a) Submit **one (1) signed, original electronic offer** via the Ariba Sourcing Module.

The Vendor must include all pages of the solicitation in its offer. The execution page must be signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed offer shall result in disqualification.

- b) File names should identify the Vendor, solicitation, and document in that order (Vendor Name – IFB Number – Proposal, etc.).
- c) Files must not be password protected. They must be in .PDF, .JPEG, .DOC or .XLS format and capable of being copied to other sources. The Vendor's offer may be deemed non-responsive if the Agency is unable to open the file(s).
- d) If the offer contains any confidential information (as defined in the NCDIT Terms and Conditions, Section 1, Paragraph 18), the Vendor must provide one (1) redacted electronic copy in addition to the original copy.

2.4 BASIS FOR REJECTION

Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers in whole or in part by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. Vendor contact regarding this RFQ with anyone other than the person listed on page 1 may be grounds for rejection of said Vendor's offer.

2.5 LATE OFFERS

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

2.6 NON-RESPONSIVE OFFERS

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

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

2.7 NOTICE TO VENDORS

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

2.8 NC ePROCUREMENT

The State utilizes the NC eProcurement (NCEP) system to process requisitions and issue purchase orders. See <http://eprocurement.nc.gov/> and the NCDIT Terms and Conditions (Section 1, paragraph 47) for more information.

- a) It is the Vendor's responsibility to read these provisions carefully and to consider them in preparing the Offer. By signature, the Vendor acknowledges acceptance of all provisions related to NCEP.
- b) The transaction fee addressed in Section 7.0, Paragraphs 47 a) and b) applies to the purchase of goods (including the initial purchase of software). It does not apply to SaaS, software maintenance/support services, or any other type of services.
- c) If not already registered in NCEP, the Vendor selected for contract award must register within two (2) days after notification of contract award.
- d) The Vendor must be current on all NCEP fees prior to submitting an offer. Otherwise, the State may disqualify the Vendor from participating in this solicitation.

2.9 DISTRIBUTORS AND RESELLERS

"Resellers" as used herein, refers to businesses that routinely sell or distribute Vendor's Products, and may include "Distributors", "Value Added Resellers" (VARs), "Original Equipment Manufacturers" (OEMs), Channel Partners, or such other designations. These businesses must be approved by the State prior to placement of any orders. Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State's competitive bidding process.

The Agency acknowledges that the Reseller has merely purchased the Third-Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third-Party Items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third-Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third-Party Items which are provided to the Reseller. The Reseller shall assign all applicable third-party warranties for Deliverables to the Agency.

2.10 POSSESSION AND REVIEW

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

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

2.11 BEST AND FINAL OFFER

The State may establish a competitive range based upon evaluations of offers, and request Best and Final Offers (BAFOs) from the Vendor(s) within this range (i.e., Finalist Vendors). 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.

2.12 CONTRACT AWARD

It is the general intent to award this contract to one (1) Vendor. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with 09 NCAC 06B. 0302 Information Technology Procurement.

2.13 POINTS OF CONTACT

Contact with the persons shown below for contractual and technical matters related to this solicitation is only permitted if expressly agreed to by the Agency or upon award of contract:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
Contract Manager: Address: Phone Number: Email Address:	Technical Lead: Address: Phone Number: Email Address:

3.0 SPECIFICATIONS

3.1 VENDOR STANDARD AGREEMENT(S)

The terms and conditions of the Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Goods, Software and other Products acquired under this Agreement ("License Agreement") may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the NCDIT 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, legal fees or other similar costs.

A license agreement for BeyondTrust software and support will be finalized by and between BeyondTrust Corporation and NCDOR and will be applicable to this IFB. A fully executed copy of the updated license agreement shall be incorporated by reference to the final version of this IFB via a Best and Final Offer.

3.2 **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.**

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 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 provide the following information with its Offer (attach additional pages if needed). The State will evaluate this information for additional risks, costs, and other factors associated with its service prior to making an award.

- a) Will any work under this under this Agreement be performed outside the United States?

☐ YES ☐ NO

If yes, specify the location(s) where such work will be performed:

- b) Describe the corporate structure and location of corporate employees and activities of the Vendor, its affiliates, or any other subcontractors.

- c) The Vendor agrees to notify the State if any work under the Agreement will be relocated outside of the United States.

☐ YES ☐ NO

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

☐ 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. The Vendor should account for this when preparing its offer.

3.3 **E-VERIFY**

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

3.4 BRAND SPECIFIC PRODUCT

Manufacturer(s) name and product descriptions used in this solicitation are product specific. The items offered in response to this solicitation must be the manufacturer and type specified. Failure to comply with this requirement will result in rejection of offer.

3.5 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The *BeyondTrust PAM solution* will be required to receive and securely manage data that is classified as *Confidential*.

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 Confidential data.

- (a) Reserved.
- (b) Upon request, Vendors shall provide a current independent third-party assessment report in accordance with the following subparagraphs (i)-(iii) prior to contract award. However, Vendors are encouraged to provide a current independent third-party assessment report in accordance with subparagraphs (i)-(iii) at the time of offer submission.
 - (i) Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, ISO 27001, or HITRUST are the preferred assessment reports for any Vendor solutions which will handle data classified as Medium Risk (Restricted) or High Risk (Highly Restricted).
 - (ii) A Vendor that cannot provide a preferred independent third-party assessment report as described above may submit an alternative assessment, such as a SOC 2 Type 1 assessment report. The Vendor shall provide an explanation for submitting the alternative assessment report. If awarded this contract, a Vendor who submits an alternative assessment report shall submit one of the preferred assessment reports no later than 365 days of the Effective Date of the contract. Timely submission of this preferred assessment report shall be a material requirement of the contract.
 - (iii) An IaaS vendor cannot provide a certification or assessment report for a SaaS provider UNLESS permitted by the terms of a written agreement between the two vendors and the scope of the IaaS certification or assessment report clearly includes the SaaS solution.
- (c) Additional Security Documentation. Prior to contract award, the State may in its discretion require the Vendor to provide additional security documentation, including but not limited to vulnerability assessment reports and penetration test reports. The awarded Vendor shall provide such additional security documentation upon request by the State during the term of the contract.

3.6 ENTERPRISE ARCHITECTURE SPECIFICATIONS

Vendors should refer to the Vendor Resources Page (<https://it.nc.gov/resources/statewide-it-procurement/vendor-engagement-resources>) for information on the State's standards for architecture, security, strategy, data quality, digital services, and identity and access management.

- 3.6.1 ARCHITECTURE DIAGRAMS** – Reserved.
- 3.6.2 SOLUTION ROADMAP** – Reserved.
- 3.6.3 IDENTITY AND ACCESS MANAGEMENT** – Reserved.
- 3.6.4 INTEGRATION APPROACH** – Reserved.
- 3.6.5 DISASTER RECOVERY AND BUSINESS CONTINUITY** – Reserved.
- 3.6.6 DATA MIGRATION** – Reserved.
- 3.6.7 APPLICATION MANAGEMENT** – Reserved.
- 3.6.8 ACCESSIBILITY**

Describe how the proposed solution complies with industry accessibility standards:

1. W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1: <https://www.w3.org/TR/WCAG21/>
2. Section 508 – Rehabilitation Act of 1973: <https://www.section508.gov/>
3. Voluntary Product Accessibility Template (VPAT®): <https://www.itic.org/policy/accessibility/vpat>

Explain whether the Solution is digitally accessible. If not fully accessible, describe the roadmap with a timeline for remediation.

3.7 DELIVERY

Successful Vendor will complete the work within ninety (90) consecutive calendar days after receipt of purchase order in accordance with Attachment A – Statement of Work for Implementation Services.

Artifact deliverables must be sent electronically to Michael.Circello@ncdor.gov.

If circumstances beyond the control of the contractor result in late delivery or implementation, it is the responsibility and obligation of the contractor to notify the Purchasing Agent listed on the purchase order, in writing, immediately upon determining delay. The written notification should indicate the anticipated delivery date.

3.8 CONTRACT TERM

A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The Initial Term shall be three (3) years, invoiced annually, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier.

The State retains the option to extend this contract for two (2) additional one (1) year periods ("Renewal Term(s)") at its sole discretion.

3.9 REQUIREMENTS

3.9.1 Core Modules —The turnkey PAM solution must provide:

- a. Privileged Remote Access: Secure jump/bastion capabilities with session joining and real-time termination.
- b. Privileged Remote Access Training for Administrators for FedRAMP, annual access for three (3) administrators
- c. Cloud, On-premises, or Hybrid Deployment: Support for appliance, virtual machines, software-as-a-service, or hybrid modules with high-availability clustering

3.9.2 Technical Specifications —The turnkey PAM solution must demonstrate compliance with the following:

- a. Sizing and Performance: Support for 100 licensed seats and 100 concurrent sessions, with the ability to scale to 500 sessions. Console response times must be less than two (2) seconds.
- b. Integration: Native connectors for NCID, Microsoft Entra (or equivalent), Active Directory (“AD”)/Lightweight Directory Access Protocol (“LDAP”) Security Assertion Markup Language (“SAML”) 2.0, and Security Incident Event Management (“SIEM”) tools (e.g. Palo Alto, QRadar, or equivalent), while supporting Syslog, Common (“CEF”), or JavaScript Object Notation (“JSON”) formats
- c. Encryption: AES256 for data at rest and TLS 1.2+ for data in transit, utilizing FIPS 140-2/3 validated modules.
- d. Audit and Compliance: Tamper-evident session recording (video and keystroke) with immutable logs stored for a minimum of twelve (12) months. Compliant with IRS Publication 1075 Safeguarding Requirements.
- e. Vulnerability Management: Remediation of Critical CVSS $\geq$ vulnerability within seven (7) calendar days

3.9.3 Implementation Services

The Vendor shall provide professional services to deploy the PAM solution in accordance with Attachment A – Statement of Work.

3.9.4 Administrator and End User Training

The Vendor must provide a minimum of one (1) eight (8)-hour remote Administrator course and two (2) four (4)-hour end user remote training sessions to include:

- i Shadow and coach Administrators on routine administrator tasks
- ii Walkthrough of configuration changes and troubleshooting steps
- iii Share best practice recommendations

4.0 **FURNISH AND DELIVER**

The Vendor must provide the cost of each item for twelve (12)-month periods.

ITEM	QTY	UNIT	DESCRIPTION	YEAR 1	YEAR 2	YEAR 3
1	1	License	Advanced Web Access for FedRAMP Accounts (PRA Cloud), Tier 1 Part # PRA-CLOUD-FEDRAMP-WEB Duration: 36 Months, invoiced annually			
2	100	License	Privileged Remote Access Per Asset Cloud for FedRAMP Accounts Part # PRAA-CLOUD-FEDRAMP Duration: 36 Months, invoiced annually			
4	3	License	Privileged Access Training for Admin for FedRAMP Accounts Part # BTU-PRA-ADMIN-SUB-FR Duration: 36 Months, invoiced annually			
4	1	Job	Professional Services as described in Attachment A Statement of Work, including all required Artifact Deliverables			
5	1	Job	Administrator and End User Training Services as described in Specification 3.9.4 above			
ANNUAL TOTALS FOR INITIAL TERM						

Total Three-Year Cost \$ _____

OPTIONAL COSTS – may or may not be purchased

ITEM	QTY	UNIT	DESCRIPTION	YEAR 4	YEAR 5
6	1	License	Advanced Web Access for FedRAMP Accounts Part # PRA-CLOUD-FEDRAMP-WEB		
7	100	License	Privileged Remote Access Per Asset Cloud for FedRAMP Accounts Part # PRAA-CLOUD-FEDRAMP		
8	3	License	Privileged Access Training for Administrators for FedRAMP Accounts Part # BTU-PRA-ADMIN-SUB-FR		
ANNUAL TOTALS FOR OPTIONAL RENEWAL TERMS					

5.0 **HISTORICALLY UNDERUTILIZED BUSINESSES**

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

See <http://ncadmin.nc.gov/businesses/hub> for more information.

Is the Vendor a Historically Underutilized Business? ☐ YES ☐ NO

If yes, specify classification: _____

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

1) **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.

2) **DEFINITIONS**

- **NCDIT:** The North Carolina Department of Information Technology, formerly Office of Information Technology Services
- **NCDIT CONVENIENCE CONTRACT:** A contract that is used for the procurement of IT goods or Services. These contracts are in place for the convenience of the state and use of them is optional.
- **OPEN MARKET CONTRACT:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- **TERM CONTRACT:** A contract in which a source of supply is established for a specified period of time for specified Services or supplies; usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price
- **THE STATE:** The state of North Carolina and its agencies.
- **VENDOR:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.

3) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.

4) **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the purchaser named on the cover sheet of this document. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDOR. The Vendor is cautioned that the requirements of this solicitation can be altered only by written addendum and that verbal communications from whatever source are of no effect.

5) **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all offers, to waive any informality in offers and, unless otherwise specified by the Vendor, to accept any item in the offer. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

6) **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. § 143-135.9. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDOR reserves the right to make partial, progressive or multiple awards: where it is advantageous to award

separately by items; or where more than one supplier is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDOR to be pertinent or peculiar to the purchase in question.

- 7) **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 8) **PROTEST PROCEDURES**: When an offeror wants to protest a contract awarded pursuant to this solicitation that is over \$25,000 they must submit a written request to the issuing agency at the address given in this document. This request must be received in this office within fifteen (15) calendar days from the date of the contract award, and must contain specific sound reasons and any supporting documentation for the protest. **Note**: Contract award notices are sent **only** to those actually awarded contracts, and not to every person or firm responding to this solicitation. IFB status and Award notices are posted on the Internet at <https://evp.nc.gov>. **All protests will be governed by NCAC Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**
- 9) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: Reserved.
- 10) **DIGITAL IMAGING**: Reserved.

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

Section 1: Terms and Conditions Applicable to All Purchases

- 1) **DEFINITIONS**: As used herein
 - a) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraphs 7 and 8, and included in Paragraph 29 c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to the Vendor's License or Support Agreements.
 - b) Purchasing State Agency or Agency shall mean the Agency purchasing the goods or Services.
 - c) Services shall mean the duties and obligations accepted by the Vendor to carry out the requirements, and meet the specifications, of this procurement.
 - d) State shall mean the State of North Carolina, the NC Department of Information Technology as an Agency or in its capacity as the Award Authority.
- 2) **STANDARDS**: Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. The Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:
 - by State or federal Regulation,
 - by the Chief Information Officer's (CIO) policy or regulation, or
 - acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

- a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor, and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
 - b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract including deinstallation, and freight to destinations within the Continental United States except in the case of default by the Vendor or delivery of non-conforming goods by the Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.
 - c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, the Vendor shall supply proof of compliance with the specifications. The Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by the Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.
- 3) **WARRANTIES:** The Vendor shall assign all applicable third-party warranties for Deliverables to the Purchasing State Agency.
- 4) **PERSONNEL:** The Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator with the exception of events outside of the Vendor's control such as key personnel death, injury, illness, or termination of employment. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of the Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract Services provided by such personnel.
- a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular workdays and normal work hours except as may be specifically agreed otherwise, established in the specification, or statement of work.
 - b) This Contract shall not prevent the Vendor or any of its personnel supplied under this Contract from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that such use does not conflict with:
 - i) the terms, specifications or any amendments to this Contract;
 - ii) any procurement law, regulation or policy; or
 - iii) any non-disclosure agreement, or term thereof, by and between the State and the Vendor or the Vendor's personnel.

- 5) **SUBCONTRACTING**: The Vendor may subcontract the performance of required Services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. The Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third-party beneficiary of the contract; that the subcontractor has no agreement with the State and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, the Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 6) **VENDOR'S REPRESENTATION**: The 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. The Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. The Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents and shall not limit the Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to the Vendor. The 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**. The Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. The Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) **Inherent Services**. If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for the Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, the Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
- c) The Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that the Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against the Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
- d) **Warranty as to Equipment; Hardware**. The Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.
- 7) **SOFTWARE LICENSE** (for embedded software, firmware, and unless otherwise provided in the State's solicitation document or in an attachment hereto) – Reserved.

- 8) **MAINTENANCE/SUPPORT SERVICES:** Unless otherwise mutually provided herein, for the first year after the expiration of any warranty coverage (and for all subsequent Contract years, for which Support is purchased), the Vendor agrees to provide the following Support Services for the Hardware and any Software provided with the Deliverables for any years in which the applicable support fees are paid, which may be more particularly described, e.g., under part numbers, in the Furnish and Deliver Table above.

HARDWARE/EQUIPMENT – Reserved.

SOFTWARE

- a) **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), the Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. The Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance Services under this Paragraph.
 - b) The Vendor shall notify the State of any material errors or defects in the Deliverables known or made known to the Vendor from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results. The Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
 - c) **Updates.** The Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as “Changes”) for any Software Deliverable developed or published by the Vendor and made generally available to its other customers at no additional charge. All such Changes shall become a part of the Software and Documentation and, as such, will be governed by the provisions of this Contract.
 - d) **Telephone Assistance.** The Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Standard Time, Monday-Friday. The Vendor shall respond to the telephone requests for Program maintenance service within four (4) hours for calls made at any time.
- 9) **TRAVEL EXPENSES:** All travel expenses should be included in the Vendor’s proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. § 138-6 as amended from time to time. 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 Contract.
- 10) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise the 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,

the Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate the Vendor for sums due under the Contract.

11) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: The 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. The Vendor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by his/her respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. The Vendor and its 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 this Contract, obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 09 NCAC 06B.1206, or other provision of law.

12) AVAILABILITY OF FUNDS: Any and all payments to the Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to the Vendor. If the Contract is terminated under this paragraph, the Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any Services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

13) PAYMENT TERMS: Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon the Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor or
- b) Include any person or entity designated in writing by the Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

- 14) ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify the Vendor in writing ten (10) calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by the Vendor as provided herein.
- 15) EQUAL EMPLOYMENT OPPORTUNITY:** The Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 16) INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, during the Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
- 17) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 18) CONFIDENTIALITY:** In accordance with N.C.G.S. §§ 143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. § 132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. § 66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. § 132-1.2. The 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 the Vendor's confidential information and not as an arbiter of claims against the 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 the 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 the 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: The Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
- b) The 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. The Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by the Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws provided that the 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 the 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 NC Department of Information Technology or the NC Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Non-Disclosure: The Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

19) DELIVERABLES: Deliverables, as used herein, shall comprise all Services, project materials, including goods, software licenses, data, and documentation created during the performance or provision of Services hereunder. Deliverables are the property of the State of North Carolina except where licensed or leased to the State. Proprietary Vendor materials licensed to the State shall be identified to the State by the Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

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

21) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION

- a) The Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how,

techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

- b) The 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 the Vendor. The State hereby grants the Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for the Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. § 143B-1350(h1). Such defense and payment shall be conditioned on the following:
 - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and
 - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or software supplied by the Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software or to replace or modify the same to become 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 goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software and refund any sums the State has paid the Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid the Vendor less any reasonable amount for use or damage.
- e) 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 (i) results from the State's alteration of any Vendor-branded product or Deliverable; or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect the Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.
- g) Sole and Exclusive Remedy. The remedies provided represent the sole and exclusive remedy available to the State under this section.

22) ACCESS TO PERSONS AND RECORDS: Pursuant to N.C.G.S. § 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.

23) ASSIGNMENT: The Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. The Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of the Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of the Vendor and Assignee.

24) INSURANCE COVERAGE: During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. At 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 the Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract; and
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

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

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

- a) If the Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to the Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. § 143B-1340(f). The Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which the Vendor's performance is conditioned, the Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. The Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offers that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) The Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.

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

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

- a) The parties may mutually terminate this Contract by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 26) 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 the Vendor, the State may cancel and exercise its rights under 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. The Vendor shall not be relieved of liability to the State for damages sustained by the State arising from the Vendor's breach of this Contract and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by the 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. The 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.
- c) The Vendor may terminate the Contract if the State breaches its payment obligations under this Contract and fails to cure such default within thirty (30) days after receiving written notice specifying such default.

29) LIMITATION OF VENDOR'S LIABILITY

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State arising under the Contract shall be limited to two (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 Warranty compliance, or to claims for injury to persons or damage to tangible personal property caused by the Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. § 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

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

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

wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.

- c) The Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor.

31) CHANGES: This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or offer on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or Services delivered without a purchase order from the Agency or State Award Authority.

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

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

33) PRICE ADJUSTMENTS FOR TERM CONTRACTS: Reserved.

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

- 35) DATE AND TIME WARRANTY:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.
- 36) INDEPENDENT CONTRACTORS:** The Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.
- 37) TRANSPORTATION:** Transportation of Deliverables shall be FOB Destination unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 38) NOTICES:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 39) TITLES AND HEADINGS:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 40) AMENDMENT:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and the Vendor in conformance with Paragraph 31) herein.
- 41) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to the Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

42) GOVERNING LAWS, JURISDICTION, AND VENUE

- a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. The Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters.
- b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.

- 43) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 44) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 45) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 46) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
- 47) ELECTRONIC PROCUREMENT:** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- a) **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under this contract. The Vendor will receive a credit for transaction fees it paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- b) The Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless the Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and the Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, the Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic

documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of contract, and the payment for goods delivered.
- d) The Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If the Vendor is a corporation, partnership or other legal entity, the Vendor may authorize its employees to use its password. The Vendor shall be responsible for all activity and all charges for such employees. The 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, the Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. The Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

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

1) DEFINITIONS

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

2) ACCESS AND USE OF SAAS SERVICES

- a) The Vendor grants the State a personal non-transferable and non-exclusive right to use and access all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users,

the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1 *et seq.*

- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by 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 the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract including, but not limited to,

all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, or who will be involved in any application development and/or operations.

- g) The Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

3) WARRANTY OF NON-INFRINGEMENT; 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 contract term without cost to the State. If the Services' monthly availability averages less than 95.0% (excluding agreed-upon maintenance downtime), the Vendor offers the following credits:

Service Credits	Credit Percentage
> = 95.0%	0%
> 90.0% and < = 94.9%	5%
< = 90.0%	10%

- 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 5% service credit will be deducted from the invoice in the month immediately following the third month, and the 5% 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:
- Actions of non-Vendor personnel;
 - Failure to follow the Vendor's written instructions relating to the Services provided to the State; or
 - Force Majeure conditions set forth hereinbelow.
 - The State's sole misuse of, or its own inability to use, the Services.

- 6) PERFORMANCE REVIEW AND ACCOUNTABILITY:** N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of zero percent (0%) of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

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

- 8) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY – Reserved.**

- 9) MODIFICATION OF SERVICES:** If 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

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

11) TRANSPORTATION: Reserved.

12) TRAVEL EXPENSES: Reserved.

13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: Reserved.

14) AVAILABILITY OF FUNDS: Reserved.

15) PAYMENT TERMS

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein but shall not increase more than five percent (5%) over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
- b) Upon the Vendor's written request of not less than thirty (30) days and approval by the State, the State may:
 - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor or

- ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,
- iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by the Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon the Vendor's receipt of a disputed invoice notice, the Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as the Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

16) ACCEPTANCE CRITERIA

- 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 contract 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 have been successfully corrected.

17) CONFIDENTIALITY: 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. The Vendor may designate information, Products, Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, or portion of a page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions 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 agrees to promptly

notify the Vendor in writing of any action seeking to compel the disclosure of the Vendor's confidential information. 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 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 the Vendor with respect to the disclosure of the Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. § 132-9 or other applicable law.

18) SECURITY OF STATE DATA

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

e) The Vendor shall certify to the State:

- i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
- ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid third party security certification not to exceed one (1) year and is consistent with the data classification level and a security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.

iii) That the Services will comply with the following:

(1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:

(a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.

(b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;

(2) Privacy provisions of the Federal Privacy Act of 1974;

(3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. §§ 75-65 and -66);

(4) The North Carolina Public Records Act, N.C.G.S. Chapter 132;

(5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA); and

(6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.

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 Agreement Administrator of such Security Breach and perform a root cause analysis thereon; (2) investigate such Security Breach; (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. The Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach including, but not limited to, (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- i) The Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for the Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, the Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA.

As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.

- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, the Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. 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 contract, cessation of business by the Vendor or other event preventing the Vendor from continuing to provide the Services, the Vendor shall not withhold the State Data or any other State confidential information or refuse, for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of the Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), the Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, and paper). Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods, and certificates of destruction shall be provided to the State.

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: Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract. The E-Procurement fee does not normally apply to services.

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 Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Agreement. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) The Vendor agrees at all times to maintain the confidentiality of its username and password for the Statewide E-Procurement Services. If the Vendor is a corporation, partnership or other legal entity, the Vendor may authorize its employees to use its password. The Vendor shall be responsible for all activity and all charges for such employees. The 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, the Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. The Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

ATTACHMENT A: STATEMENT OF WORK FOR IMPLEMENTATION SERVICES

1. Purpose and Scope of Work

NCDOR seeks implementation and support services for a turnkey BeyondTrust Privileged Access Management (“PAM”) solution. Implementation and support services will include project planning and solution design, privileged remote access (“PRA”) platform deployment and configuration, identity and authentication integration, secure access enablement for servers, network devices, applications, and third-party users, and the establishment of security policies and compliance controls. The engagement will conclude with system testing, knowledge transfer, and administrator training to ensure long-term operational success. The awarded Vendor will be responsible for the following tasks.

1.1 Project Planning and Readiness

- Review current PRA deployment status, architecture, policies, and integrations
- Identify backlog/tasks with Customer (e.g., onboarding flows, access policies, gateways)
- Validate environment access, and prerequisites
- Collaborate with Customer Project Manager (“PM”) to establish day-to-day task planning and cadence (stand-ups, weekly syncs)

1.2 Environment Configuration and Administration

- Communicate required network changes (ports, routing, network address translation (“NAT”)/firewall rules) as required by PRA connectivity plans
- Configure/adjust PRA components (e.g., Jump points, Jump Groups, Jump Items, Group Policies, Appliance settings, secure tunneling, policy enforcement) per Customer direction and per best practice
- Define/maintain permission sets, group mappings, role-based policies.
- Onboard/decommission systems, vendors, and privileged users to PRA
- Configure session policies (approval, recording, auditing settings) and least privilege controls

1.3 Integration Support

- Support directory integration (e.g., Active Directory (“AD”)/Lightweight Directory Access Protocol (“LDAP”), Entra, Multi-factor Authentication (“MFA”)/Single Sign-on (“SSO”) (e.g., Security Assertion Markup Language (“SAML”)/ OpenID Connect (“OIDC”)), and ticketing/IT Service Management (“ITSM”) hooks as directed
- Coordinate with security, network, and Identity and Access Management (“IAM”) teams for cross-domain workflows
- Validate logging/forwarding to security incident event management (“SIEM”) or audit systems (as requested)

1.4 Operations and Monitoring

- Assist with PRA health checks, appliance updates/patching windows (Customer-approved)
- Support incident response and break/fix for PRA-related issues
- Analyze session logs and access events; suggest tuning of policies
- Create/maintain runbooks and standard operating procedure (“SOP”) notes inside Customer repositories (informal operational notes)

2. Vendor Resource Responsibilities

- Vendor shall provide a full-time resource for NCDOR's implementation of BeyondTrust PRA and project manager to oversee the implementation of PRA.
 - Deploy and configure BeyondTrust PRA platform
 - Integrated identity and authentication
 - Secure access enabled for agreed systems and users
 - Privileged access policies and session monitoring configured
 - Testing and validation of all access workflows
 - Administrator training and knowledge transfer
- Vendor shall comply with applicable onboarding requirements attached as Attachment B: Onboarding Requirements for Contractors.
- Tasks to be completed during normal business hours between 8:00 a.m. and 5:00 p.m. EST, Monday through Friday, excluding state-observed holidays.

3. Timeline for Implementation and Location for Services

- Deployment will be completed within ninety (90) calendar days of award.
- Services performed under this SOW will be performed remotely.

4. Deliverables

Vendor must provide the following artifacts:

- Architecture diagrams
- Implementation plan
- Runbooks
- System configuration exports

5. Change Control

- The Parties may mutually agree, in writing, to change to project schedule and duration or work site location (i.e. onsite or remotely) at any time.
- Changes in project scope will require a Project Change Request that is in writing and signed by both parties. Any changes in scope that will result in a change in cost will require a contract amendment and revised purchase order. No work under the Project Change Request may commence until Vendor receives a full executed Project Change Request, or if applicable, a fully executed contract amendment and revised purchase order.

ATTACHMENT B: ONBOARDING REQUIREMENTS FOR CONTRACTORS



Onboarding Requirements for Contractors

All Vendor-provided and temporary staff (i.e., short-term contractors and seasonal staff), together referred to as “Contractors,” must fulfill certain onboarding requirements prior to beginning work at NCDOR. Onboarding requirements vary based on system and information access level and generally follow the principle of least privilege. Table 1 –Contractor Onboarding Requirements Matrix provides a guide for the most common levels of access and the corresponding onboarding requirements for each level. NCDOR IT Security will advise and approve access levels not represented on Table 1.

All applicable Onboarding Requirements must be completed and documentation submitted prior to beginning work at NCDOR.

The Onboarding Requirements are defined as follows:

- Confidentiality Statement:** Contractors must sign a Confidentiality Statement provided by NCDOR that acknowledges understanding of and adherence to NCDOR security policies and agrees to maintain the confidentiality of any NCDOR data to which the Contractor may have access. Recertification of this acknowledgment is required annually.
- Criminal Background Checks:** Any Contractor who will have access to NCDOR data must submit to and successfully pass an NCDOR-conducted criminal background check that includes fingerprinting. NCDOR determines the conditions for passing background checks. NCDOR repeats the background check every five (5) years.
- Security Awareness Training:** Contractors may be required to undergo NCDOR Security Awareness Training (“DORSAT”) annually. Contractors must provide a valid email address to receive access to the DORSAT.
- IT Role-Based Security Training:** Certain Contractors may also be required to complete annual IT role-based security training. See IRS Publication 1075, Control AT-3 for the scope and additional information. Vendor is required to provide IT role-based training for its staff. Compliance with this requirement will be audited by NCDOR at random.

TABLE 1 – CONTRACTOR ONBOARDING REQUIREMENTS MATRIX

NOTE: Read all indicated footnotes carefully as these contain important information

Level of Access	Confidentiality Statement	Background Check	DORSAT Training	Role-Based Training
¹ Escorted access – Must Be Escorted at All Times	YES	NO	NO	NO
Physical Access – Non-Escorted (Badge Access)	YES	YES	YES	NO*
² Logical Access to NCDOR Data/Systems/Information (Has an Account)	YES	YES	YES	YES
³ Logical Access to NCDOR Data/Systems/Information (Does Not Have an Account)	YES	NO	NO	NO

⁴ Offsite Contractor Staff with Physical Access to NCDOR Data/Systems/Information	YES	YES	YES	YES
Access to Unencrypted Paper or Electronic NCDOR Data	YES	YES	YES	YES
⁵ Logical Access to Encrypted Data	YES	NO	NO	NO

*If NCDOR Data will be accessed, Role-Based Training is required.

1. Individuals may utilize NCDOR equipment if they will be supervised with the equipment at all times. Unsupervised access to equipment requires a unique account that ties back to the individual and all account requirements listed in this matrix are required.
2. Accounts must be unique and must tie back to the individual.
3. Applies to individuals that will potentially view NCDOR data on screens as part of logical maintenance of systems, but who do not have an account. Data cannot be sent outside of the Agency without NCDOR management approval of the data sent and NCDOR IT Security approval of the method used to send the data. Maintenance activities (including remote maintenance) must be supervised by badged NCDOR staff or by a badged NCDOR management-approved designee. Any systems used to facilitate remote supervision must be secure and approved by NCDOR IT Security.
4. Access to data is defined for these purposes as individuals that have access through the first barrier of the two-barrier rule. See IRS Publication 1075 – Minimum Protections Standards for more information.
5. Encryption methods must conform to IRS Publication 1075 control requirements.