

<b>STATE OF NORTH CAROLINA</b>  <b>Department of Commerce</b> <b>Division of Employment Security</b>	<b>REQUEST FOR PROPOSAL NO. 43-1389-26</b>	
	Contract Name: DES UI Call Center Services	
<b>Refer <u>ALL</u> inquiries regarding this RFP to:</b> Name : Casey C.Jones Email : <a href="mailto:casey.c.jones@commerce.nc.gov">casey.c.jones@commerce.nc.gov</a>	Bid Opening Date: August 26, 2026	
	Issue Date: June 16, 2026	
	Commodity Code: 811617	
	Purchasing Agency: Division of Employment Security	
	Requisition No.: 12997289	

## OFFER

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

## EXECUTION

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

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

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

Offer valid for one hundred twenty (120) days from date of offer opening unless otherwise stated here: \_\_\_\_ days

## ACCEPTANCE OF OFFER

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

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

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## 1.0 ANTICIPATED PROCUREMENT SCHEDULE

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

Action	Responsibility	Date
RFP Issued	Agency	06/16/2026
Written Questions Deadline	Potential Vendors	07/01/2026 by 2:00 p.m. ET
Agency's Response to Written Questions/ RFP Addendum Issued	Agency	07/22/2026 by 5:00 p.m.ET
Offer Opening Deadline	Vendor(s)	08/26/2026 by 2:00 p.m. ET
Offer Evaluation	Agency	10/29/2026
Vendor Demonstrations ( <i>Optional</i> )	Selected Vendors	11/13/2026
Selection of Finalists	Agency	12/07/2026
Negotiations with Finalists	Agency designees and selected Vendor(s)	01/04/2027
Best and Final Offers Deadline from Finalists	Selected Vendors	01/19/2027
Contract Award	Agency	02/16/2027
Protest Deadline	Responding Vendors	15 days after award

## 2.0 PURPOSE OF RFP

### 2.1 INTRODUCTION

The purpose of this RFP is to solicit Offers for Unemployment Insurance Call Center services for the North Carolina Department of Commerce, Division of Employment Security. Services will be provided in accordance to the terms and conditions of this RFP

### 2.2 AGENCY BACKGROUND

The Division of Employment Security (DES) is responsible for the administration of the Unemployment Insurance (UI) program in the State of North Carolina. This program is a federal-state partnership and is funded by federal and state unemployment taxes employers pay on employee wages. Benefits are paid to eligible workers who lose their job through no fault of their own and are able, available and actively seeking work.

### 2.3 SUMMARY OF PROBLEM STATEMENT

DES is seeking to procure a modern, flexible Contact Center solution to support the delivery of Unemployment Insurance (UI) services statewide. Through this RFP, DES aims to partner with a vendor that can provide a responsive, claimant-focused solution that aligns with the agency's future operational and technology needs.

DES is seeking a solution that:

- Enhances the overall claimant experience through accessible, efficient customer support.

- Provides the ability to scale rapidly in response to fluctuations in UI claim volumes.
- Integrates securely and effectively with DES systems to support accurate and timely service delivery.
- Incorporates modern capabilities—such as intelligent automation, AI-supported IVR, and improved communication tools—to streamline interactions and improve operational efficiency.
- Supports DES’s broader modernization goals and aligns with evolving technology standards.
- Meets all applicable state and federal UI program requirements, including security, privacy, and performance expectations.

**Overall Goal:**

Through this competitive solicitation, DES intends to establish a partnership with a vendor that can deliver a forward-looking, service-oriented call center solution that advances the agency’s mission to provide timely and accurate unemployment services to the people of North Carolina.

## **2.4 CONTRACT TERM**

A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be one (1) year term with four (4) optional one (1) year renewals and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier.

## **2.5 INNOVATION**

The North Carolina Department of Commerce, Division of Employment Security (DES) encourages Vendors to propose innovative approaches, technologies, and service delivery models that enhance efficiency, scalability, and customer experience for the UI Call Center Services Solution.

Vendors are encouraged to leverage best practices and emerging technologies—such as AI-driven virtual agents, intelligent routing, analytics, and multilingual capabilities—to improve service outcomes, increase digital self-service, and reduce cost-to-serve.

DES is particularly interested in solutions that:

- Improve response times and first-call resolution
- Enhance claimant and employer experience
- Increase operational efficiency through automation
- Support scalable operations during demand surges
- Ensure equitable access through multilingual and accessible services

Vendors may propose value-added or alternative approaches beyond minimum specifications, provided they demonstrate clear benefits, feasibility, and alignment with DES objectives.

All innovation proposals must include a brief description, expected outcomes, associated costs (if any), and key assumptions. This is in addition to other required documents that the Vendor needs to include in their offer to be responsive and then evaluated.

## **2.6 EFFECTIVE DATE**

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

## **2.7 CONTRACT TYPE**

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

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

## **3.0 RFP REQUIREMENTS AND SPECIFICATIONS**

### **3.1 GENERAL REQUIREMENTS AND SPECIFICATIONS**

#### **3.1.1 REQUIREMENTS**

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

Offers must address all requirements and specifications in Attachment L. Where the Vendor selects "Yes," "Partial," "No," or "Roadmap," the Vendor shall provide the required explanation, limitations, alternatives, and implementation timeline in the workbook. Blank or missing responses may be deemed non-compliant and not evaluated

#### **3.1.2 SPECIFICATIONS**

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

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

#### **3.1.3 SITE AND SYSTEM PREPARATION**

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

#### **3.1.4 EQUIVALENT ITEMS**

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

### 3.1.5 ENTERPRISE LICENSING

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

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

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

## 3.2 SECURITY SPECIFICATIONS

### 3.2.1 SOLUTIONS HOSTED ON STATE INFRASTRUCTURE - RESERVED

### 3.2.2 SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE

The Agency (named on page one (1)) has designated this solicitation to receive and securely manage data that is classified as:

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

Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls.

This requirement additionally applies to all Vendor-provided, agency-managed Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions which will handle data classified as Internal, Confidential, or Restricted.

- (a) To comply with the State's Security Standards and Policies, cloud products are required to comply with applicable FedRAMP and/or GovRAMP security requirements, including but not limited to, continuous monitoring, incident response, and data classification as outlined in GovRAMP documentation.
- (b) To streamline and standardize this requirement the State has adopted GovRAMP which is a Risk and Authorization Management Program that provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. GovRAMP's security verification model is based on NIST 800-53 Rev. 5 (or current).
- (c) The required GovRAMP verified status will depend on the sensitivity of the data and processes supported by the solution as defined in the Statewide Data Classification and Handling Policy.
- (d) For purposes of this solicitation, in accordance with the North Carolina Department of Information Technology Statewide Information Security Manual, a GovRAMP verified status of Ready, Authorized or Provisionally Authorized Status is required. At offer submission, if the protected system does not currently hold a validated GovRAMP status, the Vendor will

be required to provide their GovRAMP Security Snapshot Score and upon request, the complete Snapshot Matrix. If awarded the contract, Vendor shall have an interim period from the effective date of the contract to achieve the verified GovRAMP status outlined above. The interim time periods for each data classification that requires a verified status are further described below. The Vendor shall provision access to the State to their continuous monitoring packages at a [standard] or [elevated] access level within fourteen (14) days of contract award, and seven (7) days of any subsequent GovRAMP status changes.

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

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

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

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

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

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

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

### **3.3 ENTERPRISE SPECIFICATIONS**

#### **3.3.1 ARCHITECTURE DIAGRAMS**

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



The State prefers to receive the two required architectural diagrams with the offer submission. If they are not provided at that time, the State may request them after submission; however, the Vendor must deliver them within seven (7) calendar days or the offer will be deemed non-responsive and will not be evaluated.

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

### **3.3.2 IDENTITY AND ACCESS MANAGEMENT**

The proposed solution must externalize identity and access management. The protocols describing the State's Identity and Access Management can be found at the following link: <https://it.nc.gov/services/vendor-engagement-resources#Tab-IdentityAccessManagement-1241>

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

### **3.3.3 SOLUTION ROADMAP**

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

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

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

### **3.3.4 INTEGRATION APPROACH**

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

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

Describe the proposed solution capabilities related to the following areas:

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

System Backup – describe backup plan capabilities.

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

### **3.3.6 DATA MIGRATION**

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

### **3.3.7 APPLICATION MANAGEMENT**

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

Describe how the proposed solution manages user administration.

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

### 3.3.8 ACCESSIBILITY

Describe how the proposed solution complies with industry accessibility standards.

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

Standards include:

- [State of North Carolina Digital Accessibility & Usability Standard](#)
- W3C Web Accessibility Initiative - Web Content Accessibility Guidelines (WCAG) 2.1: <https://www.w3.org/TR/WCAG21/>
- Section 508: <https://www.section508.gov/>
- Voluntary Product Accessibility Template (VPAT®):

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

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

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

## **3.4 REQUIREMENTS AND SPECIFICATIONS**

### **3.4.1 REQUIREMENTS AND FUNCTIONAL SPECIFICATIONS**

Requirements and Functional Specifications are included in Attachment L.

Vendor to complete tabs in the Excel Sheet in Attachment L, including:

- 01\_Requirements
- 02\_Key\_Specifications
- 03\_Additional Specs
- 04\_SLA

Tab 04\_SLA (SLA targets, measurement methodology, service credits, and escalation procedures need to be submitted with your offer whether they are generic or created specific to the Vendor's RFP response).

All pricing must be submitted only in the separate Attachment L, UI Call Center Pricing Workbook. Pricing must NOT be included in any Requirements/Specifications tabs.

Vendor can contact Casey C. Jones at [casey.c.jones@commerce.nc.gov](mailto:casey.c.jones@commerce.nc.gov) for an editable version of the spreadsheet. Vendor **must** respond by populating the spreadsheet. **Any other format will be deemed non-responsive and will not be evaluated by the committee.**

### **3.4.2 SOLUTION SCOPE – CONTEXT DIAGRAM**

This context diagram presents the Customer Call Center Solution as a single high-level process and illustrates its interactions with external actors, including systems, organizational groups, and external data sources. The associated table provides additional details describing these relationships.

**Note or Important Disclaimer:** The context diagram is provided for illustrative purposes only and represents a high-level view of the DES Customer Call Center ecosystem. It may not reflect the current

state in full detail or completeness. Vendors to describe in their offer all system integrations, data exchanges, dependencies, and interactions as part of their proposed solution and should not rely solely on this diagram for design assumptions.

Figure 1 - DES Customer Call Center Solution Context Diagram

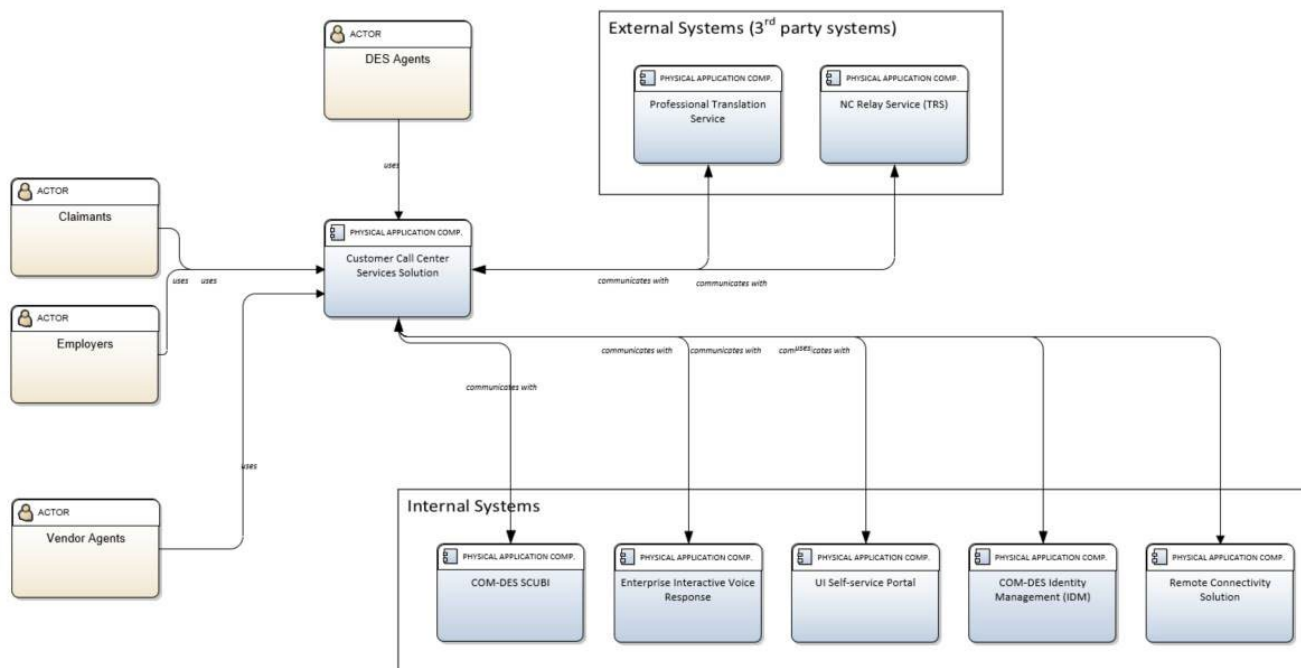
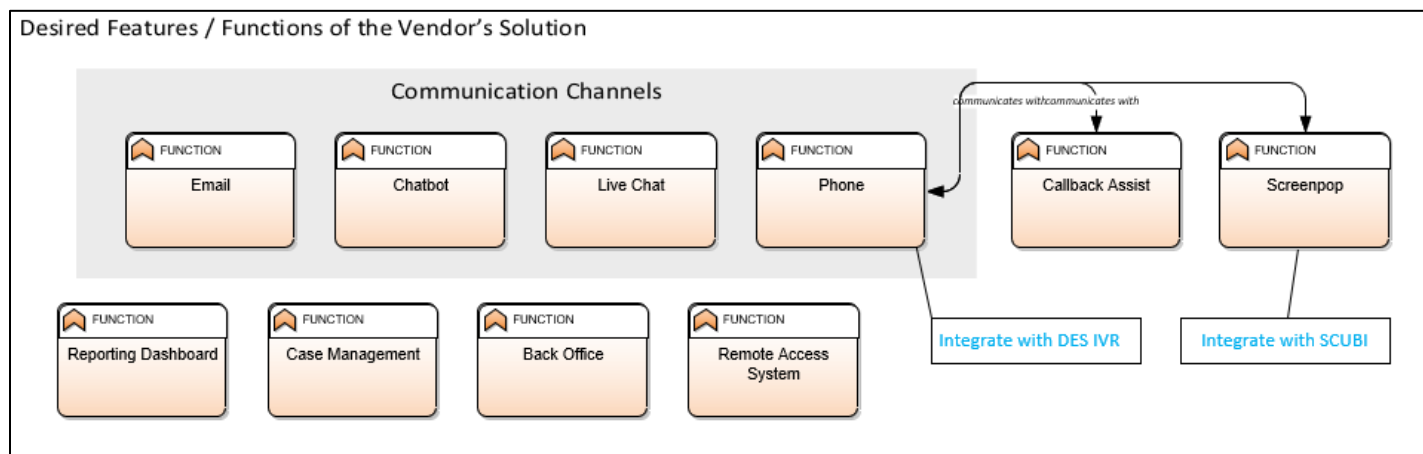


Figure 2 - Desired Features and Functions of the Vendor Solution

**Note or Important Disclaimer:** The “Desired Features / Functions of the Vendor’s Solution” diagram is provided for illustrative purposes only and represents a high-level view of key capabilities expected for the DES Customer Call Center Solution. It is not intended to be a complete representation of all functional, technical, or integration requirements. Vendors are responsible for ensuring that their proposed solution fully addresses all requirements and specifications as outlined in this RFP, regardless of whether they are explicitly depicted in this diagram.



**Table 1 - Context Diagram Relationships**

#	System	Relationship between System and Actor	Actor	Description
<b>1</b>	Customer Call Center Services Solution	<b>To and From</b>	Claimants	Claimants are citizens who file unemployment benefit claims. They interact with the DES call center to file claims, receive assistance, obtain claim status updates, and receive callbacks or follow-up communications.
<b>2</b>	Customer Call Center Services Solution	<b>To and From</b>	Employers	Employers interact with the call center to report unemployment-related information (e.g., layoffs, separations) and may receive follow-up communication or callbacks from agents.
<b>3</b>	Customer Call Center Services Solution	<b>To and From</b>	DES Agents	DES agents handle escalated interactions and may also initiate outbound communication, callbacks, or follow-ups with claimants and employers as needed.
<b>4</b>	Customer Call Center Services Solution	<b>To</b>	Professional Translation Service (External System)	Calls are transferred by agents to the Professional Translation Service to support claimants who communicate in languages other than English.
<b>5</b>	Customer Call Center Services Solution	<b>To and From</b>	NC Relay Service (TRS) – External System	NC Relay Service facilitates communication between standard voice users and individuals who are deaf, hard-of-hearing, or deaf-blind using assistive communication technologies.
<b>6</b>	Customer Call Center Services Solution	<b>To and From</b>	Vendor Agents	Vendor agents serve as the primary point of contact, handling inbound interactions from claimants and employers and initiating outbound communications such as callbacks and follow-ups.

#	System	Relationship between System and Actor	Actor	Description
7	Customer Call Center Services Solution	To	Vendor Agents	Interactions are escalated from vendor agents to DES agents for complex cases requiring state-level review or intervention.
8	Customer Call Center Services Solution	To and From	COM – DES SCUBI (Unemployment Benefit System) – Internal System	The system of record for unemployment benefits. The call center solution retrieves and updates claimant and employer data to support service delivery.
9	Customer Call Center Services Solution	To and From	Enterprise Interactive Voice Response (IVR) – Internal System	The IVR system enables automated interaction with callers, including routing, self-service options, and call deflection through voice or keypad input.
10	Customer Call Center Services Solution	From	UI Self-Service Portal – Internal System	The UI Self-Service Portal maintained by DES enables claimants and employers to initiate interactions such as web chat, which may be escalated to call center support when needed.
11	Customer Call Center Services Solution	To and From	COM – DES Identity Management (IDM) – Internal System	Provides authentication and access control for agents and systems interacting with DES platforms.
12	Customer Call Center Services Solution	To and From	Remote Connectivity Solution	Enables secure access for vendor agents to DES systems through approved methods such as VPN or virtual desktop environments (e.g., Amazon WorkSpaces), in compliance with DES security policies.

## 4.0 COST OF VENDOR'S OFFER

### 4.1 OFFER COSTS

The Vendor must list, itemize, and describe any applicable offer costs in **ATTACHMENT L: Attachment L\_UI Call Center\_Pricing Workbook**

### 4.2 PAYMENT SCHEDULE

The Vendor shall propose its itemized payment schedule based on the content of its offer. All payments must be based upon acceptance of one or more Deliverables.

## 5.0 EVALUATION

### 5.1 SOURCE SELECTION

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

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

### 5.2 EVALUATION CRITERIA

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

- 1) How well the Vendor's offer conforms with the specifications.
- 2) How each vendor's offer compares with other vendor's offers.
- 3) Total Cost of Ownership (TCO)
  - a. Comprehensiveness and reasonableness of total costs over the contract term of five (5) years, including implementation, operations, maintenance, and any optional or variable costs.
- 4) Implementation Schedule / Timeline:
  - a. Feasibility and completeness of the Vendor's proposed implementation plan, including transition approach, key milestones, resource allocation, and proposed timeline.
- 5) Past Performance / Experience:
  - **Track Record:** Demonstrated experience delivering contact center or similar services, particularly for state or local government, including meeting service levels, timelines, budgets, and specifications.
  - **References:** Quality and relevance of references or testimonials from prior clients, including government agencies and private entities, reflecting successful outcomes and customer satisfaction.

- **Similar Contracts:** Proven experience managing **large-scale, high-volume, and complex contact center operations**, including multi-channel service delivery and surge capacity.
- **Vendor Qualifications:** Overall vendor qualifications, financial and operational stability.
- Risks associated with Vendor's offer, including but not limited to Vendor errata and exceptions to the State's terms and conditions.

### 5.3 BEST AND FINAL OFFERS (BAFO)

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

### 5.4 POSSESSION AND REVIEW

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

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

## 6.0 VENDOR INFORMATION AND INSTRUCTIONS

### 6.1 GENERAL CONDITIONS OF OFFER

#### 6.1.1 VENDOR RESPONSIBILITY

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

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

#### 6.1.2 RIGHTS RESERVED

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

- a) waive any formality;
- b) amend the solicitation;

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

### **6.1.3 SOLICITATION AMENDMENTS OR REVISIONS**

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

### **6.1.4 ORAL EXPLANATIONS**

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

### **6.1.5 E-PROCUREMENT**

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

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

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

### **6.1.6 ELECTRONIC VENDOR PORTAL (EVP)**

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

### **6.1.7 PROTEST PROCEDURES**

Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in the purchasing



agency's office within fifteen (15) calendar days from the date of this RFP award and provide specific reasons and any supporting documentation for the protest. **All protests are governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

## 6.2 GENERAL INSTRUCTIONS FOR VENDOR

### 6.2.1 SITE VISIT OR PRE-OFFER CONFERENCE - RESERVED

### 6.2.2 QUESTIONS CONCERNING THE RFP

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

Written questions concerning this Solicitation will be received until **07/01/2026** at 2:00**pm** Eastern Time.

They must be submitted to the contact person listed on Page One of this Solicitation via the Ariba Sourcing Tool's message board. Please enter "Questions Solicitation 43-1389-26" as the subject for the message. Please note Vendor Questions should be submitted in the following format:

RFP Section, Page #	Requirement Category	Requirement Sub Category	Requirement Number	Vendor Question
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### 6.2.3 ADDENDUM TO RFP

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

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

### 6.2.4 COSTS RELATED TO OFFER SUBMISSION

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

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

### 6.2.5 VENDOR ERRATA AND EXCEPTIONS

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

**independent documentary verification that the offer substantially conforms to the specified goods or services specification.** If a vendor materially deviates from RFP requirements or specifications, its offer may be determined to be non-responsive by the State.

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

#### **6.2.6 ALTERNATE OFFERS**

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

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

#### **6.2.7 MODIFICATIONS TO OFFER**

An offer may not be unilaterally modified by the Vendor.

#### **6.2.8 BASIS FOR REJECTION**

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

#### **6.2.9 NON-RESPONSIVE OFFERS**

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

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

#### **6.2.10 BASIS FOR REJECTION**

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

#### **6.2.11 VENDOR REGISTRATION WITH THE SECRETARY OF STATE**

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

#### 6.2.12 VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM

The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available at the following website: <https://evp.nc.gov>.

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

#### 6.2.13 POINTS OF CONTACT

##### CONTACTS PRIOR TO CONTRACT AWARD:

Vendors may contact the Purchasing Agent listed on the first page of this document prior to award of the contract with Contractual or Technical questions. If you have questions regarding the RFP, use the directions identified in 6.2. QUESTIONS CONCERNING THE RFP of this section.

##### CONTACTS AFTER CONTRACT AWARD:

Below are the points of contact to be used after award of the contract.

##### **Vendor to Complete:**

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

### 6.3 INSTRUCTIONS FOR OFFER SUBMISSION

#### 6.3.1 GENERAL INSTRUCTIONS FOR OFFER

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

- Organize the offer in the exact order in which the specifications are presented in the RFP. The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP specification and the specific page of the response in the Vendor's offer.
- Provide complete and comprehensive responses with a corresponding emphasis on being concise and clear. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
- Clearly state your understanding of the problem(s) presented by this RFP including your proposed solution's ability to meet the specifications, including capabilities, features, and limitations, as described herein, and provide a cost offer.

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

### 6.3.2 OFFER ORGANIZATION

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

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

- a) Signed Execution Page AND all pages of this solicitation document in ONE (1) PDF. This includes:
  - Attachments A and B
  - Completed Description of Vendor Submitting Offer Form (Attachment C)
  - Completed and Signed Vendor Certification Form (Attachment E)
  - Completed Location of Workers Utilized by Vendor Form (Attachment F)
  - Completed References (Attachment G)
  - Completed Financial Statements (Attachment H)
  - Firm's Tax Identification Info (Attachment J)
  - Non-disclosure Agreement (Attachment K )
- b) Table of Contents
- c) Vendor Response to Specifications and Requirements
- d) Security Vendor Readiness Assessment Report (VRAR)
- e) Architecture Diagrams
- f) Detailed Project Timeline, i.e, Schedule of Offered Solution
- g) Errata and Exceptions if any
- h) Vendor's License and Maintenance Agreements if any

- i) Completed **Requirements and Functional Specifications** using *Attachment L – Requirements Workbook* (“Attachment L\_UI\_Call\_Center\_RFP\_Requirements\_&\_Specifications”).
- j) Completed **Cost/Pricing** of the Vendor’s Offer using *Attachment L – Pricing Workbook* (“Attachment L\_UI\_Call\_Center\_Pricing\_Workbook”), which is a **separate workbook from the Requirements Workbook**.
- k) Supporting material such as technical system documentation, training examples, etc.
- l) Vendor may attach other supporting materials that it feels may improve the quality of its response. These materials should be included as items in a separate appendix.

### 6.3.3 OFFER SUBMITTAL

Due Date: August 26, 2026  
Time: 2:00 PM Eastern Time

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

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

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

- a) Submit **one (1) signed, original electronic offer** through the Ariba Sourcing Module.
- b) The Ariba Sourcing Module document number is: WS#2187036669
- c) All File names should start with the Vendor name first, in order to easily determine all the files to be included as part of the vendor’s response. For example, files should be named as follows: Vendor Name-your file name.
- d) File contents **SHALL NOT** be password protected, the file formats must be in .PDF, .JPEG, .DOC or .XLS format, and shall be capable of being copied to other sources. Inability by the State to open the Vendor’s files may result in the Vendor’s offer(s) being rejected as Non-Responsive.
- e) If the vendor’s proposal contains any confidential information (as defined in Attachment B, Section 2, Paragraph #17), then the vendor must provide one (1) signed, original electronic offer and one (1) redacted electronic copy.

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

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

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

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

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

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

### **7.2 FINANCIAL STATEMENTS**

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

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

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

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

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

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

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

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

## **7.5 RESELLERS - RESERVED**

## **7.6 DISCLOSURE OF LITIGATION - RESERVED**

## **7.7 CRIMINAL CONVICTION - RESERVED**

## **7.8 SECURITY AND BACKGROUND CHECKS**

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

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

## **7.9 ASSURANCES**

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

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

## **7.10 CONFIDENTIALITY OF OFFERS**

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

Certain State information is not public under the NC Public Records Act and other laws. Any such information which the State designates as confidential and makes available to the Vendor in order to respond to the RFP or carry out the Agreement, or which becomes available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally

available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

## **7.11 PROJECT MANAGEMENT**

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

## **7.12 MEETINGS**

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

## **7.13 RECYCLING AND SOURCE REDUCTION**

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

## **7.14 SPECIAL TERMS AND CONDITIONS- RESERVED**

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

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

## **7.15 AGENCY TERMS AND CONDITIONS – RESERVED**



## ATTACHMENT A: DEFINITIONS

- 1) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- 2) **Cybersecurity Incident (GS 143B-1320):** An occurrence that:
  - a. Actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or
  - b. Constitutes a violation or imminent threat of violation of law, security policies, privacy policies, security procedures, or acceptable use policies.
- 3) **Deliverables:** Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include “Work Product” and means any expression of Licensor’s findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software.
- 4) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of “goods” in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
- 5) **NCDIT or DIT:** The NC Department of Information Technology.
- 6) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- 7) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- 8) **Request for Proposal (RFP):** The RFP is a formal, written solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services. The RFP is used when the value is over \$10,000. This document contains specifications of the RFP, instructions to bidders and the standard IT Terms and Conditions for Goods and Related Services. User should add Supplemental Terms and Conditions for Software and Services, when applicable.
- 9) **Security Breach:** As defined in N.C.G.S. §75-61.
- 10) **Significant Security Incident (GS 143B-1320):** A cybersecurity incident that is likely to result in demonstrable harm to the State's security interests, economy, critical infrastructure, or to the public confidence, civil liberties, or public health and safety of the residents of North Carolina. A significant cybersecurity incident is determined by the following factors:
  - a. Incidents that meet thresholds identified by the Department jointly with the Department of Public Safety that involve information:
    - i. That is not releasable to the public and that is restricted or highly restricted according to Statewide Data Classification and Handling Policy; or

- ii. That involves the exfiltration, modification, deletion, or unauthorized access, or lack of availability to information or systems within certain parameters to include (i) a specific threshold of number of records or users affected as defined in G.S. 75-65 or (ii) any additional data types with required security controls.
  - b. Incidents that involve information that is not recoverable or cannot be recovered within defined time lines required to meet operational commitments defined jointly by the State agency and the Department or can be recovered only through additional measures and has a high or medium functional impact to the mission of an agency.
- 11) Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

# ATTACHMENT B: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

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

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

Agreement means the contract awarded pursuant to this RFP.

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

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

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

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

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

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

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

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

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

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

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

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

- 10) PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided in Paragraph 9 (Acceptance), or elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
  - c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
- 11) EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 12) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 13) LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
- 14) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation. The Joint Legislative Commission on Governmental Operations and the legislative employees whose primary responsibility is to provide professional or administrative services to the Commission may audit the records of the Vendor during and after the term of this Agreement to verify accounts and data affecting fees or performance in accordance with Chapter 120, Article 13.
- 15) ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 16) INSURANCE COVERAGE:** During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably

associated with the Agreement. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.

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

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

information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

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

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

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences

resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

- c) Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- d) If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 9) of the DIT Terms and Conditions is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract.

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

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

- a) The parties may mutually terminate the Agreement by written agreement at any time.
- b) The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
  - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
  - ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
  - iii) Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.



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

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two (2) times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

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

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

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

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

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

- 27) TRANSPORTATION:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 28) NOTICES:** Any notices required under the Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 29) TITLES AND HEADINGS:** Titles and Headings in the Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 30) AMENDMENT:** The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 36) herein.
- 31) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of the Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 32) GOVERNING LAWS, JURISDICTION, AND VENUE:**
- a) The Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
  - b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.
- 33) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 34) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 35) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of the Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 36) CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless

accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.

**37) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

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

- a) **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount of all goods (excluding sales taxes) not services, of each purchase order issued through the Statewide E-Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under the Agreement. Vendor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Services. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, offers received, evaluation of offers received, award of Contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

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

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor technology"). To the extent that any Vendor technology is contained in any of the Services or Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor technology in connection with the Services or Deliverables for the State's purposes.
- b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential deliverables first originated and prepared by the Vendor for delivery to the State.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or other Deliverables supplied by the Vendor, or the operation of such pursuant to a current version of vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or other Deliverables supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the Services or Deliverables, or to replace or modify the same to become non-infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.
- e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded Service or Deliverable, or (ii) results from the continued use of the good(s) or services and other Services or Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**40) UNANTICIPATED TASKS** In the event that additional work must be performed that was wholly unanticipated, and that is not specified in the Agreement, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in

this article will be followed. For each item of unanticipated work, the Vendor shall prepare a work authorization in accordance with the State's practices and procedures.

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

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

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

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

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

## **Section 2: Terms and Conditions Applicable to Information Technology Goods and Services**

### **1) DEFINITIONS:**

- a) "Data" includes and means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) "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 Vendor hosted tenants receiving similar Services.

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

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

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

- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) The Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). The Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to the Vendor's tenants for similar Services. The Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. The Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- d) The Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract including, but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.

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

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

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

4) **ACCESS AVAILABILITY; REMEDIES:**

- a) The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. The Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements unless developed as Customized Services.
- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. The Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State. If the Services' monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to receive automatic credits as indicated immediately below, or the State may use other contractual remedies such as recovery of damages, as set forth herein in writing, e.g., in Specifications, Special Terms or in an SLA, and as such other contractual damages are limited by N.C.G.S. § 143B-1350(h1) and the Limitation of Liability paragraph below. If not otherwise provided, the automatic remedies for non-availability of the Subscription Services during a month are:
  - 1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
  - 2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
  - 3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

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

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

5) **EXCLUSIONS:**

- a) Except as stated above in Paragraphs 3 and 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- b) The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions or service failures substantially caused by:



- i) Actions of non-Vendor personnel;
  - ii) Failure to follow Vendor's written instructions relating to the Services provided to the State; or
  - iii) Force Majeure conditions set forth hereinbelow.
  - iv) The State's sole misuse of, or its own inability to use, the Services.
- 6) **PERFORMANCE REVIEW AND ACCOUNTABILITY:** N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of ten percent (10%) of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.
- 7) **LIMITATION OF LIABILITY: Limitation of Vendor's Contract Damages Liability:** Reserved.
- 8) **VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:** Reserved.
- 9) **MODIFICATION OF SERVICES:** If Vendor modifies or replaces the Services provided to the State and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.
- 10) **TRANSITION PERIOD:**
  - a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, the Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
  - b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
  - c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
  - d) The Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
  - e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in the Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, the Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
  - f) The State at its option, may purchase additional Transition Services as may be agreed upon in a supplemental agreement.
- 11) **TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.
- 12) **TRAVEL EXPENSES - RESERVED**
- 13) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES - RESERVED**
- 14) **AVAILABILITY OF FUNDS - RESERVED**
- 15) **PAYMENT TERMS (Applicable to this RFP):**
  - 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 - RESEVERED**

17) **CONFIDENTIALITY - RESERVED**

18) **SECURITY OF STATE DATA**

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by the Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations; (ii) in response to service or technical issues; (iii) as required by the express terms of this contract; or (iv) at the State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.

- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within twenty-four (24) hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- e) The Vendor shall certify to the State:
  - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
  - ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid third party security certification not to exceed one (1) year and is consistent with the data classification level and a security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.
  - iii) That the Services will comply with the following:
    - (1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:
      - (a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
      - (b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the Service Provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;
    - (2) Privacy provisions of the Federal Privacy Act of 1974;
    - (3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75-65 and -66);
    - (4) The North Carolina Public Records Act, N.C.G.S. Chapter 132;
    - (5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and

Accountability Act (HIPAA); and

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

(7) Any requirements implemented by the State under N.C.G.S. §§ 20-309.2(d).

- f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- g) Breach Notification. In the event the Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon; (2) investigate such Security Breach; (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents; (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. The Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach including, but not limited to, (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, the Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- i) The Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.

- j) In the course of normal operations, it may become necessary for the Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, the Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, the Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
  - (1) The scale and quantity of the State Data loss;
  - (2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
  - (3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
  - (4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

The Vendor shall investigate the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. The Vendor shall cooperate fully with the State, its agents and law enforcement.
- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing the Vendor from continuing to provide the Services, the Vendor shall not withhold the State Data or any other State confidential information or refuse, for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of the Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), the Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, and paper). Data shall be permanently deleted and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods, and certificates of destruction shall be provided to the State.

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

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

subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Such third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- a) Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
  - b) Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.
  - c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.
- 2) **SERVICES PROVIDED BY VENDOR:** Vendor shall provide the State with implementation Services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The Services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement"). (Reserve if not needed)
- 3) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be noticed to the Agency's Contract Administrator in writing accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.
- a) Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
  - b) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
  - c) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
    - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
    - ii) Such use does not conflict with any procurement law, regulation or policy, or
    - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.

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

## ATTACHMENT C: DESCRIPTION OF OFFEROR

Provide the information about the offeror.

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



## HISTORICALLY UNDERUTILIZED BUSINESSES

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

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

Respond to the questions below.

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

If so, state HUB classification:

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**ATTACHMENT D: COST FORM – RESERVED. ALL COSTS ARE TO BE COMPLETED IN THE EXCEL SHEET REFERENCED IN 6.3.2 OFFER ORGANIZATION IN THE RFP.**

## ATTACHMENT E: VENDOR CERTIFICATION FORM

### 1) ELIGIBLE VENDOR

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

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

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

### 2) CONFLICT OF INTEREST

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

### 3) E-VERIFY

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

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

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

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

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

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

Click here to enter text.

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

☐

YES

☐

NO

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

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## ATTACHMENT G: REFERENCES

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

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

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

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

## ATTACHMENT H: FINANCIAL REVIEW FORM

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

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

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



## ATTACHMENT J: FIRM'S TAX IDENTIFICATION INFORMATION

### Request for Proposal #

**43-1389-26**

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For internal State agency processing, including tabulation of proposals in the Interactive Purchasing System (IPS), please provide your company's Federal Employer Identification Number or alternate identification number (e.g. Social Security Number). Pursuant to G.S. 132-1.10(b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential**, before the procurement file is made available for public inspection.

**This page is to be filled out and returned with your proposal.  
Failure to do so may subject your proposal to rejection.**

**ID Number:**

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Federal ID Number or Social Security Number

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Vendor Name

# **ATTACHMENT K: CONFIDENTIALITY AGREEMENT**

## **Confidentiality Agreement Regarding the Safeguarding of Information Received from the North Carolina Department of Commerce Division of Employment Security**

1. The North Carolina Department of Commerce, Division of Employment Security (DES), has procured the services of \_\_\_\_\_ (Vendor) for the Vendor to provide services to support the DES UI Call Center. DES will provide the Vendor access to certain confidential unemployment insurance information (“Confidential Information”) under its control that is necessary for the Vendor to provide the assistance procured by DES. Unless DES otherwise indicates to the Vendor, all information provided to the Vendor shall be considered Confidential Information. “Confidential Information” includes originals and copies of the information, in whatever form, whether it be print, electronic, tape, or otherwise, as well as derivative records and reports created from the information. This Confidentiality Agreement governs the Vendor’s and each of its employees’, agents’, and contractors’ obligations with respect to treatment of Confidential Information.
2. The Vendor understands that disclosure of Confidential Information is governed by both federal and state law. For example, (and not be way of limitation), federal restrictions on this information are contained in 42 U.S.C. § 503, 26 U.S.C. § 3304, and subpart B of 20 C.F.R. Part 603. North Carolina's State law restrictions are contained in N.C. Gen. Stat. § 96-4(x). In addition to the Security Requirements set out in the Statement of Work, the Vendor agrees to do the following:
  - a. Use the Confidential Information only for the purposes authorized by law and only for the purposes specified in the Purchase Order and this Confidentiality Agreement.
  - b. Ensure that the Confidential Information or documents containing Confidential Information are stored in a place physically secure from access by unauthorized persons.
  - c. Instruct all Authorized Personnel as to the confidential nature of all information, the safeguards required to protect the Confidential Information, the civil and criminal sanctions for non-compliance contained in N.C. Gen. Stat. § 96-4(x)(3), as well as other requirements of State and federal laws, regulations, rules, and requirements cited herein governing treatment of the Confidential Information, including (without limitation) 20 C.F.R. Part 603. “Authorized Personnel” are those officers, employees, agents, or contractors of the Vendor who are required to perform the activities required by DES and any and all Statements of Work. Instruction will occur prior to permitting Authorized Personnel access to the Confidential Information.
  - d. Require strict adherence to the requirements of this Confidentiality Agreement and its required procedures, and any breaches will be fully and promptly reported to DES’s Division Counsel at 984-236-5987.
  - e. Implement safeguards and precautions to protect Confidential Information from unauthorized access.
  - f. Store and process Confidential Information in electronic format in such a way that that it is protected from unauthorized access to it.

- g. Terminate immediately an individual's authorized access upon changes in the individual's job duties that no longer require access, unauthorized access to or use of Confidential Information by the individual, or termination of employment.
- h. The Vendor will retain Confidential Information that personally identifies individuals and employers consistent with applicable state and federal law. The Vendor shall dispose of Confidential Information after the purpose for which the Confidential Information was provided is served. Disposal shall mean the return of the information to DES, destruction of the information as directed by DES, deletion of personal identifiers in lieu of destruction, or any manner otherwise authorized by DES.

I hereby certify that the Vendor, and its officers, employees, agents, and contractors have been instructed on the confidentiality requirements of DES and will abide by the provisions of this Confidentiality Agreement. I have the authority and capacity to legally bind the entity on whose behalf I am signing this Confidentiality Agreement. This Confidentiality Agreement is executed under seal for purposes of any statute of limitations.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

# ATTACHMENT L: REQUIREMENTS, FUNCTIONAL SPECIFICATIONS AND PRICING

## REQUIREMENTS AND SPECIFICATIONS

### Attachment L – Requirements & Specifications Workbook

Vendors must complete and submit responses in the following workbook and its tabs:

- File name: Attachment L\_UI\_Call\_Center\_RFP\_Requirements\_&\_Specifications.xlsx
- Tabs to complete:
  - 01\_Requirements
  - 02\_Key Specifications (Detailed Specifications)
  - 03\_Additional Specs (Additional capabilities)
  - 04\_SLA (Committed SLA targets, methodology, credits, escalation)
  - Dropdown\_value (use provided drop-downs for compliance/configuration)

**Do NOT include any pricing in this workbook. All pricing must be submitted only in the Pricing Workbook specified below.**

### Attachment L – Pricing Workbook (Separate File)

Vendors must submit all pricing only in the Pricing Workbook:

- File name: Attachment L\_UI\_Call\_Center\_Pricing\_Workbook.xlsx

**Do not enter pricing in any other Attachment L tabs (01–04). Pricing entered elsewhere will not be evaluated.**

Vendors should use the editable version of the Spreadsheet included with this RFP. If the editable version is not provided, Vendors may contact Casey C. Jones to obtain a copy.

## COST/PRICING

All pricing must be completed in the Attachment L UI Call Center Pricing Workbook, which is a separate workbook

