

**OFFER AND ACCEPTANCE:** The State seeks offers for the Services and/or goods described in this solicitation. All offers

|   |   |  |
|---|---|--|
| <b>STATE OF NORTH CAROLINA</b><br><b>Department of Administration</b>   | <b>REQUEST FOR PROPOSAL NO. 13-MS11935876</b>                                       |  |
|   | Offers will be publicly opened: June 3, 2021 @ 2:00PM                               |  |
|   | Issue Date: April 30, 2021  |  |
| <b>Refer <u>ALL</u> inquiries regarding this RFP to:</b><br>Meredith Swartz, Purchasing Officer<br><a href="mailto:meredith.swartz@doa.nc.gov">meredith.swartz@doa.nc.gov</a><br>919-807-2464 | Commodity Number: 841316 Insurance Services   |  |
|   | Description: Third Party Administrator for Statewide Unemployment Insurance Program |  |
|   | Using Agency: Office of State Human Resources                                       |  |
| <b>See page 2 for mailing instructions.</b>   | Requisition No.: PR11935876   |  |

and responses received shall be treated as offers to contract. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: 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.

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

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

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

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

**ACCEPTANCE OF OFFER:** If any or all parts of this offer are accepted, an authorized representative of the Office of State Human Resources shall affix their signature hereto and this document and the documents identified above shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the awarded Vendor(s).

|   |
|---|
| <b>FOR STATE USE ONLY</b>   |
| Offer accepted and contract awarded this ____ day of _____, 2021, as indicated on attached certification,<br>by _____ (Authorized representative of the Office of State Human Resources). |

**DELIVERY INSTRUCTIONS:** All bids shall be submitted electronically via the North Carolina Business Invitation Delivery System (NC BIDS). For additional information, the [NC BIDS for Vendors](#) page includes online training videos and a link to [NC BIDS FAQs for Vendors](#). NC BIDS has a file size limitation of 24MB. If the proposal exceeds 24MB, the vendor shall split the file into multiple files to be submitted and number each accordingly. Vendors are to use the standard naming convention when uploading proposals:

[BID NUMBER] - [VENDOR NAME] - [FILE NUMBER and SECTION INCLUDED]

This RFP is available electronically at <https://www.ips.state.nc.us/ips/>. All inquiries regarding the RFP specifications or requirements are to be addressed to the contact person listed on Page One.

**DUE TO THE CURRENT HEALTH RISKS ASSOCIATED WITH COVID-19, IN PERSON BID OPENINGS WILL NOT BE CONDUCTED.** The Department of Administration will be conducting the live bid openings over conference call. Below is the call-in information for this procurement's bid opening scheduled for 2:00 PM ET, June 3, 2021.

Microsoft Teams meeting

**Join on your computer or mobile app**

[Click here to join the meeting](#)

**Join with a video conferencing device**

ncgov@m.webex.com

Video Conference ID: 117 013 853 2

[Alternate VTC dialing instructions](#)

**Or call in (audio only)**

[+1 984-204-1487,,841300466#](#) United States, Raleigh

Phone Conference ID: 841 300 466#

Bid tabulations can be electronically retrieved at the [Interactive Purchasing System \(IPS\)](#). Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after the bid opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.

Bids will be received from each responsive Vendor using NCBIDS.

**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.

**VENDOR'S LICENSE OR SUPPORT AGREEMENTS:** 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, legal fees or other similar costs.

**DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

**QUESTIONS CONCERNING RFP:** Written questions concerning this RFP will be received until May 14, 2021 at 2:00PM Eastern Standard Time. They must be sent via e-mail to: [bid.inquiry@doa.nc.gov](mailto:bid.inquiry@doa.nc.gov). Please insert "Questions RFP #13-MS11935876 as the subject for the email. The questions should be submitted in the following format:

| Citation                      | Vendor Question | The State's Response |
|-------------------------------|-----------------|----------------------|
| Offer Section,<br>Page Number |                 |                      |

The State will prepare responses to all written questions submitted, and post an addendum to the [Interactive Purchasing System \(IPS\)](#). Oral answers are not binding on the State.

Vendor contact regarding this RFP with anyone other than Meredith Swartz may be grounds for rejection of said Vendor's offer.

**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 will be posted to the [Interactive Purchasing System \(IPS\)](#) and shall become an Addendum to this RFP. 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.

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

**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.

**NOTICE TO VENDORS:** The State may but will not be required to evaluate or consider any additional terms and conditions submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. By execution and delivery of this Invitation for Offer and response(s), the Offer agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless such are specifically accepted by the State.

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

**VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the [Interactive Purchasing System \(IPS\)](#).

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## **I. Introduction**

The purpose of this RFP and any resulting contract award is for the Office of State Human Resources (OSHR) to solicit professional and software services from a third-party administrator (TPA) for the North Carolina's Unemployment Insurance (UI) Cost Management Program.

The awarded Vendor will provide services addressing and overseeing a complete range of unemployment compensation claim processes from the time a claim is filed to the final disposition of a claim. The Vendor will ensure State funds are properly expended through aggressive claims administration and auditing, and minimize costs through conscientious and consistent cost controls and utilization of a reliable central database which supports effective claims processing and management reports. OSHR seeks a Vendor who will have their own software available to execute the scope of services in this RFP and that the software and databases will be hosted on non-state infrastructure.

### **Background:**

The State has employed a Vendor to provide third-party administration of UI matters since 1987.

The North Carolina Division of Employment Security (DES) has established a central address-of-record for all claims and UI matters and as such, the vendor awarded this contract will work closely with DES on a day-to-day basis. In 2003 DES allowed host-to-host communication of claim filings and separation information with the current vendor. In 2004 all State agencies received access to their UI account information via the DES website, although it is only used to view charge and hearings information at this time. Sixty-four (64) agencies, universities, boards and commissions in the Executive and Judicial branches of government (hereinafter called agencies) are covered under this contract. Currently the statewide program represents approximately one hundred fifty thousand (150,000) employees under the contract. In size, the agencies range from the Department of Public Safety with approximately twenty-four thousand (24,000) covered employees statewide and the Department of Health and Human Services with about eighteen thousand (18,000) covered employees to NC Psychology Board with only four (4) employees. The University of North Carolina at Chapel Hill (approximately eighteen thousand (18,000) covered employees) and North Carolina State University (approximately eleven thousand (11,000) covered employees) are the two (2) largest in the university system. Also included are fourteen (14) relatively small Boards & Commissions currently participating in the program. Included agencies are listed below:

- Administrative Office of the Courts
- Department of Administration
- Department of Agriculture & Consumer Services
- Appalachian State University
- Office of the State Auditor
- NC Board of Barber Examiners
- NC Licensing Board for General Contractors
- NC Medical Board
- NC Board of Funeral Service
- NC Auctioneer Licensing Board
- NC Board of Cosmetic Art Examiners
- NC State Board of Dental Examiners
- NC State Board of Elections
- NC State Ethics Commission
- Board of Law Examiners of the State of NC
- NC Board of Nursing
- NC State Board of Opticians
- NC Psychology Board
- Department of Commerce
- NC Community College System
- Office of the State Controller
- Department of Natural & Cultural Resources
- Department of Public Safety
- Department of Health & Human Services
- East Carolina University
- Elizabeth City State University
- Department of Environmental Quality
- Fayetteville State University
- Office of the Governor
- Department of Insurance
- Department of Information Technology
- Department of Justice
- Department of Labor
- Office of the Lieutenant Governor
- North Carolina Agricultural & Technical State University
- North Carolina Central University
- NC Education Lottery
- North Carolina State University
- Office of Administrative Hearings
- Office of State Human Resources (includes Temp Solutions)
- Office of State Budget & Management
- Department of Public Instruction
- NC Real Estate Commission
- Department of Revenue
- NC School of Science & Math
- NC School of the Arts
- Department of the Secretary of State
- Department of the State Treasurer
- Department of Transportation
- UNC Health

- University of North Carolina at Asheville
- University of North Carolina at Chapel Hill
- University of North Carolina at Charlotte
- University of North Carolina at Greensboro
- University of North Carolina at Pembroke
- University of North Carolina at Wilmington
- Western Carolina University
- Wildlife Resources Commission
- Winston-Salem State University

OSHR is responsible for administration of the contract and overall coordination of the program. Each agency and university have a designated UI Coordinator as the primary contact for each agency and university UI Program. The UI Coordinator will be the primary point of contact for agency-specific UI matters, however, referrals to managers with firsthand separation information are common. The Department of Transportation has divisional contacts, and the Department of Health and Human Services has divisional and institutional UI Coordinators who respond to separation requests which are forwarded to them by a centralized contact. Separation information for claims must be obtained from the individual agency from which the separation occurred, but OSHR will be the fallback source of information. Separation information will not be provided prior to the filing of a claim due to State confidentiality requirements.

There are a total of eleven (11) major payroll systems: The Office of State Controller manages the Integrated HR-Payroll System (BEACON). Currently, independent payroll systems are maintained by UNC Health Care System, University of North Carolina at Chapel Hill, North Carolina State University, East Carolina University, Appalachian State University, University of North Carolina at Charlotte, University of North Carolina at Greensboro, and University of North Carolina at Wilmington. All payroll systems eventually will be transitioning to internal systems.

The Department of Agriculture and Consumer Services currently has a separate in-house payroll system for temporary and seasonal employees. There are also nine (9) small Boards and Commissions which do not provide payroll. Each agency has a unique UI account number.

Currently, payroll is being provided to the TPA from DES via File Transfer, except for the Integrated HR-Payroll System, as the Integrated HR-Payroll System is not able to provide payroll to the TPA at this time.

The awarded Vendor will be responsible for auditing and protesting annual charges, as well as forwarding the hard copy Request for Reimbursement form letter to each agency along with an explanatory cover letter (subject to approval by OSHR) and instructions for processing the charge statements. The Vendor must also assist the agencies in their efforts to locate the Lists of Charges which are available on the DES website with the appropriate login information. The Vendor must give special consideration to the applicability of non-charging provisions of North Carolina Employment Security law for some of the State accounts, as well as the straight reimbursor status of others.

|   |                 |
|---|-----------------|
| Amount of Payroll Calendar Year 2016:               | \$8,638,037,614 |
| Amount of Payroll Calendar Year 2017:               | \$7,597,699,108 |
| Amount of Payroll Calendar Year 2018:               | \$7,637,115,233 |
| Amount of Payroll Calendar Year 2019:               | \$8,767,720,449 |
| Amount of Payroll Calendar Year 2020 (Q1, Q2 & Q3): | \$6,651,905,401 |

#### **Claim Filing & Charge Activity:**

| <b>Charge</b>      | <b># Claims</b> | <b>#Potential</b> | <b>Amount</b>        |
|--------------------|-----------------|-------------------|----------------------|
| Year*              | Filed           | Cost              | Charged <sup>o</sup> |
| 2017               | 3,037           | \$6,215,913.00    | \$4,259,929.50       |
| 2018               | 2,882           | \$4,067,415.38    | \$2,310,320.38       |
| 2019               | 2,829           | \$7,947,570.16    | \$6,290,525.16       |
| 2020 (Q1, Q2 & Q3) | 8,563           | \$3,854,152.94    | \$1,186,517.94       |

\* Charge Year = Year in which charges statement received and reimbursement made.

<sup>o</sup> Amounts Charged may include some credits resulting from charge protests in current and previous charge year

**Hearings Data:**

|                                      | 2017      | 2018      | 2019      | 2020 (Q1, Q2 & Q3) |
|--------------------------------------|-----------|-----------|-----------|--------------------|
| Hearings Scheduled                   | 268       | 230       | 257       | 199                |
| Employer Requested                   | 29        | 46        | 97        | 27                 |
| Claimant Requested                   | 239       | 184       | 160       | 172                |
| Hearing Decisions Received           | 255       | 217       | 252       | 167                |
| Win Rate on Decisions                | 83.2%     | 86%       | 92.1%     | 96.3%              |
| Liability Avoided                    | \$560,896 | \$477,575 | \$655,414 | \$350,382          |
| Total Number of Hearings Represented | 74        | 71        | 88        | 64                 |
| In Person Hearings                   | 4         | 3         | 7         | 1                  |
| Telephone Hearings                   | 70        | 68        | 81        | 63                 |

***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.

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

## II. **Bidding Information**

### A. **Procurement Schedule**

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

| Action  | Responsibility  | Date                        |
|---|---|-----------------------------|
| Issue of RFP  | Department of Administration                          | April 30, 2021              |
| Deadline to Submit Questions  | Potential Vendors                                     | May 14, 2021@ 2:00PM        |
| Response to Written Questions/RFP Amendments  | Department of Administration                          | May 20, 2021                |
| Submission of Offer   | Vendor(s)   | June 3, 2021                |
| Offer Evaluation  | Evaluation Committee                                  | June 6-25, 2021             |
| Selection of Finalists  | Evaluation Committee                                  | June 25, 2021               |
| Negotiations (optional)   | Evaluation Committee designees and selected Vendor(s) | TBD                         |
| Best and Final Offers from Finalists (optional)   | Vendors   | TBD                         |
| Oral Presentation/Product Demonstrations by Finalists (optional)  | Vendors   | June 28-July 1, 2021        |
| Contract Award  | IT Procurement Office                                 | TBD                         |
| Protest Deadline  | Vendors   | 15 days after award         |
| Transition from current vendor to awarded vendor, meet with State Contract Administrator and Agency and University UI Coordinators, training, testing of system, etc. | OSHR and Vendor                                       | Award date - September 2021 |
| TPA Services begin  | Vendor  | October 1, 2021             |

### B. **Instructions to Vendors**

Additional acronyms, definitions and abbreviations may be included in the text of the RFP.

- 1) Offers submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) **EXECUTION**: Failure to sign under EXECUTION section will render offer invalid.
- 3) **PROMPT PAYMENT DISCOUNTS**: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the Agreement except as a factor to aid in resolving cases of identical prices.
- 4) **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 5) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: Electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement



opportunities for goods and Services available on the Interactive Purchasing System at the following web site:  
<https://vendor.ncgov.com/vendor/login>

- 6) **ORGANIZATION:** Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 7) **E-PROCUREMENT:** This is **not** an E-Procurement solicitation.
- 8) **E-VERIFY:** Pursuant to N.C.G.S. §143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.
- 9) **RESTRICTIONS ON CONTRACTS WITH THE STATE:** Reserved

### C. General Conditions for Proposals

- 1) **DEFINITIONS, ACRONYMS AND ABBREVIATIONS:** Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:
  - a) **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.
  - b) **DES:** The NC Division of Employment Security
  - c) **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.
  - d) **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).
  - e) **NCDIT or DIT:** The NC Department of Information Technology, formerly Office of Information Technology Services.
  - f) **OSHR:** The NC Office of State Human Resources
  - g) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
  - h) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
  - i) **RFP:** Request for Proposal
  - j) **State Contract Administrator:** The OSHR business owner/contract monitor, day-day for the vendor awarded this contract.
  - k) **The State:** Is the State of North Carolina, and its Agencies.
  - l) **TPA:** Third Party Administrator
  - m) **UI:** Unemployment insurance
  - n) **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.
- 2) **READ AND REVIEW:** 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 listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.

- 3) **VENDOR RESPONSIBILITY:** The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) 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. 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.
- 4) **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).
- 5) **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 Agency contact or procurement officer named on Page 2 above 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) **INSUFFICIENCY OF REFERENCES TO OTHER DATA:** 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.
- 7) **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.
- 8) **CONTRACT TERM:** A contract awarded pursuant to this RFP shall have an effective date as provided in the Certification of Award. The term shall be three (3) years and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend the Agreement for **two** (2) additional **one** (1) year periods at its sole discretion.
- 9) **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.
- 10) **RECYCLING AND SOURCE REDUCTION:** Reserved.
- 11) **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4 and any applicable Executive Order, 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. Additional information may be found at: <http://ncadmin.nc.gov/businesses/hub/>.
- 12) **CLARIFICATIONS/INTERPRETATIONS:** Any and all amendments or revisions to this document shall be made by written addendum from the DIT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

- 13) **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.
- 14) **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.

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Alternate offers must be clearly marked

**“Alternate Offer for ‘name of Vendor’”**

and numbered sequentially with the first offer if separate offers are submitted.

This legend must be in bold type of not less than 14-point type on the face of the offer, and on the text of the alternative offer.

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- 15) **CO-VENDORS:** Vendors may submit offers as partnerships or other business entities. Such partners or other “co-Vendors”, if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.
- 16) **SUBMITTING AN OFFER:** Each Vendor submitting an offer warrants and represents that:
- a) The offer is based upon an understanding of the specifications and requirements described in this RFP.
  - b) 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.
- 17) **SUBMITTED MATERIALS:** 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.
- 18) **MODIFICATIONS TO OFFER:** An offer may not be unilaterally modified by the Vendor.

#### D. Evaluation Process

- 1) **BEST VALUE:** “Best Value” procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor’s offer; the Vendor’s past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of “Best Value” Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.

- 2) **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) 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.
  - b) 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.
  - c) To be eligible for consideration, a 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 factor may be grounds for rejection regardless of overall score.
  - 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.
- 3) **BEST AND FINAL OFFERS (BAFO):** If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendors within this range, e.g., "Finalist Vendors". The State will evaluate BAFOs and add any additional weight to the Vendors' respective offer. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.
- 4) **EVALUATION CRITERIA:** Each of the criteria below shall be evaluated in accordance with the solicitation documents and are listed in order of importance, highest to lowest:
- a) Demonstrated ability to meet the Specifications of this RFP including those detailed in the Scope of Work, Attachment A
  - b) Cost, Attachment F
  - c) Responses to Vendor Questions, Attachment D
  - d) References, Attachment E
  - e) Demonstration/proof of financial stability
- 5) **PAST PERFORMANCE:** The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 6) **EVALUATION METHOD:** Ordinally.
- 7) **INTERACTIVE PURCHASING SYSTEM (IPS):** The State has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve offer award information electronically from our Internet web site: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-offer number (XXXX), and then search. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 8) **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 this 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 will be governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

### III. **Technical Proposal**

- 1) **ENTERPRISE STRATEGIES, SERVICES, AND STANDARDS:** Agencies and Vendors should refer to the Vendor Resources Page for information on North Carolina Information Technology enterprise services, security policies and practices, architectural requirements, and enterprise contracts. The Vendor Resources Page can be found at the following link: <https://it.nc.gov/vendor-engagement-resources>. This site provides vendors with statewide information and links referenced throughout the RFP document. Agencies may request additional information.
- 2) **ARCHITECTURE DIAGRAMS DEFINED:** The State utilizes diagrams to better understand the design and technologies of a proposed solution. The architecture diagrams required at offer submission can be found at the following link: <https://it.nc.gov/architectural-artifacts>. There may be additional architectural diagrams requested of the vendor after contract award. This will be communicated to the vendor by the agency as needed during the project. The additional diagrams can be found at the link above.
- 3) **VIRTUALIZATION:** Reserved.
- 4) **NCID:** Reserved.
- 5) **CLOUD SERVICE PROVIDERS (CSPs):** For offers featuring a cloud-hosted solution, vendors shall describe how the proposed solution will support the agency's information system security compliance requirements as described in the Statewide Information Security Manual, specifically relating to, and without limitation, the sections relating to cloud services: <http://it.nc.gov/statewide-resources/policies>. The NCFHP data management system will be required to receive and securely manage data classified as Electronic Protected Health Information (ePHI) and Personally Identifiable Information (PII) ("Confidential Information"). As such, the NCFHP data management system will be classified as Program Critical and High level for confidentiality, integrity, and availability (NIST).

To comply with policy, 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. Assessment reports such as the Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, SSAE 16, and ISO 27001 are preferred and offered solutions already meeting these requirements are requested to include these reports as part of their submission.

6) **SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE:**

Vendors shall provide a completed and executed Vendor Readiness Assessment Report Non-State Hosted Solutions ("VRAR") at offer submission. This report is located at the following website: <https://it.nc.gov/documents/vendor-readiness-assessment-report-vrar>.

The Third Party Administrator for Statewide Unemployment Insurance Program will be required to receive and securely manage data that is classified as Medium Risk. Refer to the North Carolina Statewide Data Classification and Handling policy for more information regarding this data classification. The policy is located at the following website: <https://it.nc.gov/document/statewide-data-classification-and-handling-policy>.

To comply with the State's Security Standards and Policies, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls. 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. Assessment reports such as the Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, or ISO 27001 are required for any cloud service providing support for data classified as Restricted or Highly Restricted. A current assessment report will be required prior to contract award for the selected vendor.

An IaaS vendor cannot provide a certification or assessment report for a SaaS provider UNLESS that is written in the agreement between the two vendors.

- 7) **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. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, may be returned to the Vendor at the Vendor's expense.



- 8) **LITERATURE**: All offers shall include specifications and technical literature sufficient to allow the State to determine that the proposed solution substantially meets all specifications. This technical literature will be the primary source for evaluation. If a specification is not addressed in the technical literature it must be supported by additional documentation and included with the offer. Offer responses without sufficient technical documentation may be rejected.
- 9) **EQUIVALENT GOODS**: The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
- 10) **DEVIATION FROM SPECIFICATIONS**: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specification." 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.**
- 11) **SCOPE OF WORK**: See Attachment A.

#### **IV. Technical Specifications**

Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Substantial conformity with technical specifications is required.

- a) 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. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
- b) Specifications: The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only processes, configuration, material 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. See, Acceptance Criteria, below.
- c) Please describe your proposed solution's ability to meet the Scope of Work detailed in Attachment A, including capabilities, features, and limitations.

#### **V. Cost Proposal**

- 1) **OFFER COSTS**: The Vendor must list and describe any applicable offer costs which may include the following:
  - a) Software License fees or costs
  - b) 3rd party software, if any, required for the operation of the system
  - c) Technical and user documentation
  - d) Installation/conversion/integration/transition costs
  - e) Training including training materials
  - f) Other costs (*Offeror to describe what these other costs are*)
  - g) Unlimited phone/website technical support for the technical staff
- 2) **ALTERNATIVE COST RESPONSE**: Vendors who propose an Alternative cost response must submit a separate document labeled "ALTERNATIVE COST RESPONSE".

## **VI. Other Requirements and Special Terms**

- 1) **VENDOR UTILIZATION OF WORKERS OUTSIDE 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. The Vendor shall provide the following for any offer or actual utilization or contract performance:
- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the Agreement and whether any of this work will be performed outside the United States
  - b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
  - c) 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
  - d) 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

Will any work under the Agreement be performed outside the United States?

Where will Services be performed: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

- 2) **SPECIAL TERMS AND CONDITIONS:** Reserved
- 3) **FINANCIAL STATEMENTS:** Agencies must determine that a Vendor has sufficient financial resources to perform. GS 143B-1350(h1). The Vendor shall provide evidence of financial stability with its response to this RFP 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.
- 4) **DISCLOSURE OF LITIGATION:** Reserved.
- 5) **CRIMINAL CONVICTION:** Reserved.
- 6) **SECURITY AND BACKGROUND CHECKS:** Reserved.
- 7) **ASSURANCES:** Reserved.
- 8) **CONFIDENTIALITY OF DATA AND INFORMATION:** All RFP responses, information marked as confidential or proprietary, financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Vendor in order to carry out the Agreement, or which become available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section. 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.

- 9) **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.
- 10) **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. 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.
- 11) **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.
- 12) **TRANSITION ASSISTANCE:** If the Agreement is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to six (6) months after the expiration or cancellation of the Agreement, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Agreement, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Agreement for Contract performance. If the State cancels the Agreement for cause, then



the State will be entitled to offset the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

13) **TERM EXTENSIONS:** Reserved.

14) **FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY:**

- a) Pursuant to N.C.G.S. §143B-1350(h)(1), Agencies must conduct a risk assessment, including whether the Vendor has sufficient financial resources to satisfy the agreed upon limitation of liability prior to the award of a contract with Vendor.
- b) 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.
- c) 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.

15) **UNANTICIPATED TASKS:** Reserved.

16) **DUE DILIGENCE:** Reserved.

## **VII. Proposal Content and Organization**

- 1) **CONTENTS OF PROPOSAL:** This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Offers will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.
- 2) **INFORMATION AND DESCRIPTIVE LITERATURE:** The Vendor must 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 their 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 requirements may be rejected.
- 3) **PROPOSAL CONTENT:** Demonstrate substantial conformity to the RFP specifications.
  - a) Clearly state your understanding of the problem(s) presented by this RFP.
    - i) Response to technical specifications
    - ii) Cost offer
  - b) Detailed description of the Vendor's firm should include all of the following:
    - i) Full name, address, and telephone number of the organization;
    - ii) Date established;
    - iii) Background of firm;
    - iv) Ownership (public company, partnership, subsidiary, etc.);
    - v) If incorporated, state of incorporation must be included.
    - vi) Number of full-time employees on January 1st for the last three (3) years or for the duration that the Vendor's firm has been in business, whichever is less.
- 4) **ERRATA OR EXCEPTIONS:** Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
- 5) **OFFER FORMAT:** The offers should contain the entire solicitation and be organized in the order in which the requirements and/or desirable performance criteria 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 requirement and the specific page of the response in the Vendor's offer.
- 6) **GENERAL INSTRUCTIONS:** Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the offer and subsequent evaluation process:
  - a) Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.

- b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 7) **RFP RESPONSE ORGANIZATION:** The offer should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.
- a) Letter of Transmittal - Each offer must be accompanied by a letter of transmittal that provides the following information:
    - i) Identify the submitting organization;
    - ii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized by the organization to contractually obligate the organization;
    - iii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the Agreement on behalf of the organization;
    - iv) Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;
    - v) Acknowledge receipt of any and all amendments to this RFP.
  - b) Table of Contents.
  - c) Completed Attachment F, Cost Proposal.
  - d) References, Attachment E.
  - e) Financial Information.
  - f) Conflict of Interest:
    - i) Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP;
    - ii) State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
    - iii) State the employing State Agency, individual's title at that State Agency, and termination date.
  - g) Errata and Exceptions, if any. Offers conditioned upon acceptance of Vendor Exceptions may be determined to be non-responsive by the State.
  - h) Copy of the Vendor's License and Maintenance Agreements, if any. The State reserves the right to edit or modify these agreements to conform to the best interest of the State.
  - i) Other Supporting Material Including Technical System Documentation.
  - j) Training and Other Materials, Samples or Examples.
  - k) Within each section of their offer, Vendors should address the items in the order in which they appear in this RFP. Forms, if any provided in the RFP, must be completed and included in the appropriate section of the offer. All discussion of proposed costs, rates, or expenses must be presented with the cost response.
  - l) Answers to Attachment D, Questions for Offerors
  - m) VRAR (Vendor Readiness Assessment Report)
- 8) **ADHERENCE TO INSTRUCTIONS:** Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
- 9) **ATTACHMENTS:** Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

**Attachment A. Scope of Work**

While a Vendor can generally describe how its proposed solution will substantially conform with the State's specifications in Paragraph A below, all offers will specifically describe how the proposed solution will meet the components of service delivery in Paragraph B below.

**A. General Specifications**

- 1) Establish a reliable, comprehensive database. These elements include but not limited to claim reason, dates, etc. necessary for effective claims examination, management reports, data transfer, security and charge auditing as described herein.
- 2) Examine and disseminate all individual claims filed, by a service team dedicated to the State account.
- 3) Respond to all claims and appeals notices filed within the time frames required by the DES.
- 4) Identify all potential liabilities and actual expenditures of each account.
- 5) Identify non-protestable claims and outcomes of protestable claims.
- 6) Audit of UI charges to the State; appropriate action on erroneous charges, including follow-up where necessary.
- 7) Establish the necessary contact and association with agency contacts, the OSHR and the DES in order to promote a smooth informational flow in all areas of the program.
- 8) Provide educational material and training to UI Coordinators to promote an environment capable of attaining optimal savings to the State.
- 9) Submit administrative fee invoices to the OSHR on a quarterly basis, after receipt of copies of [NCUI-101 forms](#) documenting payroll for the prior quarter in which services were performed.

**B. Administrative Services**

The responding Vendor must specifically describe how its proposed solution will meet the following components of service delivery:

**1) Customer Service**

- a) Respond to claim, report, or charge inquiries by OSHR and/or agency personnel within twenty-four (24) hours from date of initial inquiry. If final response is not available, provide the status of the resolution efforts.
- b) Contact each agency and university UI Coordinators within the first four (4) weeks of the effective date of the contract for the purpose of introduction, as well as to address any particular inquiries or concerns the agency may have.
- c) Meet with the State Contract Administrator within the first two (2) weeks of contract award to plan contract transition, training, etc. and thereafter on a quarterly basis to assess the quality of provided services and identify potential problems and resolutions. The intent is to have at least one (1) in-person meeting per year, unless COVID-19 or other restrictions dictate otherwise.

**2) Contractor Staffing and Supervision**

- a) Assign a dedicated Service Representative to the program, who will be the primary contact for the project. This person shall have the experience and qualifications to ensure that the services provided are within the scope of this contract.
- b) Provide a staff of dedicated claims and hearing representatives. Backup personnel need not be exclusively dedicated to the State. The staff assigned must have at least one (1) year of documented experience, and be familiar with [NC Employment Security Law](#), preferably with the statutes involving governmental employers.
- c) Maintain an established network of attorneys with expertise in NC Employment Security law for UI Hearing representation. The names of the attorneys in the network must be provided to the Contract Representative and updated as revisions occur. The Vendor shall have performed the appropriate due diligence to ensure that attorneys in the network are not also involved with litigated issues against the State.

- d) Be responsible for the charges on any claim where the reason for the charge is directly attributable to error or omission on the part of the Vendor.

3) Education and Training

- a) Describe the timetable and manner by which agency designees statewide will receive orientation and on-going, online/web-based training. At the minimum, the training shall cover the following areas:
  - 1. Hearing process and protocol
  - 2. Claim administration procedures
  - 3. Communication processes
  - 4. Management reports
- b) Describe in your offer how a concise process guide is provided to each agency and to the OSHR. The information will supplement the UI Program Guide developed for the agencies by the OSHR. At a minimum, the process guide must contain the following information:
  - i. Claim handling process from TPA receipt of claim to final disposition
  - ii. Expectations of the State UI Coordinators upon receipt of a request for separation information
  - iii. Description of procedures and protocol regarding UI hearings
  - iv. Description of the management reports and an explanation of their utility and purpose.
- c) Provide periodic news updates on current case law or practices that may affect the UI Program or UI costs in State Government.

4) Physical Facilities

- a) Provide toll free contact phone number for all staff assigned to the State.
- b) Ensure that electronic communication capabilities (e.g., email, internet) exist to allow for immediate and secure communications.

5) Internal Controls

The TPA Vendor must establish and maintain adequate internal controls to ensure that:

- a) All claim files are accurately established, maintained, and updated.
- b) Confidentiality of individual claims is always maintained.
- c) Documentation, relating to claim or charge protests, is available for review upon the request of the Contract Administrator.

6) Claims Administration:

- a) Become the addressee of record for all unemployment compensation matters. Follow-up with the DES after initial notification of an address change, to confirm that the address-of-record is properly in place. Investigate and resolve any subsequent problems where there may be lapse in DES usage of the address-of-record, on a statewide or local office level.
- b) Receive and respond to claim filings and any future claim administration process which may be made available, via the DES's website.
- c) Collect and store all available payroll information necessary to the process on an ongoing basis. Have a system in place to notify the State Contract Administrator if payroll is not received for a given quarter. For example, the Vendor shall submit payroll details no later than the 25<sup>th</sup> of the month, following each quarter end.)
- d) Collect and store historical claims data necessary for auditing charges. The claims data will be provided by the State in the form of an Excel spreadsheet.
- e) Evaluate all claims to insure validity.

- f) Solicit separation information from designated agency personnel within twenty-four (24) hours of receipt of a claim. Follow-up on non-response to the initial inquiry within forty-eight (48) hours of the DES deadline. Follow-up with the State Contract Administrator within twenty-four (24) hours of the deadline for any claim where the UI Coordinator did not respond.
- g) Protest invalid or inappropriate claims as necessary within the time limits established by the DES. At no time will a claim be accepted as chargeable because of an inability to obtain response to a request for information from the State, unless the efforts to obtain separation information described above have been followed and documented.

#### 7) Hearing Process

- a) Initiate all appeals with the DES in a timely manner and provide necessary documentation to all interested parties for all telephone hearings.
- b) Initiate contact with the appropriate UI Coordinator within twenty-four (24) hours of receipt of the hearing notice, notice of postponement, or notice of continued hearing. Contact is defined as speaking with the UI Coordinator or leaving a message with another person at the site to alert the agency that a hearing is forthcoming.
- c) Provide the following services for all hearings:
  1. Discuss the case with the Agency's UI Coordinator and State Contract Administrator and determine if there is a need for representation
  2. Advise the UI Coordinator of the need for attendance, continuance, or postponement,
  3. Identify the appropriate witnesses needed to attend, and documentation needed for the record,
  4. Upon approval by the UI Coordinator, provide telephonic counsel prior to the hearing to all agency personnel who will attend as potential witnesses.
- d) Provide representation for all appeals hearings involving complex issues, and those where attendance is otherwise requested by the State because of extenuating circumstances, see Attachment C.
- e) If an agency intends to appeal a Commission level decision to civil court, obtain a tape or transcript of the hearing from the DES and provide that with a copy of the file to the agency legal representative.

#### 8) Audit Services

- a) Verify claim validity, and potential charge amount where wage data is available. Take appropriate action upon the identification of erroneous application of liability.
- b) Verify annual charge data from the DES, and track charges for reporting purposes.
- c) Assign a dedicated staff member to be responsible for initiating and monitoring all charge protest activity for the State and serve as the main point of contact for the DES and the State. This person will be responsible for protesting invalid charges and tracking credits where applicable. Follow-up to ensure expected final outcome occurs, whether it is a response to a charge protest or an un-refunded credit.
- d) Distribute annual charge related communications that are not made available to the agencies via the DES website. Work with the State Contract Administrator to determine the most efficient manner to distribute the information. Distribution to the agencies of the charge information must be within twenty-four (24) hours of receipt and include an explanatory cover letter (pre-approved by the OSHR), with a contact name for assistance.

#### 9) Information Management

Each agency must plan for expenditures and analyze claims in order to educate managers and supervisors to reduce liabilities where possible. The OSHR must receive data for analysis of agency and statewide trends. Transmission of certain information where social security numbers are part of the data must be in compliance with the State privacy laws. Due to these privacy concerns the mode of transferring reports or data to the State is an important consideration, since employee social security numbers are an important field in the data. The State would prefer that each UI Coordinator would be able to log in to the Vendor's password protected website using the Internet to access the report information. OSHR must also have the ability to download and manipulate the data for internal ad-hoc reports. However, the following elements will be considered regarding on-line inquiry:

1. The system capability to download data, preferably in Excel, to individual agencies and statewide data to the OSHR. This capability shall exist at no additional cost to the State.
2. Printing capabilities shall include the ability to route multiple pages of screen data to a printer vs. just a single screen print. Printing capabilities are to be available to each agency, and the OSHR.
3. Security must be provided at the user level, and the capability must exist for more than one (1) user at each Agency to have access. A process must exist for periodic auditing of user access for security reasons.
4. A user manual and initial training in the on-line inquiry process must be provided. Ongoing training shall be dictated by need due to system update or change in agency designee.
5. Vendor shall complete and submit with its proposal a VRAR (Vendor Readiness Assessment Report) (See Attachment D: Questions for Offerors, # 28)

a) Reporting Requirements:

The TPA Vendor must provide the following reports or data download capabilities as specified, minimally within the stated time frames. Claim liabilities and dispositions must be updated as new information is received to ensure the information is accurate and current. The reports must be easy for the user to understand, and not include data that is used for the Vendor's internal coding or processing needs. Agency-specific reports or data must be broken down and made available to each UI Coordinator, with statewide data made available to the OSHR.

1. Quarterly Detail and Summary of Claims Activity

This report must be available by claim filing date, rather than picking up all activity processed in a given period, in order to be aligned with the DES fiscal year for charges, which begins the first week of August (e.g., the first quarter would be August, September, and October). Each report must update and build upon the prior quarter data through the end of the fiscal year. The reports shall be provided no later than the tenth (10<sup>th</sup>) day of the month following the quarter's end, except for the report covering the final quarter in the charge year. This report which will contain the claim filing data for the entire charge year may be delivered the thirtieth (30<sup>th</sup>) day of September, in order that the claim dispositions can be as current as possible.

The report shall be broken out by agency, account number, and unit and/or division where applicable. The following data must be provided for each claim filed:

- (a) Claimant name
- (b) Social Security Number
- (c) Benefit year beginning date
- (d) Last day worked
- (e) Reason for separation
- (f) Most current claim status, including pending protests/appeals, and final ruling
- (g) Maximum potential liability on the claim
- (h) Amount of liability removed or deferred as a result of protests and appeals
- (i) Remaining chargeable liability

Summary information shall be provided for the State of North Carolina as well as by agency. Each of the following must be summarized for each reporting period:

- (a) Number of claims filed
- (b) Number of claims not protestable
- (c) Number of claims contested: number won, number lost, number pending
- (d) Dollar amount of potential liability for (a), (b) and (c)
- (e) Dollar amount of liability removed
- (f) Remaining chargeable liability

## 2. Annual Hearings Activity Report

This report will summarize statewide appeal and hearing activity for the State of North Carolina. The report must be aligned with the DES fiscal year as described above. The report shall be provided to OSHR by the first (1<sup>st</sup>) day of September following the end of each fiscal year. The report must provide the following:

- (a) Total number of appeals
- (b) Total number of hearings attended with TPA representation
- (c) Total number of hearings attended without TPA representation
- (d) Number of hearings won and number lost, number withdrawn, number pending
- (e) Total number of Commission appeals
- (f) Number of Commission appeals won, number lost, number pending

## 3. Annual Report of Charge Activity

This report will show charges or credits applied to each claim with a charge and charge protest activities (pending, won, lost). It will be broken out by agency, account number and fund source. The report must be provided no later than March 31st of the year following each DES Reconciliation Statement. This must be a separate report and not be included with claims being filed in the year the charges are processed. Minimal detail information which must be provided for each claim with a charge includes:

- (a) Claimant name
- (b) Social Security Number
- (c) Benefit year beginning date
- (d) Reason for separation
- (e) Final claim disposition
- (f) Maximum liability on the claim
- (g) Amount charged
- (h) Charge protest status, if applicable
- (i) Amount credited due to charge protest, if applicable

## 10) Turnover of State's Data

All information and data pertaining to claims administered under this contract must be returned to the State in the form designated by the Contract Administrator. This may include hard copy files, in addition to electronic data transfer. All information must be returned to the State within one (1) week of the end of the contract. The transition must begin six (6) weeks prior to the contract end date. Transfer of data shall be at no additional cost to the State.

## 11) Invoicing

After the end of each quarter, State Contract Administrator will submit to the TPA Vendor the gross payroll totals from NCUI 101 Quarterly Tax and Wage Reports including supporting documentation. Upon receipt and acceptance, the Vendor shall then submit one (1) quarterly for TPA fees back to the State Contract Administrator. Invoices should bear the correct purchase order number to ensure prompt payment. Failure to do so will result in payment delay. Each invoice must itemize the work for which payment is sought.

The TPA Vendor shall submit monthly invoices within fifteen (15) days following the end of each month for hearings conducted during that month to the Agency's (or University's) UI Coordinator.

**Attachment B. Department of Information Technology Terms and Conditions****1) DEFINITIONS:** As used herein;

Agreement means the contract awarded pursuant to this RFP.

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

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

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

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

- 2) **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 ninety (90) days after acceptance.
- 4) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 5) **TRAVEL EXPENSES:** **All travel expenses should be included in the Vendor's proposed hourly costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.



- 6) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the 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 CRITERIA:**
- a. Initial acceptance testing is required for all Vendor supplied Services before going live, unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of Services may be controlled by additional written terms as agreed by the parties.
  - b. After initial acceptance of Services, the State shall have the obligation to notify Vendor, in writing and within following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld, but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice have been successfully corrected.
- 10) **PAYMENT TERMS:**
- a) Monthly Payment terms are Net thirty (30) days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules.

- b) Payment may be made in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Subscription fees for term years after the initial year shall be as quoted under State options herein, but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing.
  - c) Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
    - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
    - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
    - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
  - d) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
  - e) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon Vendor's receipt of a disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software 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.
  - f) 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 Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.
- 11) **EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
- 12) **ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 13) **LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
- 14) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

- 15) **ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 16) **INSURANCE COVERAGE:** During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and
  - b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
  - c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
  - d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.
- 17) **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
- 18) **CONFIDENTIALITY:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

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

- 20) **WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of the Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to the Agreement pursuant to Paragraph 40) herein below.
- 21) **TERMINATION:** Any notice or termination made under the Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.
- a) The parties may mutually terminate the Agreement by written agreement at any time.
  - b) The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
    - i) **Termination for Cause:** In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
    - ii) **Termination For Convenience Without Cause:** The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
- 22) **LIMITATION OF VENDOR'S LIABILITY:**
- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (vi) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.
  - b) The Vendor's liability for damages to the State arising under the contract shall be limited to two (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** Reserved.
- 39) **ACCESS AND USE OF SAAS SERVICES**:
- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, et. seq.

- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS tenants for similar Services. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third-party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) 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) 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.

40) **WARRANTY OF NON-INFRINGEMENT; REMEDIES.**

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



- b) Should any Services supplied by Vendor become the subject of a claim of infringement of a patent, copyright, Trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the State the right to continue using the Services, or replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected Services, and refund any sums the State has paid Vendor and make every reasonable effort to assist the State in procuring substitute Services. If, in the sole opinion of the State, the cessation of use by the State of any such Services due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid for unused Services.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services supplied by the Vendor, their use or operation, infringes on a patent, copyright, trademark or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the State in any such action. Such defense and payment shall be conditioned on the following:
  - i. That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii. That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's material alteration of any Vendor-branded Services, or from the continued use of the good(s) or Services after receiving notice they infringe on a trade secret of a third party.

41) **ACCESS AVAILABILITY; REMEDIES:**

- a) The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services.
- b) The State shall notify the Vendor if the Services are not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State.

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

1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

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

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

42) **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.

43) **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 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.

44) **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.

45) **TRANSITION PERIOD:**

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

46) **SECURITY OF STATE DATA:**

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the

Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at 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 24 hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- e) The Vendor shall certify to the State:
  - i. The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
  - ii. That the system used to provide the Subscription Services under this Contract has and will maintain a valid 3rd party security certification not to exceed 1 year and is consistent with the data classification level and a security 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; and

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);
  6. Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.
- f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) 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 Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.

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

Vendor shall investigate of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.
  - n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
  - o) Secure Data Disposal. When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST) approved methods and certificates of destruction shall be provided to the State.
- 47) **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) **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.

**Attachment C. Defining Complex Issues for UI Hearing Representation**

“Resignations” which were forced, coerced, or suggested by the employer. These will usually become dismissal issues and throw the burden of proof on the employer. It is essential to inform the Claim or Hearing Representative at the outset if these conditions exist, to properly prepare the case.

Dismissal for dishonesty or theft in cases where the employee denies the charge and “gray areas” exist in the documentation or available testimony. If the agency/university has solid documentation and witnesses, a representative should not be necessary.

Dismissal for absenteeism may require representation, depending on the documentation. If the documentation is incomplete a representative may be necessary. If the record shows the dates, reasons and reporting off of the absences, a representative should not be necessary.

Dismissal for “Improper Conduct” may require representation since no prior warnings are required. It would be important to show the seriousness of the act resulting in an immediate dismissal. If the agency/university has solid facts and the act is documented as one which would require immediate dismissal, no representative should be needed.

Dismissal for poor job performance usually requires large amounts of documentation. If this is the case, a representative may be needed to streamline the presentation as much as possible.

Dismissal for repeated rule or policy violations should usually not require a representative, as the documented warnings should naturally build the case. Representation may be required where the documentation is weak and depending on the severity of the violations.

Any case where there is advance knowledge that the claimant has an attorney would warrant representation.

NOTE: Cases involving voluntary resignations should not usually require representation. The claimants have the burden of proving that they have resigned “with good cause”, which means they did everything a reasonably prudent person would do and could do to protect the employment prior to leaving. Reasonable actions by a claimant would be (but not limited to):

- Informing a supervisor or department manager of work-related problems the claimant was unable to resolve on their own. Then allowing the superiors a reasonable time to try to resolve the problem.
- Requesting in writing a leave of absence, medical leave, transfer, etc.
- Requesting a reasonable change in hours or a reduction of hours to accommodate some specific conflicting personal situation.

If the claimant did attempt or act on any of the above, the case would become complex, and a representative would likely be recommended.

**Attachment D. Questions for Offerors**

As part of their response to the RFP, Vendors must answer all of the following questions:

1. What experience and qualifications do you have to provide the services required in this RFP?
2. Describe the system capabilities that will allow your firm to meet the State's objectives, including back-up and security mechanisms.
3. What are the data processing requirements necessary to obtain the payroll data? Provide formatting specifications and address whether the capability exists to accept and convert payroll data already in a format that may be similar to the proposer's specifications.
4. How do you plan to assume responsibility for management of all existing claims?  
Specifically describe the steps to be followed to:
  - a) Begin work on existing claims and ensure timely follow-up on unfavorable determinations
  - b) Immediate management of new claims
  - c) Communication with UI Coordinators
5. What is your staffing plan for administration of the State's unemployment compensation claims? Provide an organizational chart showing the relationship of the dedicated staff assigned to the State with reference to management, and back-up personnel.
6. What are the internal performance standards, and how are they measured? For example, claims response time frame, hearing results, appeals etc.
7. What mechanisms are used to determine client satisfaction and how often are they applied?
8. What is the process for responding timely and accurately to inquiries, and complaints by employers?
9. Who is the supervising attorney for North Carolina hearing representation?
10. What is the average maximum weekly caseload for a hearing representative to provide notification and counseling? At what point would back-up assistance typically be provided, and what is the process to determine the necessity of back-up assistance?
11. Define the geographical areas your per diem hearing representative network currently in North Carolina, and if necessary, how you propose to expand services to meet the State's geographical needs?
12. What is your process and criteria for selecting per diem Hearing Representatives?
13. Provide examples of educational materials and guidelines provided to your clients.
14. Specifically describe all telecommunication and electronic data transfer capabilities.
15. Describe internal controls to ensure data is up-to-date, accurate and confidential.
16. Is there a process in place to correct address-of-record problems? If so, please describe.
17. Describe the mode for receiving claim forms from the DES, obtaining separation information from the UI Coordinators and responding with separation information to the DES.
18. What is the process followed upon receipt of an unfavorable determination on a protested claim?
19. What is the proposed communication process to ensure timely coordination with the UI Coordinators on hearings notification and counseling?
20. How do you determine whether to assign a representative to a hearing?
21. What communication process do you use upon receipt of an unfavorable Commission level decision to inform the employer of the decision and next steps to pursue appeal?
22. Describe the process for auditing and protesting charges, including the follow-up plan if the DES does not respond, or if presentation of additional information may result in a credit.
23. Provide an example of a typical charge protest communication with the DES.
24. Describe your information management system and its capability to provide the described required reports, on-line inquiries and download of information.



25. Describe the process and timeframe for updating claim disposition and accurate maximum potential liability amounts.
26. What is your proposal to provide claims activity statistics and reports with consideration to privacy needs?
27. Demonstrate your experience with clients having an equivalent geographic distribution of operations, similar to the State of NC.
28. Vendor shall complete and submit with its response a [VRAR \(Vendor Readiness Assessment Report\)](#).
29. Describe procedure to report software issues/problems and expected resolution timeline.
30. Provide disaster recovery plan including Recovery Time Objective and Recovery Point Objective metric.

**Attachment E. References**

Vendor must supply three (3) references for which similar or related work has been performed during the past three (3) years. References will be contacted and resulting information will be considered during the evaluation period.

**Reference #1**

Agency or Company Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact /Contract Administrator Name: \_\_\_\_\_

Title of Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Description of Services Provided, including volume of UI claims handled: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**Reference #2**

Agency or Company Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact /Contract Administrator Name: \_\_\_\_\_

Title of Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Description of Services Provided, including volume of UI claims handled: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**Reference #3**

Agency or Company Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Contact /Contract Administrator Name: \_\_\_\_\_

Title of Contact: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Description of Services Provided, including volume of UI claims handled: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attachment F. Cost Proposal**

Vendor must fully complete Attachment F by inserting a cost into each blank below.

Each cost will be a fixed for the contract term, three (3) years, and additional two (2) years should the State exercise its options to renew the contract.

Low cost will be determined by the Vendor with the lowest unit price per \$1,000.00 of Annual Payroll.

**\$\_\_\_\_\_ (Unit Price) per \$1,000.00 of Annual Payroll**