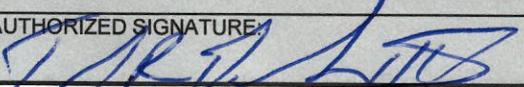


<b>STATE OF NORTH CAROLINA</b>  <b>Department of Information Technology</b> <b>Statewide IT Procurement Office</b>	<b>REQUEST FOR BEST AND FINAL OFFER NO.</b> <b>ITS-400277</b>  <b>Offers will be received until:</b> 2:00 PM Eastern Time on September 21, 2018  <b>Issue Date:</b> September 13, 2018
<b>Refer <u>ALL</u> inquiries regarding this BAFO to:</b>  Debbie Patterson, Procurement Officer <a href="mailto:debbie.patterson@nc.gov">debbie.patterson@nc.gov</a> 919-754-6619	<b>Commodity Number:</b> 204  <b>Description:</b> IT Infrastructure Solutions  <b>Using Agency:</b> Statewide
<b>See page 2 for mailing instructions.</b>	<b>Requisition No.:</b> N/A

**NOTICE TO VENDOR:** Offers, subject to the conditions made a part hereof, will be received at this office, 3900 Wake Forest Road, Raleigh, NC 27609 until 2:00 PM Eastern Time on the day of opening and then opened, for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Offers submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. Offers are subject to rejection unless submitted on this form.

**EXECUTION:** In compliance with this Request for Best and Final Offer (BAFO), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. §143B-1354 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion of fraud. The signature below is adopted as my electronic signature as provided in Article 40 of the NC General Statutes,

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

OFFEROR: NetApp, Inc.		
STREET ADDRESS: 1395 Crossman Ave.	P.O. BOX: Click here to enter text.	ZIP: 94089
CITY & STATE: Sunnyvale, CA	TELEPHONE NUMBER: Click here to enter text.	TOLL FREE TEL. NO: Click here to enter text.
PRINT NAME & TITLE OF PERSON SIGNING: Thomas Balaban, Sr. Director		FAX NUMBER: Click here to enter text.
AUTHORIZED SIGNATURE: 	DATE: 09/20/18	E-MAIL: Click here to enter text.

Offer valid for one hundred-twenty (120) calendar days from date of offer opening unless otherwise stated here: [Click here to enter text.](#) days.

**ACCEPTANCE OF OFFER:** If the State accepts any or all parts of this offer, an authorized representative of NCDIT shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, any provisions and requirements of the original IFB which have not been superseded by this BAFO and the Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

<b>FOR NCDIT USE ONLY</b>	
Offer accepted and contract awarded this _____ day of _____, 2018, as indicated on attached certification, by _____ (Authorized representative of NCDIT).	10/12/2018   11:13 AM EDT DBF6EB174A72411...

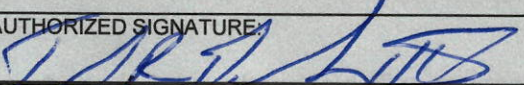


<b>STATE OF NORTH CAROLINA</b>  <b>Department of Information Technology</b> <b>Statewide IT Procurement Office</b>	<b>REQUEST FOR BEST AND FINAL OFFER NO.</b> <b>ITS-400277</b>	
	<b>Offers will be received until:</b> 2:00 PM Eastern Time on September 21, 2018	
	<b>Issue Date:</b> September 13, 2018	
<b>Refer <u>ALL</u> inquiries regarding this BAFO to:</b>  Debbie Patterson, Procurement Officer <a href="mailto:debbie.patterson@nc.gov">debbie.patterson@nc.gov</a> 919-754-6619	<b>Commodity Number:</b> 204	
	<b>Description:</b> IT Infrastructure Solutions	
	<b>Using Agency:</b> Statewide	
<b>See page 2 for mailing instructions.</b>	<b>Requisition No.:</b> N/A	

**NOTICE TO VENDOR:** Offers, subject to the conditions made a part hereof, will be received at this office, 3900 Wake Forest Road, Raleigh, NC 27609 until 2:00 PM Eastern Time on the day of opening and then opened, for furnishing and delivering the goods and services as described herein. Refer to page 2 for proper mailing instructions. Offers submitted via facsimile (fax) machine in response to this Best and Final Offer (BAFO) will not be accepted. Offers are subject to rejection unless submitted on this form.

**EXECUTION:** In compliance with this Request for Best and Final Offer (BAFO), and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all goods and services which are offered, at the prices agreed upon and within the time specified herein. Pursuant to N.C.G.S. §143B-1354 and under penalty of perjury, the undersigned Vendor certifies that this offer has not been arrived at collusively or otherwise in violation of Federal or North Carolina law and this offer is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting an offer for the same commodity, and is in all respects fair and without collusion of fraud. The signature below is adopted as my electronic signature as provided in Article 40 of the NC General Statutes,

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

OFFEROR: NetApp, Inc.		
STREET ADDRESS: 1395 Crossman Ave.	P.O. BOX: Click here to enter text.	ZIP: 94089
CITY & STATE: Sunnyvale, CA	TELEPHONE NUMBER: Click here to enter text.	TOLL FREE TEL. NO: Click here to enter text.
PRINT NAME & TITLE OF PERSON SIGNING: Thomas Balaban, Sr. Director		FAX NUMBER: Click here to enter text.
AUTHORIZED SIGNATURE: 	DATE: 09/20/18	E-MAIL: Click here to enter text.

Offer valid for one hundred-twenty (120) calendar days from date of offer opening unless otherwise stated here: [Click here to enter text.](#) days.

**ACCEPTANCE OF OFFER:** If the State accepts any or all parts of this offer, an authorized representative of NCDIT shall affix his/her signature to the Vendor's response to this Request for BAFO. The acceptance shall include the response to this BAFO, any provisions and requirements of the original IFB which have not been superseded by this BAFO and the Department of Information Technology Terms and Conditions. These documents shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

<b>FOR NCDIT USE ONLY</b>  Offer accepted and contract awarded this _____ day of _____, 2018, as indicated on attached certification, by _____ (Authorized representative of NCDIT).
--



**DELIVERY INSTRUCTIONS:** Vendor shall deliver **one (1) signed original version of its offer**, subject to the conditions made a part hereof, and **one (1) signed, executed electronic copy of its offer** on USB Flash Drive. The files shall not be password-protected and shall be capable of being copied to other media.

Vendor shall address envelope and indicate IFB Number as shown below. Please note that the U.S. Postal Service does not deliver any mail (U.S. Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the offer in this Office by the date and time of opening specified in this document.**

Vendor may submit its response by **email** instead of by US Mail or other delivery service. Bid responses may be emailed to **debbie.patterson@nc.gov** no later than the specified time and date of opening.

DELIVER TO:
IFB NUMBER: ITS-400277 North Carolina Department of Information Technology Attn: Debbie Patterson, Procurement Officer 3900 Wake Forest Road Raleigh, NC 27609

**SOLICITATION REQUEST FOR BEST AND FINAL OFFER (BAFO):** This request is to acquire a best and final offer from Vendor for IT Infrastructure Solutions. The offer should integrate the previous response to the IFB and Addendum, and any changes listed below, responses to bid clarification questions in Table 1, and the updated Attachment D submitted by the Vendor. Any individual Vendor can receive a different number of requests for BAFOs than other Vendors.

**NOTE:** This IFB is still in the evaluation period. During this period and prior to award, possession of the BAFO, original bid response and accompanying information is limited to personnel of the Department of Information Technology (DIT) Statewide IT Procurement Office, and to agencies responsible for participating in the evaluation. Vendors who attempt to gain this privileged information, or to influence the evaluation process (i.e., assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.

The State intends to make progressive awards for this term contract due to the number of responsive Vendors and the State's desire to establish a multiple Vendor contract. One or more Vendors will receive Requests for a Best and Final Offer. Contract awards may be made as such Requests for BAFOs are completed. The State anticipates completing all awards in a timely manner.

**BID CLARIFICATIONS:** Vendor shall provide responses to bid clarifications in Table 1 in the gray-shaded space provided below each item.

#	IFB Section	Bid Clarifications
1	Attachment B – GS4 and Appendix 3 of Vendor's Response: Exception to Terms, pages 62-63: Service Level Agreements	<p>The State acknowledges that NetApp's product and service offerings fall under the category of Converged IT Infrastructure or complex, highly configured IT Infrastructure Solutions and are exempt from the Delivery Time Service Level Agreement timeframes and minimum thresholds. The Quote Time for Converged IT Infrastructure Solutions and Services is ten (10) business days from receipt of requests. Additional time may be allowed if necessary for Vendor and Agency to refine solutions</p> <p>Any Reseller designated by Vendor must agree to the terms and conditions of the awarded contract. Any Reseller designated by Vendor must agree to meet</p>



#	IFB Section	Bid Clarifications
		the Service Level Agreement requirements per Section C, Subsection 14 (paragraphs b, c, & d) and the Performance Assurance requirements of Section C, Subsection 15 for Quote Time, Order Accuracy, and Invoice Accuracy (as amended in Addendum 1). Vendor shall confirm it agrees to include this language in any subsequent agreement with its designated Resellers on an awarded contract and work with its designated Resellers to track and report the listed Service Level Agreements versus the minimum thresholds in Table 3 in Section C, Subsection 15.
	Accept	
2	Attachment B – GS21	Vendor shall indicate if it will accept North Carolina Statewide E-Procurement orders with no fees to customers.
	Accept	
3	Appendix 3 of Vendor's Response: Exception to Terms, page 65: Explanation of Limitation of Liability Clause	Vendor agrees to remove its exception to Section C, Paragraph 40 from its response to IFB ITS-400277 and agrees to the IFB term as stated below:  40. <b><u>EXPLANATION OF LIMITATION OF LIABILITY CLAUSE:</u></b> In Paragraph 29 of Section G, the State interprets the phrase "contract value" as one and a half times the value of the purchase or cost of cover (whichever is greater) in the event of equipment failure or failure to deliver equipment according to the requirements of the contract; and two times the purchase value for all other contract damages.
	Accept	
4	Appendix 3 of Vendor's Response: Exception to Terms, page 67: Late Delivery, Back Order	Vendor agrees to remove its exception to Section G, Paragraph 20 from its response to IFB ITS-400277 and agrees to the IFB term as stated below:  20) <b><u>LATE DELIVERY, BACK ORDER:</u></b> Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, 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 substitute Deliverables or Services.
	Accept	
5	Appendix 3 of Vendor's Response: Exception to Terms, page 68: Insurance Coverage/Commercial General Liability	Vendor agrees to remove its exception to Section G, Paragraph 24(b) from its response to IFB ITS-400277 and agrees to the IFB term as stated below:  24) <b><u>INSURANCE COVERAGE:</u></b>  b) <b><u>Commercial General Liability</u></b> - 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
	Accept	
6	Appendix 3 of Vendor's Response: Exception to Terms, page 68: Electronic Procurement	Vendors, or its Authorized Reseller, as applicable, are required under this contract to accept orders via the State's E-Procurement users and to pay the E-Procurement transaction fee.



#	IFB Section	Bid Clarifications
		Any Reseller designated by Vendor must agree to the terms and conditions of the awarded contract. Any Reseller designated by Vendor must agree to meet the requirements of Section G, Paragraph 47 "Electronic Procurement". Vendor shall confirm it agrees to include this language in any subsequent agreement with its designated Resellers on an awarded contract.
	Accept	

Table 1: Bid Clarifications

**BAFO, IFB ITS-400277 Modifications:**

To the extent that any of the Vendor's terms presented or incorporated in the Vendor's response to IFB ITS-400277 conflict with the terms and conditions of the IFB, the IFB's terms will take precedence except as modified herein. Terms and Conditions presented in Vendor's IFB response comprising IP, warranty, licensing agreements, maintenance and support for licensed products or software shall supersede the IFB ITS-400277 Terms and Conditions for IP, warranty, licensing software, subscription services for software and software use, and Software as a Service; provided, however that the term of such licensing agreements shall not supersede other terms and conditions of the IFB except as specifically agreed.

**The following modifications are made to Section G, "Department of Information Technology Terms and Conditions" where "reserved" removes such term as void:**

1. Sub-Section 1 "General Terms and Conditions Applicable to All Purchases"
  - Paragraph 8 "Maintenance/Support Services" is reserved.
  - Paragraph 5 and Paragraph M6 of Addendum 1 "Subcontracting" are modified as follows:

The Vendor may subcontract the performance of required Services with other Vendors or third parties, or change subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor. In the event of a dispute that is not resolved within thirty (30) days, Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors.

- Paragraph 14 "Acceptance" is modified as follows:

**ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor within 30 calendar days following delivery of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or



failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the rights available under 9 NCAC 06B.1206. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within fourteen (14) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein. Any reference in Vendor standard agreement(s) to deemed acceptance upon delivery of Deliverables is void.

- Paragraph 18 "Confidentiality" is modified as follows:  
The following sentence is removed from the first paragraph: "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".

**CONFIDENTIALITY:** In accordance with N.C.G.S. §§143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. 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 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.

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 this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

2. Sub-Section 2 "Department of Information Technology Terms and Conditions Applicable for Software and Services" is modified to strike Paragraphs 1, 2, 3, 4, and 5. Paragraph 6 is modified as follows:

6) STATE PROPERTY AND INTANGIBLES RIGHTS: The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all Deliverables as defined in Sub-Section 1, Paragraph 19. To the extent that any Vendor Technology is contained in any of the Deliverables, and not licensed pursuant to the terms of a license agreement, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

3. Sub-Section 3 "Department of Information Technology Terms and Conditions Applicable for Software as a Service (SaaS) is modified to strike Paragraphs 1, 2, 3, 5, 7, 8, 10, and 12.
4. In the event of any conflict between the terms and conditions of this Agreement and the agreements included in Vendor's IFB response, the following terms and conditions of this Agreement shall always take precedence:
  - Section G, Sub-Section 1, Paragraph 13 "Payment Terms". The State does not agree to pay any late payment or interest fees on Vendor invoices.
  - Section G, Sub-Section 1, Paragraph 18 "Confidentiality", as modified herein.
  - Section G, Sub-Section 1, Paragraph 25 "Dispute Resolution"
  - Section G, Sub-Section 1, Paragraph 28 "Termination"
  - Section G, Sub-Section 1, Paragraph 42 "Governing Laws, Jurisdiction, and Venue"
  - Notwithstanding any terms, definitions, or documents incorporated by reference in the Vendor's IFB response,
    - the term "confidential information" shall be determined pursuant to the IFB and the N.C. Public Records Act,
    - the term "affiliate" shall not apply to the State or any authorized purchaser,
    - terms requiring payment of audit costs shall not apply,

- merger clauses, "entire agreement" clauses, and clauses of similar intent shall not apply,
- arbitration provisions, provisions limiting actions that differ from the statutes of limitation established by North Carolina law and terms requiring indemnification by the State or hold harmless provisions shall not apply, and
- in matters of records retention, the State's record retention schedules and the NC Public Records Act shall control.

5. The following terms are added for inclusion Section C of the final Agreement:

- Software and/or 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 Software and/or Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software and/or Services. The State shall not be subject to contracting through ratification by use.
- Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Vendor will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support. The Vendor is specifically precluded from an act or action that does, or may, subject the State's data or information, or the State, to European Union (EU) jurisdiction.
- Automatic renewals of maintenance or service agreements are not permitted under this Agreement.
- State has the authority to transfer or assign Vendor's products, licenses, or services in accordance with N.C.G.S. §143A-6, and other applicable law.
- Vendor shall provide State notice any changes to the terms of its standard agreement(s), including but not limited to licensing terms, AUP, TOU, TOS, and the obtain the State's agreement to incorporate such changes into the State's agreement. Unilateral change provisions without Vendor notification and the State's agreement are void.
- Agency Purchase Orders supersede any Vendor Ordering Document. To the extent that any Vendor Ordering Documents are utilized, the terms and provisions of such documents shall be subordinate to the Agreement established by IFB ITS-400277 and the Ordering Document shall be utilized solely for administrative purposes.
- Award of a contract shall not constitute the State's agreement with any open source licensing agreements. The State reserves the right to review and negotiate such third party open source agreements at the time of a specific procurement.
- The State reserves the right to negotiate more specific terms as necessary to comply with changes in law or regulation, whether State or federal, for reasons of privacy or security of data, or for conditions of funding for the procurement.

6. Section C, Paragraph 16 "Additions/Deletions of Qualified Offerings" is modified as follows:



Replacement and/or supplemental products that meet or exceed the minimum IFB requirements may be added to this contract at the sole discretion of the State. Replacement products shall be offered at the same minimum discount off MSRP as Vendor provided in its response to Attachment D: Price Proposal. Vendor shall submit the request to add or replace products via process established by NCDIT Contract Administrator. The State is under no obligation to accept the offerings.

Vendor shall remove all discontinued IT Infrastructure Solution devices and related peripherals from the contract within one hundred eighty (180) calendar days after the product's end of life date.

7. Section C, Paragraph 22(e) "Contract Administration/Data Template and Post-Award Meeting" is modified as follows:

Data Template and Post-Award Meeting: Reserved

**BAFO COST:** Based on comparison of Vendor's initially submitted costs with current North Carolina similar contracts and other states' similar contracts, the State encourages the Vendor to supply more competitive prices for all applicable categories in Attachment D. Vendor shall submit its most competitive prices by updating the version of Attachment D that was submitted by the Vendor to the State in response to the IFB and returning the updated Attachment D with the Vendor's BAFO submission.

8	<b>Vendor shall indicate below if it has revised pricing and submitted an updated Attachment D in Excel format with its response to this request for BAFO.</b> Yes, we will be providing an updated Attachment D.
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<b>STATE OF NORTH CAROLINA</b> <b>Department of Information Technology</b> <b>Statewide IT Procurement Office</b>	<b>INVITATION FOR BIDS NO. ITS-400277</b>
	<b>Offers will be publicly opened:</b> December 12, 2017
<b>Refer <u>ALL</u> inquiries regarding this IFB to:</b> Debbie Patterson, Procurement Officer <a href="mailto:debbie.patterson@nc.gov">debbie.patterson@nc.gov</a> 919-754-6619	<b>IFB Issue Date:</b> November 2, 2017
	<b>Commodity Number:</b> 204
	<b>Description:</b> IT Infrastructure Solutions
<b>See page 2 for mailing instructions.</b>	<b>Using Agency:</b> Statewide
	<b>Requisition No.:</b> N/A

**OFFER AND ACCEPTANCE:** The State seeks offers for the goods, software, and/or services described in this solicitation. The State's acceptance of any offer shall be demonstrated by execution of the acceptance found below and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: In cases of conflict between documents comprising the contract, the order of precedence shall be (1) Best and Final Offers, if any, (2) special terms and conditions specific to this Invitation for Bids (IFB), (3) specifications, (4) Department of Information Technology Terms and Conditions of this IFB, and (5) the agreed portions of the awarded Vendor's offer.

**EXECUTION:** In compliance with this IFB 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: <a href="#">Click here to enter text.</a>		
STREET ADDRESS: <a href="#">Click here to enter text.</a>	P.O. BOX: <a href="#">Click here to enter text.</a>	ZIP: <a href="#">Click here to enter text.</a>
CITY, STATE and ZIP: <a href="#">Click here to enter text.</a>	TELEPHONE NUMBER: <a href="#">Click here to enter text.</a>	TOLL FREE TEL. NO: <a href="#">Click here to enter text.</a>
PRINT NAME & TITLE OF PERSON SIGNING: <a href="#">Click here to enter text.</a>		FAX NUMBER: <a href="#">Click here to enter text.</a>
AUTHORIZED SIGNATURE:	DATE: <a href="#">Click here to enter text.</a>	E-MAIL: <a href="#">Click here to enter text.</a>

Offer valid for one hundred eighty (180) calendar days from date of offer opening unless otherwise stated here: [Click here to enter text.](#) calendar days

**ACCEPTANCE OF OFFER:** If any or all parts of the offer are accepted, an authorized representative of NCDIT 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 NCDIT USE ONLY</b> Offer accepted and contract awarded this _____ day of _____, 2018, as indicated on attached certification, by _____ (Authorized representative of NCDIT).
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**NOTE TO VENDORS: You may contact the Procurement Officer listed on page 1 of this IFB to obtain editable versions of the above Attachments to facilitate the development of your response to this IFB.**



## **Section A. Intent, Use, Duration, and Scope**

1. The purpose of this IFB is to solicit offers and select multiple Vendors for each Segment to provide IT Infrastructure Solutions for purchase, with options for support, to Agencies within the State of North Carolina.
2. Vendor shall only offer Agencies IT Infrastructure Solutions for segments listed in Table 1 under this contract. The State reserves the right to add, change, or remove IT Infrastructure Solutions Segments at any time during the contract. NCDIT reserves the right to remove a Vendor from this contract if Vendor offers Agencies, under this contract, IT Infrastructure Solutions that are not included in the scope of this contract.

<b>Segment</b>	<b>Segment Description</b>
Servers	Physical servers, including rack-mounted, blades, and tower models, virtual servers, and related emerging technologies
Storage	Enterprise mass storage components, purchased as standalone units or as part of a storage system containing several unique items, and related emerging technologies
Networking Equipment	Physical devices which are required for communication and interaction between devices on a computer network, and related emerging technologies (e.g., L1-L7 networking devices: repeaters, extenders, optical, switches, routers, firewalls, gateways, and IP Telephony)
IT Infrastructure Software	Software used in the operation, maintenance, or management of IT Infrastructure Solutions within the scope of this contract (e.g., IT hardware management software, software defined storage, network modeling software, performance monitoring software)
Converged IT Infrastructure Solutions	Includes pre-engineered converged and hyper-converged enterprise infrastructure solutions that integrate one or more IT infrastructure elements (e.g., servers, storage, networking equipment, virtualization, management software) and related emerging technologies
IT Infrastructure Peripheral Components	Peripherals (e.g., memory, hard drives, racks, additional processors, cables) must be able to attach to, work with, and be supported by the IT Infrastructure Solutions and the architecture described elsewhere herein. Peripherals must be present with the general offerings of the manufacturer, and as such, normally available from the manufacturer represented. Peripheral Options (procured by themselves) may be purchased under this contract in amounts up to <b>\$25,000</b> .
Value Added Services	Value Added Services related to IT Infrastructure Solutions (e.g., roadmap planning, site assessments, design, configuration, manufacturing (e.g., assembly, configuration), installation, implementation, training, move / add / changes, hard drive retention, end of life disposal / recycling, and support and maintenance, including extended maintenance renewals for hardware and associated software, middleware, and firmware. For Value Added Services, Vendor and Agency shall develop a mutually agreed upon written Statement of Work subject to the terms and conditions of this contract to describe in detail the Value Added Services being provided by the Vendor to the Agency and the specific pricing for these Value Added Services.



Table 1: IFB Scope

3. Vendor shall include in its offer the following:
  - a. At least one (1) of the following Segments: Servers, Storage, or Networking Equipment
  - b. The applicable Peripheral Components and Value Added Services for the included Segment(s)
4. The purchase of microcomputers and related peripherals is not in the scope of this IFB. The North Carolina Department of Information Technology has established and manages the 204A – Microcomputers and Peripherals statewide IT term contract and the 204B – Ruggedized Mobile Computing Devices, Accessories, and Peripherals, With Respective Support and Maintenance State Term Contract that are available for use by Agencies.
5. Vendor shall be the Original Equipment Manufacturer of the equipment proposed in its offer, or the Original Equipment Manufacturer's single authorized representative of the equipment proposed in its offer.
6. Vendor may provide its full catalog within the scope of this IFB. This may include products manufactured by other OEMs if they are purchased as part of an integrated solution that includes the Vendor's products.
7. Original Equipment Manufacturer vendors are not precluded from including third parties, subcontractors, and partners to deliver the goods and services of this IFB to Agencies during the contract period.
8. This solicitation will result in a Statewide IT Contract pursuant to 9 NCAC 06B.0701 for an indefinite quantity of goods or services that may be used by a State agency. The contract shall be a Statewide IT **CONVENIENCE** Contract for the use of Executive State Agencies. Further, it may be used as a Convenience Contract, available, but not mandatory, for the use of non-Executive State Agencies permitted by law. Such entities include the North Carolina University System and its member campuses, Instructional components of the Department of Public Instruction, Instructional components of the North Carolina Community College System, as well as local (municipal and county) governments.
9. 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 Vendor is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; and where other factors are deemed to be necessary or proper to the purchase in question.
10. Vendors are cautioned that the State cannot, does not, and will not guarantee purchase quantities to be made under this contract. The historic annual spend by state agencies across the existing statewide IT term contracts that fall under the scope of this IFB is approximately \$50 million.
11. A contract awarded pursuant to this IFB shall have an effective date as provided in the Notice of Award. The term shall be five (5) 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 this contract for five (5) additional one (1) year periods at its sole discretion. The State reserves the right to further amend the contract's intent of coverage as may be required by future legislative activities.

## **Section B. General Information**

1. **IFB SCHEDULE:** The responsible parties and date and times for the IFB's key activities are provided in Table 2. The State will make every effort to adhere to the schedule in Table 2, but reserves the right to amend the IFB Schedule.

Activity	Responsibility	Date	Time
Issue IFB	Statewide IT Strategic Sourcing Office	November 2, 2017	
<b>Deadline To Submit Questions (using Attachment A)</b>	Vendors	November 13, 2017	2:00 PM Eastern
Issue Response to Written Questions / IFB Amendments	Statewide IT Strategic Sourcing Office	November 28, 2017	
<b>Deadline To Submit Offer</b>	Vendors	December 12, 2017	2:00 PM Eastern
Evaluate Offers	Statewide IT Strategic Sourcing Office	January 16, 2018	
Conduct Negotiations (if needed)	Statewide IT Strategic Sourcing Office and Finalist Vendors	January 23, 2018	
<b>Deadline to Submit Best and Final Offers (if needed)</b>	Finalist Vendors	January 30, 2018	2:00 PM Eastern
Award Contract	Statewide IT Strategic Sourcing Office	February 15, 2018	
<b>Deadline to Submit Protest</b>	Vendors	15 calendar days after award	

Table 2: IFB Schedule

2. **VENDOR QUESTIONS:** Using Attachment A, Vendor shall submit any questions it may have regarding this IFB or the IFB process via e-mail to [debbie.patterson@nc.gov](mailto:debbie.patterson@nc.gov) with a subject line of "Questions - IFB ITS-400277". Written questions concerning this IFB will be received until the date and time listed in Table 2 of this IFB. The State will prepare responses to all written questions submitted, and post an addendum to this IFB on the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/>. The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award.
3. **ADDENDUM TO IFB:** The State may issue addenda if Vendor questions are permitted as described above, or if additional terms, specifications or other changes are necessary for this solicitation. All addenda will be posted to the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/>, and shall become an Addendum to this IFB. Critical update information may be included in these Addenda. It is important that all Vendors bidding on this IFB periodically check the State website for any and all Addenda that may be issued prior to the offer opening date.
4. **INSUFFICIENCY OF REFERENCES TO OTHER DATA:** Only information that is received in response to this IFB will be evaluated. Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.
5. **OFFER SUBMISSION:** Vendor shall deliver **one (1) signed original executed offer** and **one (1) copy** of its executed offer to Issuing Agency in a sealed package with Company Name and IFB Number clearly marked on the front. Vendor shall return all the pages of this solicitation in its response. Vendor shall also submit **one (1) signed, executed electronic copy** of its offer on USB Flash Drive. Vendor shall include in its electronic submission as separate files the completed versions of all Attachment files provided by the Procurement Officer listed on page 1 of this IFB. These separate files shall be in the same format as the Attachment files provided by the Procurement Officer upon request from Vendor. The files shall not be



password-protected and shall be capable of being copied to other media. Offers submitted electronically, or via facsimile (FAX) machine will not be accepted. Vendor shall submit offer in a sealed package with the Execution page signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed offer shall render offer invalid. All offers shall comply with Section F. Instructions to Vendors.

Vendor shall address envelope and indicate IFB Number as shown below. Please note that the U.S. Postal Service does not deliver any mail (U.S. Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the offer in this Office by the time and date of opening specified in Table 2 of this IFB.**

DELIVER TO:
IFB NUMBER: ITS-400277 Statewide IT Procurement Office Attn: Debbie Patterson, Procurement Officer 3900 Wake Forest Road Raleigh, NC 27609

6. **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 requirements or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State. If either a unit price or an extended price submitted by a Vendor is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Vendor contact regarding this IFB with anyone other than the Procurement Officer listed on page 1 of this IFB may be grounds for rejection of said Vendor's offer.
7. **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.
8. **NON-RESPONSIVE OFFERS:** Vendor's offer 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:
  - a. "This offer does not constitute a binding offer",
  - b. "This offer will be valid only if this offer is selected as a finalist or in the competitive range",
  - c. "Vendor does not commit or bind itself to any terms and conditions by this submission",
  - d. "This document and all associated documents are non-binding and shall be used for discussion purposes only",
  - e. "This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties", or
  - f. A statement of similar intent.
9. **BEST AND FINAL OFFERS (BAFO):** If negotiations or subsequent offers are solicited, Vendor shall provide a BAFO in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration.
10. **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.

11. **POSSESSION AND REVIEW:** During the evaluation period and prior to award, possession of the offers and accompanying information is limited to NCDIT personnel, and to the committee responsible for participating in the evaluation. Any Vendor who attempts to gain this privileged information, or to influence the evaluation process (i.e., assist in evaluation) will be in violation of purchasing rules and their offer will not be further evaluated or considered.
12. **AWARD INTENT:** It is the general intent to award this contract to multiple Vendors. As provided by statute, award will be based on Best Value Analysis, Lowest Price Technically Acceptable Source Selection Method in accordance with N.C.G.S. §143B-1350(h), which provides that the offer shall be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302.

The Interactive Purchasing System (IPS) that allow the public to retrieve award information electronically is available at the following link: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the IFB Number **ITS-400277**, 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.

13. **RIGHTS RESERVED:** While the State has every intention to award a contract as a result of this IFB, issuance of the IFB 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 IFB;
  - d. reject any or all offers received in response to this IFB;
  - e. waive any undesirable, inconsequential, or inconsistent provisions of this IFB;
  - 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;
  - 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 09 NCAC 06B.0316 (c); or
  - i. negotiate with one or more Vendors under 09 NCAC 06B.0316 (b).
14. **EFFECTIVE DATE:** This solicitation, including any Exhibits and completed Attachments, 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 Vendor for goods provided nor Services rendered prior to the appropriate signatures and the arrival of the effective date of the contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.
15. **E-PROCUREMENT SOLICITATION:** This is an E-Procurement solicitation. See Paragraph 48 in Section G. Department of Information Technology Terms and Conditions. The 1.75% transaction fee only applies to purchase orders issued through the Statewide E-Procurement Service for goods. Purchases of goods conducted outside the Statewide E-Procurement Service and all purchases of services are exempt from the 1.75% transaction fee.

The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide E-Procurement initiative. It is the Vendor's responsibility to



read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to E-Procurement.

- a. General information on the E-Procurement Service can be found at <http://eprocurement.nc.gov/>
- b. Within two (2) business days after notification of award of a contract, Vendor shall register in NC E-Procurement @ Your Service at the following web site: <http://eprocurement.nc.gov/Vendor.html>
- c. As of the IFB offer submittal date, the Vendor shall be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this IFB.
- d. If the awarded Vendor does not stay current on all E-Procurement fees, the State may remove the Vendor from the contract for a thirty (30) day period or until resolution, whichever is shorter. If the Vendor is making a reasonable effort to resolve any past due fees, no penalty will be imposed. The determination of the reasonable effort criteria will be at the discretion of the Statewide IT Strategic Sourcing Office.

16. **VENDOR RESPONSIBILITY:** Reserved.

17. **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 IFB.
- b. Costs for developing and delivering responses to this IFB 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 Vendor in the preparation and presentation of its offer.

18. **SUBMITTED MATERIALS:** All materials submitted in response to this IFB 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 IFB process.

## **Section C. Specifications**

Vendor shall refer to this Section and Attachment B for a listing of Submission Requirements and General Specifications. **Vendor shall submit their responses to the listed Submission Requirements and General Specifications in Attachment B using the space provided below each Submission Requirement and General Specification in Attachment B.**

1. **VENDOR STANDARD AGREEMENT(S):** The terms and conditions of Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this Agreement may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the NCDIT Terms and Conditions herein shall apply in all cases and supersede any provisions contained in 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.
2. **VENDOR UTILIZATION OF WORKERS OUTSIDE THE U.S.:** In accordance with N.C.G.S. §143B-1361(b), the Vendor shall detail the manner in which it intends to utilize resources or workers in the IFB response using Attachment B. 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. Vendor shall provide the following for any offer or actual utilization during duration of the contract:
  - a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States
  - b. The corporate structure and location of corporate employees and activities of the 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
3. **E-VERIFY:** Pursuant to N.C.G.S. § 143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor shall submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.
4. **RESTRICTIONS ON CONTRACTS WITH THE STATE:** Reserved
5. **VENDOR ELIGIBILITY:** 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). Vendor shall provide this certification in Attachment B.
6. **CONFLICT OF INTEREST:** Applicable standards may include: N.C.G.S. §§143B-1352 and 143B-1353, 14-234, and 133-32. Vendor shall not knowingly employ, during the period of this contract, 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.



7. **LETTER OF AUTHORIZATION FROM ORIGINAL EQUIPMENT MANUFACTURER:** If the Vendor is not the Original Equipment Manufacturer of the product line(s) offered herein, the Vendor shall be the Original Equipment Manufacturer's single authorized representative.

a. If an Original Equipment Manufacturer elects to have another Vendor submit an offer to this IFB as the Original Equipment Manufacturer's single authorized representative, Vendor submitting the offer shall include with its offer a written, dated statement on the Original Equipment Manufacturer's letterhead, addressed to the State of North Carolina, and signed by an individual authorized to bind the Original Equipment Manufacturer, that stipulates:

1. Vendor submitting the offer is the Original Equipment Manufacturer's single authorized representative of the Original Equipment Manufacturer's product line as it relates to the scope of this IFB.
2. Original Equipment Manufacturer is committed to supporting the specifications and requirements of the contract for the duration of the contract, acknowledging that the Vendor submitting the offer bears sole performance responsibility as established by the Prime Vendor concept in Section G. Subsection 6 of this IFB. This includes the Original Equipment Manufacturer's commitment to supporting the Vendor submitting the offer if successful by providing the Original Equipment Manufacturer's products in a timely manner and in quantities necessary for the Vendor submitting the offer to fulfill the requirements of the contract.
3. Explains how warranty services will be provided to Agencies on Original Equipment Manufacturer's product lines included in Vendor's offer
4. Original Equipment Manufacturer intends to maintain and publish the established method of pricing (U.S. MSRP or Price List) for the duration of this contract, and will make such information available to NCDIT and Agencies if requested.

8. **CUSTOMER REFERENCES:** Using Attachment C, Vendor shall provide three (3) Customer References that meet the following criteria:

- a. Provide evidence of Vendor's ability to deliver in the last two years IT Infrastructure Solutions that are in the scope of this IFB. If the Vendor is not the Original Equipment Manufacturer of the product line(s) included in its offer, Vendor must provide references of its company (not references of the Original Equipment Manufacturer).
- b. Customer is organization similar in size and scope to the State of North Carolina with annual purchases of at least \$1,000,000 in IT Infrastructure Solutions that are in the scope of this IFB, with at least one of the references being a public-sector organization.

Vendor shall note that the State will be contacting the provided Customer References and is advised to notify the selected Customer References and request that they respond promptly to the State's inquiries.

9. **FINANCIAL STATEMENTS:** Vendor shall provide evidence of financial stability by returning completed Attachment F with its offer, and providing copies of Financial Statements with its offer as further described herein below. As used herein, Financial Statements shall exclude tax returns and compiled statements.

- a. For a publicly traded company, Financial Statements for the past four (4) fiscal years, including at a minimum, income statements, balance sheets, statement of changes in financial position or cash flows, and accompanying notes to the financial statements. If four (4) years of Financial Statements are not available, this information shall be provided to the fullest extent possible but

not less than one (1) year. If less than four (4) years of Financial Statements are provided, Vendor shall 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 a Vendor's offer. The State reserves the right to determine whether the substitute information meets the requirements for Financial Statements sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award.

10. **DISCLOSURE OF LITIGATION:** Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this contract.

- a. Vendor shall notify the State in its offer using Attachment B, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of this contract or any Scope Statement awarded to Vendor.
- b. Vendor shall notify the State in its offer using Attachment B, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
- c. All notices under subsection a. and b. herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by Section G. Department of Information Technology Terms and Conditions of this IFB. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

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



12. **SECURITY AND BACKGROUND CHECKS:** The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.
13. **PRODUCT RECALL:** Vendor assumes full responsibility for prompt notification of both the NCDIT Contract Administrator and Agencies of any product recall in accordance with the applicable state and federal regulations.
14. **SERVICE LEVEL AGREEMENTS:** The ability of the Vendor to meet the service requirements outlined herein will be a consideration in the award of this contract. No award will be made to any Vendor, regardless of bid price, that has not demonstrated to the State's total satisfaction that they have the capabilities to meet the service requirements of this IFB. Vendor shall describe in Attachment B their approach and capabilities to address the following Service Level Agreements:
- a. **Delivery Time**  
Vendor shall process Agency purchase order and deliver ordered IT Infrastructure Solutions within thirty (30) calendar days. Delivery Time is the number of calendar days between Vendor's receipt of a valid request for IT Infrastructure Solutions and the date the IT Infrastructure Solutions are delivered. Agency requested delivery dates that are past the established minimum threshold are excluded from this Service Level Agreement. Orders for Converged IT Infrastructure Solutions or complex, highly configured IT Infrastructure Solutions are excluded from this Service Level Agreement. Delays in delivery due to industry-wide component shortages or region-wide transportation delays that are submitted in writing to the Agency with supporting documentation are not included in the calculation of this Service Level Agreement.
  - b. **Quote Time**  
Vendor shall process Agency requests for quotes for IT Infrastructure Solutions within five (5) business days for items in the Servers, Storage, Networking Equipment, IT Infrastructure Software, and IT Infrastructure Peripheral Components Segments. Vendor shall process Agency requests for quotes for IT Infrastructure Solutions within ten (10) business days for items in the Converged IT Infrastructure Solutions and Value Added Services Segments. Quote Time is the number of calendar days between Vendor's receipt of a request for quote on IT Infrastructure Solutions and the date the written quote is delivered to the Agency.
  - c. **Order Accuracy**  
For the purposes of this IFB and resulting contract, order accuracy shall measure the degree that Vendor delivers items to the Agency that match what is on the Purchase Order and that an accurate packing slip is included in the shipment. If a single item received does not match the item that was listed on the Purchase Order, or an accurate packing slip is not included in the shipment, then the delivery is considered to be inaccurate for purposes of measuring this Service Level Agreement. Agency shall notify Vendor in writing (e.g., email) of any order accuracy issues.
  - d. **Invoice Accuracy**  
Vendor shall issue invoices that match the Agency Purchase Order issued to the Vendor and the Vendor's quote. Vendor shall invoice Agency by model, not by individual component and individual component price, unless specifically requested by Agency, provided in Vendor's quote, and broken out on Purchase Order as separate line items.
15. **PERFORMANCE ASSURANCE:** Vendor shall support NCDIT and Agencies to track, measure, and report on each of the Service Level Agreements in Section C, Subsection 14. The minimum threshold for each

Service Level Agreement is listed in Table 3 of this IFB. Vendor shall provide a one (1) percent invoice credit for each instance that does not meet the minimum threshold performance for an Agency. Invoice credits shall be provided to the Agencies within thirty (30) calendar days after the end of the contract quarter.

Service Level Agreement	Minimum Threshold
Delivery Time	95%
Quote Time	95%
Order Accuracy	98%
Invoice Accuracy	98%

Table 3: Service Level Agreement Minimum Thresholds

All Service Level Agreements shall be tracked and reported by the Vendor from the beginning of the contract. To enable the Vendor to implement and stabilize its processes, the Performance Assurance invoice credits for each instance that does not meet the minimum threshold will not commence until after sixty (60) calendar days from the start of the contract. Vendor shall provide the NCDIT Contract Administrator a summary of all invoice credits issued to Agencies each contract quarter by Agency, by Service Level Agreement.

16. **ADDITIONS/DELETIONS OF QUALIFIED OFFERINGS:** Replacement and/or supplemental products that meet or exceed the minimum IFB requirements may be added to this contract at the sole discretion of the State. Replacement products shall be offered at a price equal to or lower than the original offer price of the product being replaced. Vendor shall submit the request to add or replace products via process established by NCDIT Contract Administrator. The State is under no obligation to accept the offerings.

Vendor shall remove all discontinued IT Infrastructure Solution devices and related peripherals from the contract within forty-five (45) calendar days after the product's end of life date.

17. **CONTRACT CHANGES:** Subject to written pre-approval from the NCDIT Contract Administrator, Vendor may offer additional IT Infrastructure Solution models, peripherals, extended warranties, and maintenance plans that are in the scope of this IFB and are within awarded Segments. If the Vendor accepts orders and/or delivers through other parties, for example a manufacturer accepting orders and delivering through a dealer network, then it is the responsibility of Vendor to apprise such parties of all contract changes. Prices may be decreased at any time without prior approval.

18. **ORDERING INFORMATION:** Orders will be placed throughout the contract period on an as-needed basis for the quantity required at the time, and will be issued directly to the Vendor.

Vendor is required, upon request, to provide Agencies with catalogs (if an online catalog is not available), descriptive literature, and/or web sites with current prices. This information shall be provided to the ordering Agency within two (2) business days of the request. Such information shall be provided at no charge.

19. **RETURN OF MERCHANDISE:** An IT Infrastructure Solution device or related peripheral that is not performing per the specification in this IFB may be returned to the Vendor without penalty if a resolution is not achieved within thirty (30) calendar days at no additional cost to the State.

Vendor shall not charge any restocking fee for unopened IT Infrastructure Solution devices or related peripherals that are returned within thirty (30) calendar days of delivery date. Vendor shall indicate in Attachment B what their restocking policy is after thirty (30) calendar days of delivery date, including any restocking fees.



20. **EQUIPMENT GUARANTEE:** Vendor guarantees that the original equipment, all required peripherals, associated products and all parts regularly used with the type of equipment offered are:

- a. Standard original equipment, latest model of regular stock product, in production at the time of offer opening and available for statewide distribution.
- b. Factory produced, assembled for the first time, newly serialized and the state customer shall be the first end user of the product.

21. **USE OF RESELLERS/DISTRIBUTORS:** The State will allow Vendor(s) to utilize approved, designated Resellers to participate as alternate distribution sources for the Vendor(s). Such participation is subject to the following conditions:

- a. Order Placement: Vendor shall specify whether orders must be placed directly with them or may be placed directly with designated Reseller(s). If Reseller(s) is designated to fulfill orders, Vendor shall provide the State with all necessary ordering and contact information and ensure that the Reseller(s). Reseller(s) shall be registered to receive purchase orders through the State E-Procurement system and be current on all E-Procurement fees.
- b. Conditions of Participation: Reseller(s) shall be approved in advance by the State as a condition of eligibility under this section. The State also reserves the right to rescind any such participation or request additional Resellers be named at the State's discretion.
- c. Number of Designated Resellers: The State reserves the right to limit the number of Resellers per Original Equipment Manufacturer who are authorized under the awarded contract. At this time, the State will accept a maximum of seven (7) authorized Resellers per Original Equipment Manufacturer. The Original Equipment Manufacturer may also be on the statewide term contract in addition to their seven (7) authorized Resellers.
- d. Responsibility for Performance and Reporting: Vendor shall be fully liable for Reseller(s)' performance and compliance with all contract terms and conditions. Product purchased through Reseller(s) must be consolidated and reported **by Vendor** in required Performance Reports (see Section C, Subsection 22).
- e. Product: Product ordered directly through Reseller(s) shall be only products previously approved under this contract and shall be subject to all terms and conditions of this contract. At no time can a Reseller's price exceed the published contract price.

22. **CONTRACT ADMINISTRATION:** NCDIT Contract Administrator will monitor Vendor performance as necessary over the duration of the contract with respect to satisfactory fulfillment of all contractual obligations. Performance assessments may comprise: delivery, condition of delivered goods, specification compliance of delivered goods, prompt and appropriate resolution of warranty claims, adequate servicing of contract in any and all aspects which the contract has stipulated, maintaining current State pricing on the web site, and prompt, complete and satisfactory resolution of any contractual discrepancies. Further, if a Vendor fails to adhere to the terms and conditions or other requirements of this contract or any subsequent solicitation issued under the framework of this contract, then the State, at its sole discretion, may remove the Vendor from the contract (or subsequent solicitation requests issued under this contract). The State may elect to remove the Vendor on a temporary or permanent basis.

Vendor shall provide the NCDIT Contract Administrator with the following reports, using Attachment G Contract Reporting Template, to support contract administration activities:

- a. Purchase Activity Report: Vendor agrees to provide to the NCDIT Contract Administrator reports of sales achieved under the contract. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Report shall include the following data elements at a minimum:

- Purchasing Agency

- Purchasing Agency Segment (e.g., State Agency, K-12, Community College)
  - Purchase Order Number
  - Invoice Date
  - Manufacturer Name
  - Manufacturer Model Number
  - Manufacturer Part Number
  - IT Infrastructure Solutions Segment (e.g., Servers, Storage, Networking Equipment, Converged IT Infrastructure Solutions, Peripherals, Value Added Services)
  - Item Description
  - Serial Number (if applicable)
  - Quantity Delivered
  - Unit of Measure
  - Unit List Price
  - Standard Contract Unit Price (e.g., Unit List Price multiplied by (1 minus Minimum Discount %))
  - Final Unit Price of Item
  - Upgraded / Extended Warranty Sold Flag (Yes / No)
  - Description of Upgraded / Extended Warranty
  - Upgraded / Extended Warranty Part Number
  - Upgraded / Extended Warranty MSRP
  - Upgraded / Extended Warranty Final Price
- b. Warranty Report: Vendor shall provide the NCDIT Contract Administrator upon request a consolidated history of all warranty claims for devices purchased under this contract. Report shall include the following data elements at a minimum:
- Purchasing Agency
  - Manufacturer Name
  - Manufacturer Model Number
  - Manufacturer Part Number
  - IT Infrastructure Solutions Segment (e.g., Servers, Storage, Networking Equipment, Converged IT Infrastructure Solutions)
  - Item Description
  - Serial Number (if applicable)
  - Date of Purchase
  - Warranty Claim Date
  - Problem Description
  - Reason Description
  - Resolution
- c. Service Level Report: Vendor shall provide the NCDIT Contract Administrator with a report of Service Level Agreements under the contract where Vendor's performance fell below the minimum threshold. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Report shall include the following data elements at a minimum:
- Purchasing Agency Name
  - Service Level Agreement Name
  - Service Level Agreement Minimum Threshold
  - Service Level Agreement Actual Performance
  - Number of Instances Below Minimum Threshold During Reporting Period



- Total Invoice Credits Provided to Purchasing Agency
  - Explanation for Below Minimum Threshold Performance
  - Vendor's Plan to Address Below Minimum Threshold Performance
- d. Historically Underutilized Business Report: Vendor shall provide the NCDIT Contract Administrator with a report of the percentage of the Vendor's contract sales that are attributed to Historically Underutilized Businesses (HUBs) as defined by State of North Carolina. This would be all contract sales if the Vendor is a HUB, or could be contract sales associated with subcontractors that are HUBs and used by the Vendor to deliver goods or Services under the contract. These reports shall be provided quarterly, within thirty (30) calendar days from the last day of the reporting quarter. Report shall include the following data elements at a minimum:
- Purchasing Agency Name
  - Purchasing Agency Segment
  - Total Contract Sales for Reporting Period
  - Percentage of Contract Sales for Reporting Period that are Attributed to HUBs
- e. Data Template and Post-Award Meeting: Upon award of this contract, Vendor shall meet with E-Procurement Team to discuss best option to enable procurement of awarded items under this contract. Options include having Vendor complete a State-provided data template to enable the E-Procurement Team to load catalogs on to the Statewide E-Procurement Service or having Vendor implement a punch-out catalog connection with the Statewide E-Procurement Service. The E-Procurement Team will facilitate the completion of the E-Procurement data template or development of a punch-out catalog connection with Vendor and address other questions regarding the requirements for the E-Procurement service upon award.
- f. Vendor shall work with NCDIT's Statewide IT Strategic Sourcing Office or Agency to address any special reporting requests.

23. **COMPUTER EQUIPMENT RECYCLING PROGRAM:** Reserved.

24. **ABNORMAL QUANTITY REQUESTS:** During the term of the contract, the State reserves the right to request additional discounts (beyond the awarded contract discount percentage) from Vendors for any order or combined orders that exceed the Abnormal Quantity Threshold for this contract. The State will determine the Abnormal Quantity Threshold Amount after award. The State reserves the right to adjust the Abnormal Quantity Threshold Amount at any time during the contract. Further, the State, at its sole discretion, may choose to issue a Request for Quote to awarded Vendors or issue a separate Invitation for Bid for the requirement.

25. **MINIMUM SALES VOLUME:** Vendor shall provide in its offer evidence of recent sales of IT Infrastructure Solutions that are within the scope of this IFB. Vendor shall provide evidence that it has a minimum sales volume of \$50,000,000 (USD) of IT Infrastructure Solutions in the United States that are within the scope of this IFB to customers in the United States within each of the last two (2) years. Vendor shall provide their yearly sales data for the last two (2) Full Calendar Sales Years (e.g., 2015, 2016) in the space provided in Attachment B.

26. **PRICE LISTS:** Vendor shall include an electronic copy of the Original Equipment Manufacturer's current U.S. Manufacturer's Suggested Retail Price List in its offer. The current U.S. Manufacturer's Suggested Retail Price List does not need to be included in Vendor's printed offer.

Vendor shall provide the NCDIT Contract Administrator and Agencies with a link to an Internet web site that contains the current MSRP List for all products offered under the scope of this IFB for the duration of this contract.

27. **INTERNET WEB SITE:** Vendor shall develop (subject to approval by the NCDIT Contract Administrator) and maintain an Internet web site designated solely for the State of North Carolina. Only items included in this contract and approved by the NCDIT Contract Administrator may be displayed on this site. Vendor shall maintain current and accurate contract pricing for the products and services on the web site. Any Vendor that lists items or Internet links to products not authorized by the contract or that does not maintain current and accurate prices may be removed from contract.
28. **VENDOR CONTACT INFORMATION:** Vendor shall complete Attachment E and include it in its offer.
29. **PRICING:** Vendor shall submit Pricing as instructed in Attachment D.
- a. Vendor shall decrease its net unit price to the State if the MSRP for a product or service decreases. Vendor shall submit all MSRP increases to the NCDIT Contract Administrator for review and approval. If the MSRP increase is approved by the NCDIT Contract Administrator, Vendor shall maintain the percentage off discount (or a larger discount can be offered).
  - b. Special Pricing: If the Original Equipment Manufacturer offers any special pricing or incentives during the contract period (i.e., seasonal, promotional, inventory reduction) whether temporary or permanent, Vendor shall make the special pricing or incentives available to the State under the terms of the contract.
30. **TERM EXTENSIONS:** The State reserves the right to extend any contract awarded if it is determined to be in the best interest of the State.
31. **WARRANTY:** Vendor warrants that all equipment furnished under the contract will be new and of good material and workmanship. Vendor shall provide direct un-infringed unlimited USA Original Equipment Manufacturer warranties on the equipment and related peripherals delivered under this contract. Vendor shall describe their standard warranty for each proposed Segment in Attachment B. The report of a problem does not presuppose that every call shall result in an "on-site" visit for service/repair. Vendor and/or service subcontractor shall utilize best efforts to resolve problems in a timely fashion through the use of acceptable servicing methods to include, but not limited to, verbal problem analysis and remote diagnosis. The warranty requirement does not impose any additional duty on the State to make other than normal and good faith problem resolution efforts or expenditures of time. Vendor is responsible for compliance with warranty terms by any third-party service provider.

Upon request by the State, Vendor shall provide a copy of the manufacturer's standard warranty within two (2) business days.

The warranty must be for a minimum period of twelve (12) months from date equipment is delivered to Agency. Such replacement shall include all parts, labor, and transportation cost to the location where equipment is down, free of any charge to the owner or his representative.

32. **DELIVERY:** IT Infrastructure Solutions devices and related peripherals shall be delivered complete as ordered within thirty (30) calendar days after receipt of purchase order to any location within North Carolina. "Delivered complete as ordered" refers to such items as extra RAM and additional cards and drives being installed in the system at time of delivery, or upon delivery at no additional charge to the State (unless otherwise requested by the State). Complete delivery shall be defined as inside delivery of ordered IT Infrastructure Solution device and related peripherals.

The Vendor shall provide user manuals and operating instructions with each IT Infrastructure Solution device and applicable peripherals. Delivery will not be considered complete until one copy of each required manual is delivered. Electronic or web-based user manuals are acceptable to meet this requirement.

If circumstances beyond the control of the Vendor result in a late delivery, it is the responsibility and obligation of the Vendor to notify the Purchasing Agent listed on the purchase order, in writing,

immediately upon determining delay of shipment. The written notification shall indicate the anticipated delivery date.

Agency shall notify the Vendor at time of ordering of any non-standard delivery requirements (e.g., stairs, loading dock, security procedures).

33. **ENTERPRISE ARCHITECTURE STANDARDS:** The North Carolina Statewide Technical Architecture is located at the following website: <https://it.nc.gov/services/it-architecture/statewide-architecture-framework>. This provides a series of domain documents describing objectives, principles and best practices for the development, implementation, and integration of business systems. Agencies and Vendors shall refer to these Architecture documents when implementing enterprise applications and/or infrastructure.
34. **VIRTUALIZATION:** The State desires the flexibility to host the Vendor's proposed solution in a virtualized environment, should it determine in the future that virtualized hosting for such solution would be more economical or efficient. The State currently utilizes server virtualization technologies including VMware, Solaris and zLinux. Vendor should state in Attachment B whether its solution operates in a virtualized environment. Vendor also should identify and describe all differences, restrictions or limitations of its proposed solution with respect to operation, licensing, support, certification, warranties, and any other details that may impact its proposed solution when hosted in a virtualized environment
35. **NCID:** The proposed solution must externalize identity management and may be required to utilize the North Carolina Identity Service (NCID) for the identity management and authentication related functions performed by this application. NCID is the State's enterprise identity management (IDM) service. It is operated by the North Carolina Department of Information Technology. Additional information regarding this service can be found in the DIT Service Catalog at: <http://it.nc.gov/it-services> (see Identity Management - NC Identity Management under the main menu item Application Services) and the NCID Web site at: <https://www.ncid.its.state.nc.us/>.
36. **RESELLERS:** "Resellers" as used herein, refers to businesses that routinely sell or distribute Vendor's Products, and may include "Distributors", "Value Added Resellers" (VARs), "Original Equipment Manufacturers" (OEMs), Channel Partners, or such other designations. These businesses shall be approved by the State prior to placement of any orders. Any contract established will be subject to this solicitation and any resulting Agreement(s), and to the terms and conditions of the State's competitive bidding process.

The Agency acknowledges that the Reseller has merely purchased the Third Party Items for resale or license to the Agency, and that the proprietary and intellectual property rights to the Third Party Items are owned by parties other than the Reseller ("Third Parties"). The Agency further acknowledges that except for the payment to the Reseller for the Third Party Items, all of its rights and obligations with respect thereto flow from and to the Third Parties. The Reseller shall provide the Agency with copies of all documentation and warranties for the Third Party Items which are provided to the Reseller. The Reseller shall assign all applicable third party warranties for Deliverables to the Agency. The State reserves all rights to utilize existing agreements with such Third Parties or to negotiate agreements with such Third Parties as the State deems necessary or proper to achieve the intent of this IFB.

37. **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, 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 shall 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.



38. **INVESTIGATION:** The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
39. **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. **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.**
40. **EXPLANATION OF LIMITATION OF LIABILITY CLAUSE:** In Paragraph 29 of Section G, the State interprets the phrase "contract value" as one and a half times the value of the purchase or cost of cover (whichever is greater) in the event of equipment failure or failure to deliver equipment according to the requirements of the contract; and two times the purchase value for all other contract damages.
41. **OPEN ENROLLMENT:** The State will allow new Vendors to be added to this contract at defined points for the duration of this contract. The initial schedule for conducting the Open Enrollment process will be on the anniversary dates of the contract award. The State reserves the right to adjust the schedule at any time during the contract term. New Vendors will be required to meet all criteria and specifications as established in the awarded IFB ITS-400277, including all Addendums. New Vendors may submit their complete offer to the NCDIT Contract Administrator for this contract during the prescribed open enrollment period. The NCDIT Contract Administrator will review all received offers from new Vendors, seek any clarifications, and may conduct a Best and Final Offer process. New Vendors will be informed of award decision by the NCDIT Contract Administrator. Awarded Vendors that are removed from this contract for cause by the State may be barred from the Open Enrollment process.
- Vendors that do not meet all specifications of IFB ITS-400277, including all Addendums, and can provide IT Infrastructure Solutions that are in the scope of this contract may explore working with one or more awarded Vendors on this contract to be included in the awarded Vendor's catalog of IT Infrastructure Solutions that are made available to the State under this contract.
42. **MINIMUM ANNUAL SALES REQUIREMENT:** The State reserves the right to review Vendor reported contract sales on an annual basis, starting after the completion of the second year of this contract, and remove any Vendor from this contract that does not have a minimum of \$100,000 in annual sales under this contract. If a Vendor is removed for failure to meet the minimum annual sales requirement, Vendor must wait at least 12 months before being eligible to participate in the Open Enrollment process.

## **Section D. Price Proposal**

1. Vendor shall use Attachment D to submit their proposed pricing for evaluation for providing IT Infrastructure Solutions that are in the scope of this IFB. Vendor shall read and follow the directions listed on the Instructions worksheet in Attachment D.
2. Vendor shall provide pricing in the form of a Minimum Percentage Discount Off Manufacturer's Suggested Retail Price (MSRP) for each IT Infrastructure Solutions Segment included in its offer. Minimum Percentage Discounts must be entered to the nearest whole number (e.g., 70%). Vendor is not required to include in its offer every IT Infrastructure Solutions Segment, but Vendor shall provide a Minimum Percentage Discount Off MSRP for every Sub-Segment in the Segments the Vendor elects to include in its offer.

3. The Minimum Percentage Discount Off MSRP shall be based on the Vendor's most recently published U.S. Manufacturer's Suggested Retail Price list.
4. The proposed Minimum Percentage Discount Off MSRP for each Segment shall apply to all offered items within the Segment, except for Exceptions included in Table D.2 in Attachment D.
5. Vendor shall maintain the Minimum Percentage Discount Off MSRP offered on all Original Equipment Manufacturer's offerings (current and newly announced), products, and price revisions. Failure to conform to the awarded price structure at any point during the term of the contract will subject the Vendor to penalties and cancellation, as deemed appropriate by the State, and described elsewhere within this document.
6. Vendor may increase the Minimum Percentage Discount Off MSRP or lower the MSRP, resulting in a lower cost to the State, during the life of the contract. Once established, Vendor may not decrease the Minimum Percentage Discount Off MSRP.
7. Vendor shall not submit non-numeric values (e.g., TBD) or a range of numeric values (e.g., 20% to 40%) in the Minimum Percentage Discount Off MSRP columns in Table D.1, Table D.2, or in column D in Table D.3 in Attachment D.

## **Section E. Additional Information**

1. **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/>. Vendor may indicate in Attachment B if it or any third parties, subcontractors, or partners it intends to use to deliver goods and services within the scope of this IFB to Agencies are a Historically Underutilized Business as defined by the State.

## **Section F. Instructions to Vendors**

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor shall request a clarification from the Procurement Officer listed on page 1 of this IFB. Questions and clarifications shall be submitted in writing using Attachment A and may be submitted by personal delivery, letter, or e-mail within the time period identified in Table 2 of this IFB.
2. **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. **Converged IT Infrastructure Solutions:** Pre-engineered IT enterprise solutions that integrate one or more IT infrastructure elements (e.g., servers, storage, networking equipment, virtualization, management software)
  - 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 North Carolina Department of Information Technology, formerly Office of Information Technology Services
  - f. **Original IT Infrastructure Solution Equipment:** Equipment that shall be the same model indicated by its external label and source of manufacture. All component parts inside the system must be Original Equipment Manufacturer approved. The items offered must represent the labeled Original Equipment Manufacturer's products and specifications and be subject to the Original Equipment Manufacturer's warranty unless terms more favorable to the Agency are agreed in writing prior to shipment. Any substitutions, alterations or modifications, internal or external, must be noted and described in detail. The State or Agency reserves the right to request an inspection by a representative of the Original Equipment Manufacturer whose label appears on the item to verify its authenticity.



- g. **Original Equipment Manufacturer:** Original Equipment Manufacturer means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets IT Infrastructure Solution equipment, including Servers, Storage, Networking Equipment, and Converged IT Infrastructure Solutions. The Original Equipment Manufacturer's name(s) shall appear on the IT Infrastructure Solution equipment.
- h. **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- i. **The State:** Is the State of North Carolina, and its Agencies.
- j. **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

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

- 3. **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 4. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall include in their offer specifications and technical literature sufficient to allow the State to determine that the proposed equipment meets all requirements. This technical literature will be the primary source for evaluation of offered products. If a requirement is not addressed in the technical literature, it shall be supported by additional documentation and included with the Vendor's offer. Offers without sufficient technical documentation may be rejected. **Only information that is received in response to this IFB will be evaluated.** Reference to information previously submitted will not satisfy this provision. Offers, which do not comply with these requirements, will be subject to rejection. Descriptive Literature to meet this requirement may be submitted electronically as part of the Vendor's offer, and does not need to be included in the printed offer. The electronic submission of Descriptive Literature cannot be a link to a website.
- 5. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. The State also encourages and promotes using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendor may indicate in Attachment B how the products or packaging they offer have recycled content and are recyclable.
- 6. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the Procurement Officer listed on page 1 of this IFB. Do not contact the user directly. Any and all revisions to this document shall be made only by written addendum from NCDIT. Vendor is cautioned that the requirements of this IFB can be altered only by written addendum and that verbal communications from whatever source are of no effect.
- 7. **AWARD OF CONTRACT:** Responsive offers will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by N.C.G.S. §143-135.9, and in accordance with N.C.G.S. §143B-1350(h), which provides that the offer shall be in substantial conformity with the specifications herein, and 09 NCAC 06B.0302. Unless otherwise specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item offer. In addition, on agency specific or term contracts, NCDIT reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by items; or where more than one Vendor is needed to provide the contemplated requirements as to quantity, quality, delivery, service, geographical areas; other factors deemed by NCDIT to be pertinent or particular to the purchase in question.

8. **SAMPLES:** Reserved.
9. **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.
10. **PROTEST PROCEDURES:** Protests of awards exceeding \$25,000 in value shall be submitted to the issuing Agency at the address given on the first page of this document. Protests shall be received in this Office within fifteen (15) calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. Note: contract award notices are sent only to Vendors that are actually awarded contracts, and not to every person or firm responding to this solicitation. IFB status and Award notices are posted on the Internet at <https://www.ips.state.nc.us>. **All protests will be governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**
11. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following web site: <https://vendor.ncgov.com/vendor/login>
12. **DIGITAL IMAGING:** The State will digitize the Vendor's offer 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."
13. **PROPOSAL CONTENT AND ORGANIZATION:** Vendor shall deliver one (1) signed original printed version of its offer and one (1) copy of its offer to Issuing Agency in a sealed package with Company Name and IFB Number clearly marked on the front. Vendor shall also submit one (1) signed, executed electronic copy of its offer on USB Flash Drive. The files shall not be password-protected and shall be capable of being copied to other media.
  - a. **Offer Format:** Each page shall be numbered. All offers shall be printed double-sided on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.
  - b. **IFB Response Organization:** The offer shall be organized and indexed in the following format and shall contain, at a minimum, all listed items in the sequence indicated.
    1. **The completed, signed Execution Page (page 1 of this IFB) shall be placed at the front of the offer.**
    2. Letter of Transmittal - Each offer shall be accompanied by a letter of transmittal that provides the following information:
      - a) Identify the submitting organization;
      - b) 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;
      - c) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the contract on behalf of the organization;
      - d) Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;
      - e) **Acknowledge receipt of any and all amendments to this IFB.**
    3. Table of Contents
    4. Letter of Authorization / Certification from Manufacturer (if applicable)
    5. Completed Attachment B. Offeror Response Template
    6. Completed Attachment C. Customer Reference Template for three (3) Customer References

7. Completed Attachment D. Price Proposal (Vendor shall print out the final version of the completed Pricing Sheet worksheet of the Excel file and include printed copy in this section)
  8. Completed Attachment E. Vendor Contact Form
  9. Completed Attachment F. Financial Review Form
  10. Financial Information Supporting Documentation (e.g., electronic copies of annual reports)
  11. Conflict of Interest Statement
    - a) Provide a statement that no assistance in preparing the offer was received from any current or former employee of the State of North Carolina whose duties relate(d) to this IFB, 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 IFB;
    - b) 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
    - c) State the employing State Agency, individual's title at that State Agency, and termination date.
  12. Copy of IFB that includes all pages
  13. Appendix with any Additional Materials
  14. One (1) **signed, executed electronic copy** of its offer on USB Flash Drive. Vendor shall include in its electronic submission as separate files the completed versions of all Attachment files provided by the Procurement Officer listed on page 1 of this IFB upon Vendor request. This includes the completed Excel version of Attachment D with all worksheets. The files shall not be password-protected and shall be capable of being copied to other media. This also includes electronic copy of the Original Equipment Manufacturer's U.S. MSRP List for all proposed IT Infrastructure Solutions Segments.
- c. IFB Response General Instructions: Vendors are strongly encouraged to adhere to the following general instructions to bring clarity and order to the offer development and subsequent evaluation process:
1. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
  2. The response shall be complete and comprehensive with a corresponding emphasis on being concise and clear.
  3. Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials shall be included as items in a separate appendix.
  4. Vendor shall furnish all information requested. If response spaces are provided in the IFB and its Attachments, Vendor shall furnish requested information in the spaces provided.
  5. If required elsewhere in this IFB, Vendor shall 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.
  6. Any offer that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.



## **Section G. Department of Information Technology Terms and Conditions**

### **Section 1: General Terms and Conditions Applicable to All Purchases**

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

- a) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Paragraphs 7 and 8, and included in Paragraph 29 c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- b) Purchasing State Agency or Agency shall mean the Agency purchasing the goods or Services.
- c) Services shall mean the duties, tasks, and obligations accepted by the Vendor to carry out the requirements, and meet the specifications, of this procurement.
- d) State shall mean the State of North Carolina, the Department of Information Technology as an Agency or in its capacity as the Award Authority.

**2) STANDARDS:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or federal Regulation,
  - by the Chief Information Officer's (CIO) policy or regulation, or
  - acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.
- a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
- b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.
- c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function,

characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

- 3) **WARRANTIES:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.
- 4) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator 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 this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract Services provided by such personnel.
- a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
  - b) This Contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
    - i) Such use does not conflict with the terms, specifications or any amendments to this Contract, 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.
- 5) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.
- 6) **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 this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. 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 has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

- b) **Inherent Services.** If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
  - c) Vendor warrants that it has the financial capacity to perform and to continue 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 this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
  - d) **Warranty as to Equipment; Hardware.** Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.
- 7) **SOFTWARE LICENSE** (*for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto*): Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.
- 8) **MAINTENANCE/SUPPORT SERVICES:** Unless otherwise mutually provided herein, for the first year after the expiration of any warranty coverage (and for all subsequent Contract years, for which Support is purchased), Vendor agrees to provide the following Support Services for the Hardware and any Software provided with the Deliverables for any years in which the applicable support fees are paid, which may be more particularly described, e.g., under part numbers, in the Furnish & Deliver Table, above:

**HARDWARE/EQUIPMENT:**

- a) **Basic Services.** The Vendor will provide at least normal and usual Hardware support and maintenance Services generally provided to customers in a similar program, position or setting consistent with and subject to the payment of the support and maintenance fees agreed upon in this Contract, all as indicated by part numbers in the Furnish and Deliver Table, above. The Vendor



warrants to the State that all items furnished will be new (unless otherwise requested in this IFB/RFQ), of good material and workmanship, and agrees to repair or replace any items which fail to comply with the specifications by reason of defective material or workmanship under normal use, free of State's negligence or accident for one year from date of installation. Such repair or replacement shall include any transportation costs free of any charge to the State. This statement is not intended to limit any additional coverage, which may normally be associated with a product, such as any "hot switch" or similar replacement warranty program applicable as indicated by the Vendor's support description in the Furnish & Deliver Table, above. Any available warranties applicable to replacement Hardware equipment or parts will be passed on to the using agency.

- b) **Telephone Assistance.** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Support problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Standard Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

**SOFTWARE:**

- a) **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor and the State shall act promptly and in a reasonably timely manner in communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or affect maintenance Services under this Paragraph.
- b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.
- c) **Updates.** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Changes shall become a part of the Software and Documentation and, as such, will be governed by the provisions of this Contract.
- d) **Telephone Assistance.** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Standard Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.
- 9) **TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Contract.
- 10) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary

alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise 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 this Contract and compensate Vendor for sums due under the Contract.

- 11) 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 Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. 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 this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 09 NCAC 06B.1206, or other provision of law.
- 12) AVAILABILITY OF FUNDS:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any Services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 13) PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:
- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
  - c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
- 14) ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following

installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within fourteen (14) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

- 15) 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.
- 16) INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
- 17) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- 18) CONFIDENTIALITY:** In accordance with N.C.G.S. §§143B-1350(e), 143B-1375 and 09 NCAC 06B.0103 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. 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.
- 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 this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

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

**20) LATE DELIVERY, BACK ORDER:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, 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 substitute Deliverables or Services.

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

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully



paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

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

**22) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

**23) ASSIGNMENT:** Vendor may not assign this Contract 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 this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

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

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

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

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by this Contract, the State shall provide written notice of said failure to 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 offers that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.

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

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

- a) The parties may mutually terminate this Contract by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 26), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
  - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to 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 29) and 30) 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 this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by 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.

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

- a) Where Deliverables or Services are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables or Services.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranty compliance, or to

claims for injury to persons or damage to tangible personal property caused by Vendor's gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

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

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

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

**32) STOP WORK ORDER:** Reserved.

**33) PRICE ADJUSTMENTS FOR TERM CONTRACTS:** Reserved.

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

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

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

**37) TRANSPORTATION:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In



cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

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

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

**40) AMENDMENT:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

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

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

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

**43) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**44) COMPLIANCE WITH LAWS:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

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

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

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

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

**48) ELECTRONIC PROCUREMENT (Applies only to Statewide Term Contracts):** Reserved.

**Section 2: Department of Information Technology Terms and Conditions Applicable for Software and Services:**

- 1) **LICENSE GRANT FOR APPLICATION SOFTWARE, (COTS):** This paragraph recites the scope of license granted, if not superseded by a mutually agreed and separate licensing agreement, as follows:
  - a) Vendor grants to the State, its Agencies and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the State, its Agencies and lawful customers. This license shall be perpetual or for the term of the contract (pick one, delete the other), unless terminated as provided herein. The State agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, a State Entity shall be defined as any department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.
  - b) Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
  - c) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.
  - d) The State may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 3), and applicable terms in the solicitation documents or statements of work.
- 2) **WARRANTY TERMS:** Notwithstanding anything in the Agreement or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the State.
  - a) a) Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the State) for a period of ninety (90) days from the date of acceptance ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.
  - b) Vendor warrants to the best of its knowledge that:
    - i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
    - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
    - iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
    - iv) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.
  - c) UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS

OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

**3) RESTRICTIONS:** State's use of the Software is restricted as follows:

- a) The license granted herein is granted to the State and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Department of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
- b) No right is granted hereunder to use the Software to perform Services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State is permitted.
- c) The State may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and State will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.
- d) State shall not remove, obscure or alter Vendor's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

**4) SUPPORT OR MAINTENANCE SERVICES:** This paragraph recites the scope of maintenance Services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be stated in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the State, Vendor agrees to provide the following support Services ("Support Services") for the current version and one previous version of the Software commencing upon delivery of the Software:

- a) **Error Correction:** If the error conditions reported by the State pursuant to the General Terms and Conditions are not corrected in a timely manner, the State may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the State's request at no added expense to the State.
- b) **Other Agreement:** This Paragraph 4 may be superseded by written mutual agreement provided that: Support and maintenance Services shall be fully described in such a separate agreement annexed hereto and incorporated herein
- c) **Temporary Extension of License:** If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the State and continue until the earlier of:
  - i) Return of the inoperative CPU to full operation, or
  - ii) Termination of the license.
- d) **Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The State will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the State within twenty-four (24) hours; unless otherwise agreed.

**5) ACCEPTANCE:** Acceptance testing is required for all Vendor supplied software unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance

with the State's specifications, and Vendor's Product Warranties and technical representations. Acceptance of software or Services may be controlled by amendment hereto, or additional terms as agreed by the parties. The State shall have the obligation to notify Vendor, in writing and within a reasonable time following installation of any software deliverable if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a software deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of software.

- 6) **STATE PROPERTY AND INTANGIBLES RIGHTS:** The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the State (the "Deliverables"). To the extent that any Vendor Technology is contained in any of the Deliverables, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

### **Section 3: Department of Information Technology Terms and Conditions Applicable for Software as a Service (SaaS):**

#### **1) DEFINITIONS (SaaS):**

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

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

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse



assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called “service bureau” uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time 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.

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

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

**4) ACCESS AVAILABILITY; REMEDIES:**

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

If the Services monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to receive automatic credits as indicated immediately below, or the State may use other contractual remedies such as recovery of damages, as set forth herein in writing, e.g., in Specifications, Special Terms or in an SLA, and as such other contractual damages are

limited by N.C.G.S. §143B-1350(h1) and the Limitation of Liability (Section G.1, Paragraph 29 herein). If not otherwise provided, the automatic remedies for nonavailability of the Subscription Services during a month are:

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

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

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

**5) EXCLUSIONS:**

- a) Except as stated above in Section G.3, 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 Section G.3, 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 Section G.1, Paragraph 43.
  - iv) The State's sole misuse of, or its own inability to use, the Services.

**6) PERFORMANCE REVIEW AND ACCOUNTABILITY. Reserved**

**7) MODIFICATION OF SERVICES:**

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

**8) TRANSITION PERIOD:**

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.

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

**9) PAYMENT TERMS (SaaS):**

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein, but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
- b) Upon Vendor's written request of not less than 30 days and approval by the State, the State may:
  - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,
  - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon 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.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as 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.

**10) ACCEPTANCE CRITERIA (SaaS):**

- 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 fourteen (14) calendar days following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld, but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice have been successfully corrected.

**11) 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.
- b) 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.
- c) 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.
- d) 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.
- e) Vendor will provide and maintain secure backup of the State Data. 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 from hacks, 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.

- f) 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 3<sup>rd</sup> 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.
  - i) 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:
      - 1. The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
      - 2. 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.
- g) 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 or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.

- h) 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 general 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.
- i) 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. In the event that 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.
- j) 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.
- k) 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.
- l) 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.
- m) 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.
- n) 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 also 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 conduct an investigation 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.

- o) 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 11) 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.
- p) 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.

## **12. ACCESS TO PERSONS AND RECORDS (SaaS):**

Pursuant to N.C. General Statute 147-64.7, the State, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to costs charged to this Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by any State, if in the State's opinion, such requirement is imposed by federal or state law or regulation. The Vendor shall allow the State to audit conformance including contract terms, system security and data centers as appropriate. The State may perform this audit or contract with a third party at its discretion at the State's expense. Such reviews shall be conducted with at least 30 days' advance written notice and shall not unreasonably interfere with the Service Provider's business.

## Attachment A: Question Submission Template

### Attachment A. Question Submission Template

Vendor shall submit any questions it may have regarding this IFB or the IFB process via e-mail to [debbie.patterson@nc.gov](mailto:debbie.patterson@nc.gov) with a subject line of "Questions - IFB ITS-400277". Written questions concerning this IFB will be received until the date and time listed in Table 2 of this IFB. Vendor should fill in its company name in cell C5, and indicate applicable IFB Section in column B and Subsection in column C for each question entered in column D. Vendor may add additional rows to the table below if needed.

Vendor Name:			
Question #	IFB Section	IFB Subsection	Vendor Question
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## Attachment B: Offeror Response Template

Vendor shall review the Submission Requirements and General Specifications in the tables below and in the space provided below each Submission Requirement and General Specification **describe their proposed approach or ability to meet or exceed each Submission Requirements and General Specifications.** Vendor's responses shall be complete and comprehensive with a corresponding emphasis on being concise and clear. Vendor may include additional materials in a separate appendix in their offer and reference these additional materials in the applicable response to the General Specifications or Technical Specifications. Vendor shall not add or delete rows in this Attachment, or change the order of the rows in the tables.

Submission Requirements	
SR1	Per Section C, Subsection 2, Vendor shall detail the manner in which it intends to utilize resources or workers. This includes whether any of the work under this contract will be performed outside the United States.
<a href="#">Click here to enter text.</a>	
SR2	Per Section C, Subsection 5, Vendor shall certify that is not an ineligible vendor as set forth in N.C.G.S. § 143-59.1 (a).
<a href="#">Click here to enter text.</a>	
SR3	Per Section C, Subsection 7, Vendor shall indicate if it is the Original Equipment Manufacturer of the equipment proposed in its offer or an Original Equipment Manufacturer's <u>single</u> designated authorized representative.
<a href="#">Click here to enter text.</a>	
SR4	Per Section C, Subsection 10a, Vendor shall provide its response regarding convictions as appropriate.
<a href="#">Click here to enter text.</a>	
SR5	Per Section C, Subsection 10b, Vendor shall provide its response regarding civil litigation, arbitration, proceeding, or judgments as appropriate.
<a href="#">Click here to enter text.</a>	
SR6	Per Section C, Subsection 25, Vendor shall provide evidence that it has a minimum sales volume of \$10,000,000 of IT Infrastructure Solutions that are within the scope of this IFB to customers in the United States within each of the last two (2) years. Vendor should provide below its yearly sales data for the last two (2) Full Calendar Sales Years (e.g., 2015, 2016).
<a href="#">Click here to enter text.</a>	
SR7	Per Section E, Subsection 1, Vendor should indicate if it or any third parties, subcontractors, or partners it intends to use to deliver goods and services to Agencies are a Historically Underutilized Business as defined by the State. If so, Vendor should specific the classification of Historically Underutilized Business that it or its third parties, subcontractors, or partners fall under.
<a href="#">Click here to enter text.</a>	
SR8	Vendor shall certify that it is able to provide all proposed IT Infrastructure Solutions across all counties within the State of North Carolina.
<a href="#">Click here to enter text.</a>	
SR9	Vendor should confirm that it understands that there is no minimum order amount for this contract.
<a href="#">Click here to enter text.</a>	

General Specification	
GS1	Vendor should describe how it will manage the State of North Carolina account during the contract, including providing the names, titles, and relevant experience of any key account management team members.
<a href="#">Click here to enter text.</a>	



General Specification	
GS2	Vendor should explain how it will provide, apply, and keep current software security patches and firmware upgrades for all Vendor supported IT Infrastructure Solution devices at no additional cost to the Agency. Installation of security patches and firmware upgrades shall be in accordance with the NCDIT Change and Release Management processes (see <a href="http://it.nc.gov/it-services">http://it.nc.gov/it-services</a> ) and in compliance with North Carolina Statewide Information Security Manual (see <a href="http://it.nc.gov/document/statewide-information-security-manual">http://it.nc.gov/document/statewide-information-security-manual</a> ).
Click here to enter text.	
GS3	Vendor should explain how devices offered under this contract will support Agencies' compliance with the Statewide Data Classification and Handling Policy (located at <a href="https://it.nc.gov/document/statewide-data-classification-and-handling-policy">https://it.nc.gov/document/statewide-data-classification-and-handling-policy</a> ).
Click here to enter text.	
GS4	Per Section C, Subsection 14, Vendor shall describe their approach and capabilities to meet or exceed each of the listed Service Level Agreements. This includes how Vendor will track and report the listed Service Level Agreements versus the minimum thresholds in Table 3 in Section C, Subsection 15.
Click here to enter text.	
GS5	Per Section C, Subsection 19, Vendor should describe their restocking policy <u>after</u> thirty (30) calendar days from receipt of IT Infrastructure Solution device or peripheral, <u>including any restocking fees</u> .
Click here to enter text.	
GS6	Per Section C, Subsection 31, Vendor should describe their standard warranty for each IT Infrastructure Solutions Segment included in their offer.
Click here to enter text.	
GS7	Per Section C, Subsection 33, Vendor shall review and understand the North Carolina Statewide Technical Architecture that is located at <a href="https://it.nc.gov/services/it-architecture/statewide-architecture-framework">https://it.nc.gov/services/it-architecture/statewide-architecture-framework</a> and certify that their proposed IT Infrastructure Solution devices are compatible with the North Carolina Statewide Technical Architecture.
Click here to enter text.	
GS8	Per Section C, Subsection 34, Vendor should state whether its solution operates in a virtualized environment. Vendor also should identify and describe all differences, restrictions or limitations of its proposed solution with respect to operation, licensing, support, certification, warranties, and any other details that may impact its proposed solution when hosted in a virtualized environment
Click here to enter text.	
GS9	Per Section F, Subsection 5, Vendor may indicate if the <u>products</u> offered in response to this IFB contain recycled content. If yes, Vendor may indicate the recycled material and the overall percentage of recycled content in the products.
Click here to enter text.	
GS10	Per Section F, Subsection 5, Vendor may indicate if the <u>packaging</u> of products offered in response to this IFB contain recycled content. If yes, Vendor may indicate the percentage of recycled content in the packaging and if the packaging can be recycled.
Click here to enter text.	
GS11	Per Section F, Subsection 5, Vendor may indicate how the products offered in response to this IFB can be recycled at the end of their use.
Click here to enter text.	
GS12	Per Section G, Subsection 8, Vendor should describe how it will deliver Support Services to Agencies across all counties within the State of North Carolina. Vendor shall confirm that any third party entity providing support service and repair are authorized to service and repair all IT Infrastructure Solution devices proposed in the Vendor's offer during and after the warranty period.
Click here to enter text.	

General Specification	
GS13	It is the State's expectation that Vendor will maintain an active network of support facilities to service all areas of the State of North Carolina. These locations may be branch or satellite offices of the Vendor, manufacturer service and support facilities, or facilities of a third party that the Vendor may designate to provide warranty service as required in this IFB. Vendor should describe how products offered under this contract will meet this expectation, including providing a listing of the support facilities and addresses in its response. The State reserves the right to satisfy itself by inquiry or otherwise of Vendor support facilities capabilities in this regard
<a href="#">Click here to enter text.</a>	
GS14	Vendor should, at minimum, offer One Year, Next Business Day, Onsite With Defective Media Retention warranty service. Vendor should offer upgraded / extended warranty options for all Server, Storage, Network Equipment, and Converged IT Infrastructure Solution items purchased under this contract. Additional warranty options that may be offered include, but are not limited to, Return to Depot, Advanced Exchange, On-site Service, quicker resolution of hardware problems, and extension of Original Equipment Manufacturer's warranty. Vendor should describe its standard and upgraded/extended warranty offerings for items offered under this contract.
<a href="#">Click here to enter text.</a>	
GS15	It is the State's expectation that warranty/service calls placed by the State to the Vendor are recorded through a web interface or via phone using an automated tracking system. The tracking system should allow the State user to query the system at any time to obtain the detailed reports on the status of warranty/service calls. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS16	It is the State's expectation that the Vendor will offer advanced level technical support whereby the service calls can bypass the general technical support and be escalated to an advanced level technical support team. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS17	It is the State's expectation that Vendor will provide 24x7 warranty information, service history, and original system configuration via web site look up by unit serial number or other unique identifier. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS18	It is the State's expectation that Vendor will develop (subject to approval by the Statewide IT Procurement Office) and maintain an Internet web site designated solely for the State of North Carolina. Only items included in this contract and approved by the Statewide IT Procurement Office may be accessed from this site. Vendor will maintain current and accurate contract pricing for the products on the web site. Any Vendor that lists items or Internet links to products not authorized by the contract or that does not maintain current and accurate prices may be temporarily or permanently removed from contract. Vendor should describe its ability to establish a website to support Agencies in finding and procuring IT Enterprise Hardware, related peripherals, and optional Value Added Services that it is awarded under this contract.
<a href="#">Click here to enter text.</a>	
GS19	It is the State's expectation that Vendor will provide an online ordering site for user-replaceable warranty items. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS20	It is the State's expectation that Vendor will provide online order tracking system that can be accessed 24x7 by a State user. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS21	It is the State's expectation that Agencies may place orders via regular mail, fax, email, electronic procurement, or procurement card, and no additional fees shall apply for orders purchased with a procurement card. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS22	It is the State's expectation that Vendor will, upon request, provide end users with catalogs (if an

General Specification	
	online catalog is not available), descriptive literature, and/or web sites and current prices within two (2) business days of the request at no charge. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS23	It is the State's expectation that all equipment will be delivered complete as ordered. Delivered complete as ordered" refers to such items as extra RAM and additional cards and drives being installed in the system at time of delivery, or upon delivery at no additional charge to the State (unless otherwise requested by the State). Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS24	<p>It is the State's expectation that Vendor will consolidate invoices to match the Agency purchase order issued to the Vendor and that Vendor will invoice by model, not by individual component and itemized component price. If an Agency orders peripheral options as individual line items on a purchase order, Vendor may invoice those items separately. Vendor should describe how it will meet this expectation.</p> <p>Vendor should note that it is the State's intent to reduce the number of invoices received for a single purchase order and thus reduce Vendor invoicing errors that may result in a delayed payment to the Vendor. Vendor's failure to issue correct invoices to the State may result in their temporary or permanent removal from this contract.</p>
<a href="#">Click here to enter text.</a>	
GS25	It is the State's expectation that Vendor will provide the purchasing Agency with serial numbers for items included in each shipment that have serial numbers. Serial numbers would be provided in an industry standard electronic format which can be incorporated into existing Agency equipment databases. The State will provide industry standard database formats to be used by the Vendor. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS26	It is the State's expectation that Vendor will offer Imaging services for applicable products procured under this contract. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS27	It is the State's expectation that Vendor will offer Asset Tagging services for applicable products procured under this contract. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS28	It is the State's expectation that Vendor will offer on-site Installation services for applicable products procured under this contract. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	
GS29	It is the State's expectation that Vendor will provide the State upon request with quarterly product roadmaps and evaluation units (per Vendor's standard guidelines) to assist the State with the planning of future technology configurations and standards. Vendor should describe how it will meet this expectation.
<a href="#">Click here to enter text.</a>	

### Attachment C: Customer Reference Template

Per Section C, Subsection 8, Vendor shall use this template to submit three (3) Customer References with their offer. At least one of the three Customer References shall be from a public-sector organization.

Name of Organization	Click here to enter text.	Contact Person Name	Click here to enter text.
Contract Start Date	Click here to enter text.	Contact Person Title	Click here to enter text.
Contract End Date	Click here to enter text.	Contact Person Telephone Number	Click here to enter text.
		Contact Person Email Address	Click here to enter text.
Describe the quantity and type of IT Infrastructure Solutions provided to the customer.			
Click here to enter text.			
Describe the major Value Added Services (e.g., configuration, asset tagging, installation, training) provided to this customer.			
Click here to enter text.			

## Attachment D: Price Proposal

**Vendor shall request from the Procurement Officer listed on page 1 of this IFB an Excel version of Attachment D to enable Vendor to provide all Pricing related requested information.**

### Attachment D: Price Proposal

Vendor shall use this workbook and follow the directions below **(being sure to scroll down to see all 6 steps)** to submit its Price Proposal for evaluation by the State.

Applicable Worksheet	Step	Directions
Instructions	1	<b>Fill in your company's name here ==&gt;</b>
Pricing Sheet	2	In Table D.1 on the worksheet labeled Pricing Sheet, Vendor shall fill in the gray-shaded cells in column D with its proposed Minimum Percentage Discount Off MSRP for new / original equipment for each for the IT Infrastructure Solutions Segment in column A and IT Infrastructure Solutions Sub-Segment in column B that it intends to include in its offer. Percentage calculations should be to the nearest whole number. If the discount percentage submitted includes a number after the decimal, it will be rounded to the nearest whole number.
Pricing Sheet	3	In Table D.2 on the worksheet labeled Pricing Sheet, Vendor may fill in the gray-shaded cells with any exceptions to the proposed Minimum Percentage Discount Off MSRP for each for IT Infrastructure Solutions Segment and Sub-Segments listed in Table D.1. Vendor should select the relevant IT Infrastructure Solutions Segment in column A using the drop down menu, select the relevant IT Infrastructure Solutions Sub-Segment in column B using the drop down menu, enter a description of the exception in column C, and enter the proposed Minimum Percentage Discount Off MSRP in column D for the listed exception. For example, Vendor ABC entered in a 50% Minimum Percentage Discount Off MSRP for the Servers Segment and Hardware Sub-Segment in Table D.1 but has a specific server product family that it wants to offer only a 40% Minimum Percentage Discount Off MSRP. Vendor ABC would select Servers from drop down menu in column A in Table D.2, select Hardware from drop down menu in column B in Table D.2, enter the name of the server product family in column C of Table D.2, and enter 40% in column D of Table D.2. Percentage calculations should be to the nearest whole number. If the discount percentage submitted includes a number after the decimal, it will be rounded to the nearest whole number.
Value Added Services	4	In Table D.3 on the worksheet labeled Value Added Services, Vendor may propose optional Value Added Services (see Table 1 in IFB for description of Value Added Services) and associated not to exceed rates. Vendor shall provide a description of the proposed Value Added Service in column B, the Unit of Measure in column C (e.g., per device, per hour, per user), the not to exceed Value Added Services Fee Rate in column D per indicated Unit of Measure, and any applicable comments in column E. If an Agency chooses to purchase these Value Added Services, Vendor will be held to any not to exceed cost rates stated in Table D.3. Vendor may offer Agencies Value Added Service rates that are lower than the accepted not to exceed cost rates.
Optional Pricing Incentives	5	In Table D.4 on the worksheet labeled Optional Pricing Incentives, Vendor may provide additional Pricing Incentives for the State's consideration (e.g., higher discounts off MSRP or lower Fee Rates based on hitting defined overall contract volumes, volume based discounts for larger quantity orders).
All	6	Vendor shall save this Excel File upon completion using filename format "IT Infrastructure Solutions IFB Attachment D Price Proposal_VENDOR NAME" and follow instructions in Section F. Instructions to Vendors in the IFB on paper and electronic submission of Price Proposal.



## Attachment D: Price Proposal

<b>Vendor Name:</b>	
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**Table D.1: Minimum Percentage Discounts for IT Infrastructure Solutions**

IT Enterprise Hardware Segment	IT Enterprise Hardware Sub-Segment	Minimum Percentage Discount Off MSRP
Servers	Hardware	
	Software	
	Extended Warranties	
Storage	Hardware	
	Software	
	Extended Warranties	
Networking Equipment	Hardware	
	Software	
	Extended Warranties	
IT Infrastructure Software	Software	
IT Infrastructure Converged Solutions	Hardware	
	Software	
	Extended Warranties	
IT Infrastructure Peripheral Components	Hardware	
	Extended Warranties	

**Table D.2: Exceptions to Minimum Percentage Discounts for IT Infrastructure Solutions**

[illegible]

## Attachment D: Price Proposal

**Vendor Name:**

0

**Table D.3: Not to Exceed Value Added Services Fee Rates**

[illegible]

## Attachment D: Price Proposal

Vendor Name:

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0

Vendor may provide additional Pricing Incentives in the space below for the State's consideration.

Table D.4: Additional Pricing Incentives

	Additional Pricing Incentives
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

## Attachment E: Vendor Contact Form

Vendor shall provide with its offer the information requested below. Vendor shall notify the NCDIT Contract Administrator in a timely manner of any changes to the Vendor Contact Information via written notice or email. When Vendor submits its quarterly sales reports to the NCDIT Contract Administrator, Vendor shall verify that all Vendor Contact Information is current.

### Ordering Information:

Company Name	Click here to enter text.			Federal ID Number	Click here to enter text.
Street Address	Click here to enter text.				
City	Click here to enter text.	State	Click here to enter text.	Zip Code	Click here to enter text.
Toll Free Phone Number	Click here to enter text.	Phone Number	Click here to enter text.	Fax Number	Click here to enter text.

### Local Primary Representative for Inside Sales for State and Local Governments:

Contact Name	Click here to enter text.				
Email Address	Click here to enter text.				
Toll Free Phone Number	Click here to enter text.	Phone Number	Click here to enter text.	Fax Number	Click here to enter text.

### Local Primary Representative for Outside Sales for State and Local Governments:

Contact Name	Click here to enter text.				
Email Address	Click here to enter text.				
Toll Free Phone Number	Click here to enter text.	Phone Number	Click here to enter text.	Fax Number	Click here to enter text.

### Local Representative for Academic Sales (K-12 Local Education Authorities):

Contact Name	Click here to enter text.				
Email Address	Click here to enter text.				
Toll Free Phone Number	Click here to enter text.	Phone Number	Click here to enter text.	Fax Number	Click here to enter text.

### Local Representative for Academic Sales (Higher Education):

Contact Name	Click here to enter text.				
Email Address	Click here to enter text.				
Toll Free Phone Number	Click here to enter text.	Phone Number	Click here to enter text.	Fax Number	Click here to enter text.

### Customer Service / Technical / Warranty Support:

Website Address	Click here to enter text.				
Email Address	Click here to enter text.				
Toll Free Phone Number	Click here to enter text.	Phone Number	Click here to enter text.	Fax Number	Click here to enter text.

## Attachment F: Financial Review Form

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

### Attachment F: Financial Review Form

Vendor shall review Attachment F, provide responses in the gray-shaded boxes, and submit completed Attachment F with its offer. Vendor shall not add or delete rows or columns in Attachment F, or change the order of the rows or column in the file.

Enter Vendor name in cell B3.			
Answer the following questions in space provided in column B.			
1. Has your organization been in business for more than 3 years?			
2. How is your organization structured for tax purposes (e.g., C Corporation, S Corporation, Limited Liability Company, Limited Liability Partnership, Limited Partnership, Nonprofit Corporation)?			
3. Has your organization filed for bankruptcy in the past 3 years?			
4. Are the financial figures provided in this Attachment based on audited financial statements?			
5. Has your organization's auditor issued any notification letters addressing significant issues for the past 3 years?			
6. If Yes was entered to Question 5, please provide explanation and include copy of notification letters with offer.			
Provide requested information below for the past 3 <u>complete</u> fiscal years in columns B, C, and D.		Latest Complete Fiscal Year minus 2 years	Latest Complete Fiscal Year minus 1 year
Start Date of Financial Statements			
End Date of Financial Statements			
Currency of Figures in Financial Statements			
Exchange Rate to U.S. Dollars (if applicable)			
<b>Balance Sheet Data</b>			
Cash and Temp. Investments			
Accounts Receivable (beginning of Year)			
Accounts Receivable (end of Year)			
Average Account Receivable for the Year (calculated)		-	-
Inventory (beginning of Year)			
Inventory (end of Year)			
Average Inventory for the Year (calculated)		-	-
Current Assets			
Current Liabilities			
Total Liabilities			
Total Stockholders' Equity (beginning of Year)			
Total Stockholders' Equity (end of Year)			
Average Stockholders' Equity during the Year (calculated)		-	-
<b>Income Statement Data</b>			
Net Sales			
Cost of Goods Sold (COGS)			
Gross Profit (Net Sales - COGS)(calculated)		-	-
Interest Expense for the Year			
Net Income after Tax			
Earnings for the Year before Interest and Income Tax Expense			
<b>Statement of Cash Flows</b>			
Cash Flow Provided by Operating Activities			
Capital Expenditures (property, plant, and equipment)			
Provide link to complete annual report that contains financial statements and management discussion for past 3 <u>complete</u> fiscal years in columns B, C, and D.			
Provide any additional comments in space provided in column B			





[illegible]

Vendor Name:	Enter Vendor Name
Reporting Period:	Enter Quarter and Year (e.g., Q1 2017)

[illegible]