

STATE OF NORTH CAROLINA Department of Public Instruction Office of the State Superintendent	REQUEST FOR PROPOSAL NO. 40-RQ20680730	
	Offers will be publicly opened: October 1, 2018	
	Issue Date: September 6, 2018	
Refer <u>ALL</u> inquiries regarding this RFP to: Tymica Dunn, Procurement Section Chief Tymica.Dunn@dpi.nc.gov Phone no. 919-807-3664	Commodity Number: 924-18	
	Description: Read to Achieve Diagnostics – Software as a Service	
	Using Agency: Department of Public Instruction	
See page 2 for mailing instructions.	Requisition No.: RQ20680730	

OFFER AND ACCEPTANCE: The State seeks offers for the Services and/or goods described in this solicitation. All offers and responses received shall be treated as offers to contract. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: Best and Final Offers, if any, Special terms and conditions specific to this RFP, Specifications of the RFP, the Department of Information Technology Terms and Conditions, and the agreed portion of the awarded Vendor's offer.

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

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

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

Offer valid for one hundred eighty (180) days from date of offer opening unless otherwise stated here: ___ days

ACCEPTANCE OF OFFER: If any or all parts of this offer are accepted, an authorized representative of North Carolina Department of Public Instructions (NCDPI) 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).

FOR DEPARTMENT OF PUBLIC INSTRUCTION USE ONLY Offer accepted and contract awarded this ___ day of _____, 20___, as indicated on attached certification, by _____ (Authorized representative of Department of Public Instruction), Chief Financial Officer North Carolina State Board of Education By: _____ Mark Johnson, NC Superintendent of Public Instruction, on behalf of the State Board of Education following approval by the Chief Financial Officer pursuant to Board Policies SBOP-013 and CNTR-002.
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DELIVERY INSTRUCTIONS: The Vendor must deliver one (1) **signed unredacted original** and one (1) **unredacted copy** of the Offer to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front. **Vendor must return all the pages of this solicitation in their response.** The Vendor must also submit one (1) **signed, executed and unredacted electronic copy** of its offer on fifteen (15) USB Flash Drive(s). The files should not be password-protected and should be capable of being copied to other media. It is also required that the Vendor submit 1 **redacted and signed** electronic (Proprietary and Confidential Information Excluded) copy of its offer in three (3) USB Flash Drives.

Address envelope and insert offer number as shown below. Please note that the US Postal Service does not deliver any mail (US 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 specified time and date of opening.**

DELIVER TO:
BID NUMBER: 40-RQ20680730
NC Department of Public Instruction
Attn: Tymica Dunn, Purchasing Section Chief
301 N. Wilmington Street
Raleigh, NC 27601

Sealed offers, subject to the conditions made a part hereof, will be received at **Department of Public Instruction's Purchasing & Contracts Office, 301 N. Wilmington Street, Raleigh, NC 27601** until 2:00pm Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted 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 result in disqualification. All offers must comply with Section VI, Proposal Content and Organization. A proposal is considered "delivered" only when it physically arrives at 301 North Wilmington Street, Raleigh, NC.

Offers will not be accepted by electronic means. This RFP is available electronically at <https://www.ips.state.nc.us/ips/>. All inquiries regarding the RFP specifications or requirements are to be addressed to the contact person listed on Page One.

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

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

VENDOR'S LICENSE OR SUPPORT AGREEMENTS: The terms and conditions of the Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this RFP may apply to the extent such terms and conditions do not materially change the terms and conditions of this RFP. In the event of any conflict between the terms and conditions of this RFP and the Vendor's standard agreement(s), the terms and conditions of this RFP relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the Department of Information Technology (DIT) Terms and Conditions herein shall apply in all cases and supersede any provisions

contained in the Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

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

QUESTIONS CONCERNING RFP: Written questions concerning this RFP will be received until **September 12, 2018 at 2:00pm** Eastern Standard Time. They must be sent via e-mail to: Tymica.Dunn@dpi.nc.gov or faxed to 919-807-3664. Please insert "Questions **40-RQ20680730**" as the subject for the email. The questions should be submitted in the following format:

Citation	Vendor Question	The State's Response
Offer Section, Page Number		

The State will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) <https://www.ips.state.nc.us/ips/>. Oral answers are not binding on the State.

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

ADDENDUM TO RFP: If a pre-offer conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/>, and shall become an Addendum to this RFP. Vendors' questions posed orally at any pre-offer conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.

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

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

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

LATE OFFERS: Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the

designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/ips>

POINTS OF CONTACT: Reserved.

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I. Introduction

The purpose of this RFP and any resulting contract award is to solicit offers for Read to Achieve Diagnostic Software as a Service solution (RtAD SaaS) to meet NCDPI's obligations under state laws, which can be found at N.C.G.S. 115C-83.1, *et. seq.* More information on Read to Achieve can be found here: <http://www.dpi.state.nc.us/k-3literacy/achieve/>.

North Carolina state law requires kindergarten through third grade students to be assessed with valid, reliable, formative and diagnostic reading assessments. NCDPI is obligated to adopt and provide these developmentally appropriate assessments. The solution must assess student progress, diagnose difficulties, inform instruction and remediation, and yield data that can be used with the Education Value-Added Assessment System (EVAAS).

This request is for a close-ended contract between the awarded Vendor and NCDPI for formative and diagnostic reading assessments to meet the requirements of Read to Achieve, during a specified period of time.

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

II. Bidding Information

A. Procurement Schedule

The Procurement Manager will make every effort to adhere to the following schedule. This is an estimated schedule but not definite schedule.

Action	Responsibility	Date
Issue of RFP	Department of Public Instruction	9/6/18
Deadline To Submit Questions	Potential Vendors	9/12/18
Response to Written Questions/RFP Amendments	Department of Public Instruction	9/17/18
Submission of Offer	Vendor(s)	10/1/18
Responsiveness Evaluation	Department of Public Instruction	TBD
Vendor Demonstrations by Responsive Vendors	Vendors	10/22/18 & 10/23/18
Offer Evaluation	Evaluation Committee	TBD
Selection of Finalists	Evaluation Committee	TBD

Action	Responsibility	Date
Negotiations	Evaluation Committee designees and selected Vendor(s)	TBD
Best and Final Offers from Finalists	Vendors	TBD
Contract Award	IT Procurement Office	TBD
Protest Deadline	Vendors	15 days after award

B. Instructions to Vendors

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

- 1) Offers submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) **EXECUTION**: Failure to sign under EXECUTION section will render offer invalid.
- 3) **PROMPT PAYMENT DISCOUNTS**: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the Agreement except as a factor to aid in resolving cases of identical prices.
- 4) **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 5) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: Electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following web site: <https://vendor.ncgov.com/vendor/login>
- 6) **ORGANIZATION**: Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 7) **E-PROCUREMENT**: **This is an E-Procurement solicitation.** See Section 1, paragraph #38 of the attached North Carolina Department of Information Technology Terms and Conditions Services made part of this solicitation contain language necessary for the implementation of North Carolina's statewide E-Procurement initiative. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to E-Procurement.
 - a) General information on the E-Procurement service can be found at <http://eprocurement.nc.gov/>
 - b) Within two days after notification of award of a contract, the Vendor must register in NC E-Procurement @ Your Service at the following web site: <http://eprocurement.nc.gov/Vendor.html>
 - c) As of the RFP submittal date, the Vendor must be current on all E-Procurement fees. If the Vendor is not current on all E-Procurement fees, the State may disqualify the Vendor from participation in this RFP.
- 8) **E-VERIFY**: Pursuant to N.C.G.S. §143B-1350(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must

submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

9) **RESTRICTIONS ON CONTRACTS WITH THE STATE:** Reserved

C. General Conditions for Proposals

- 1) **DEFINITIONS, ACRONYMS AND ABBREVIATIONS:** Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:
 - a) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
 - b) **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.
 - c) **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).
 - d) **NCDIT or DIT:** The NC Department of Information Technology, formerly Office of Information Technology Services.
 - e) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
 - f) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
 - g) **RFP:** Request for Proposal
 - h) **The State:** Is the State of North Carolina, and its Agencies.
Vendor: Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.
 - i) **CEDS:** Common Education Data Standards
 - j) **Comprehension:** Comprehension is the complex cognitive process that readers use to understand what they have read. (National Reading Panel, Mehta, Foorman, Branum-Martin, Taylor)
 - k) **Developmentally Appropriate Practices:** Developmentally Appropriate Practices (DAP) involves teachers meeting young children where they are (by stage of development), both as individuals and as part of a group; and helping each child meet challenging and achievable learning goals. (NAEYC)
 - l) **Diagnostic Assessment:** In education, a diagnostic assessment helps identify a student's learning problems, so teachers can provide instruction to remedy those problems. Diagnostics don't tell teachers *how* to carry out instruction to rectify deficits in students' achievement, but they do let teachers know *what* must be fixed. (ASCD/Popham) Armed with this diagnostic information, a teacher gains greater insight into *what to teach*, by knowing what skill gaps to address or by skipping material previously mastered; into *how to teach*, by using grouping options and initiating activities based on preferred learning styles and interests; and into *how to connect* the content to students' interests and talents. (ASCD/McTighe, O'Connor)
 - m) **DMG:** Data Management Group
 - n) **Dyslexia:** Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading

comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge (NC House Bill 149)

- o) **ELA** : English Language Arts
- p) **End User**: All current and future North Carolina Local Education Agencies (LEAs), Charter Schools, Regional Schools, Educational Services for the Deaf and Blind Schools (ESDB), and other public schools as the need may arise (individually or collectively).
- q) **ETL**: Extract, Transform and Load
- r) **EVAAS**: Education Value-Added Assessment System. Refer <https://ncdpi.sas.com/>
- s) **FERPA**: Family Educational Rights and Privacy Act
<http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- t) **Fluency**: Fluent readers are able to read orally with appropriate speed, accuracy, and proper expression. Fluency is the ability to read as well as we speak and to make sense of the text without having to stop and decode each word. (National Reading Panel, Mehta, Foorman, Branum-Martin, Taylor)
- u) **Formative Assessment**: The best formative assessment involves both students and teachers in a recursive process. It starts with the teacher, who models the process for the students. Gradually, students internalize the learning goals and become able to see the target themselves. A student's self-assessment process marks the transition to independent learning. Formative assessment is *not* used for grading. Formative assessment is used before instruction, to find out where students are, and during instruction, to find out how they are progressing. Formative assessment means collecting any information, before or during instruction, that can be shared with students and used for improvement. (ASCD/Brookhart)
- v) **IAM**: Identity and Access Management (IAM) is a web service that helps you securely control access to proposed solution's resources for your users. The NC Education Identity and Access Management (NCEdCloud) plan can be found here:
<http://cloud.fi.ncsu.edu/projects/iamdiagrams/20120229.nc.rttt.iam.plan.v5.0.pdf>
- w) **LDAP**: Lightweight Directory Access Protocol is a software protocol for enabling anyone to locate organizations, individuals, and other resources and devices in a network, on the public internet or on a corporate intranet.
- x) **NAEP**: National Assessment of Educational Progress. <https://nces.ed.gov/nationsreportcard/>
- y) **NCSBE**: NC State Board of Education
- z) **Observation-Based Assessment**: Observation-based assessments are when teachers watch students to make a determination, perhaps of problem-solving processes, understanding of content, or social skills.

Note the following features:

- it gives clear instructions to both the assessor and candidate about how to “do” the assessment
 - it gives a clear indication of the observable things to look for and how to record those observations
 - it guides the assessor on how to make the final assessment decision
- aa) **Oral Language**: Oral language is the system through which we use spoken words to express knowledge, ideas, and feelings. This means developing the skills and knowledge that go into listening and speaking – all of which have a strong relationship to reading comprehension and to writing. The components of oral language are necessary to communicate and learn through conversation and spoken interaction. (Lesaux, Harris)
 - bb) **Phonological/Phonemic Awareness**: Phonemic awareness refers to the student's ability to focus on and manipulate phonemes in spoken syllables and words. (National Reading Panel, Mehta, Foorman, Branum-Martin, Taylor)
 - cc) **Phonics**: Phonics is the relationship between the letters (or letter combinations) in written language and the individual sounds in spoken language. (National Reading Panel, Mehta, Foorman, Branum-Martin, Taylor)
 - dd) **PII**: Personally Identifiable Information <http://www.gsa.gov/portal/content/104256>

- ee) **Progress Monitoring:** Progress monitoring is used to assess students' academic performance, to quantify a student rate of improvement or responsiveness to instruction, and to evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class. (Center on Response to Intervention at American Institutes for Research)
- ff) **RtAD SaaS:** Read to Achieve Diagnostics provided as a Software as a Service pursuant to this contract governed by state laws, which can be found at N.C.G.S. 115C-83.1.
- gg) **Reliable Assessment:** Reliability equals consistency. Reliability is the characteristic of a set of test scores that relates to the amount of random error from the measurement process that might be embedded in the scores. Scores that are highly reliable are accurate, reproducible, and consistent from one testing occasion to another. That is, if the testing process were repeated with a group of test takers, essentially the same results would be obtained. Various kinds of reliability coefficients, with values ranging between 0.00 (much error) and 1.00 (no error), are usually used to indicate the amount of error in the scores. (*National Council on Measurement in Education*)
- hh) **SAML: Security Assertion Markup Language** is a standard protocol for web browser Single Sign-On (SSO) using secure tokens.
- ii) **Specific learning disability:** Means a disability in one or more of the basic processes involved in understanding or in using language, spoken or written, that may manifest itself in the impaired ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The disability substantially limits academic achievement so that the child does not learn at an adequate rate when provided sustained, high quality instruction and scientific research-based intervention. Alternate terms may include, but are not limited to, dyslexia and dyscalculia.
Disabilities not included: Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of serious emotional disturbance, or of environmental, cultural, or economic disadvantage. Refer to North Carolina's Policy Governing Services for Children with Disabilities.
- jj) **Sensitivity/Specificity:** Sensitivity is the rate at which a test correctly identifies a student with a language impairment as having a deficit. It is sensitive to finding children with disabilities. Specificity, however, is the opposite. It's the rate at which a test identifies a child with typical skills as having adequate language skills, or normally developing skills. Sensitivity and Specificity may vary based on Standard Deviations in that assessment.
Classification Accuracy determines how well does the screener identify the two groups of students – those who are at risk for language impairment and those who are typically developing
- kk) **SaaS:** Software as a Service. SaaS subscription solution means that all the Hardware and Software (HW/SW) components of the vendor proposed service solution are the sole responsibility of the vendor and shall be hosted by the Vendor and delivered remotely over a network, typically the Internet. The Vendor is responsible for all aspects of system and software performance of the proposed vendor-managed SaaS solution.
- ll) **SIF:** Schools Interoperability Framework
- mm) **Universal Screener:** Universal screener includes administering measures or collecting other data to allow broad generalizations to be made regarding the future performance and outcomes of all students at individual and group level (e.g. classroom, grade, school, district). The purpose is to give district and school teams a broad view of the overall health of instruction for all students as well as to identify those students requiring more intensive intervention and enrichment. (North Carolina's Policy Governing Services for Children with Disabilities Addendum)
- nn) **Valid Assessment:** Validity refers to the accuracy of an assessment, whether or not it measures what it is supposed to measure. Validity is the degree to which the evidence obtained through validation supports the score interpretations and uses to be made of the scores from a certain test administered to a certain person or group on a specific occasion. Sometimes the evidence shows why competing interpretations or uses are inappropriate, or less appropriate, than the proposed ones. (*National Council on Measurement in Education*)

oo) **Vocabulary:** Vocabulary development is closely connected to comprehension. The larger the reader's vocabulary (either oral or print), the easier it is to make sense of the text. (National Reading Panel, Mehta, Foorman, Branum-Martin, Taylor)

- 2) **READ AND REVIEW:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all specifications, requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from the State's contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
- 3) **VENDOR RESPONSIBILITY:** The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs thereof. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying Services, maintenance, warranties, value added Services or other criteria identified herein. The Vendor acknowledges that, to the extent the awarded contract involves the creation, research, investigation or generation of a future RFP or other solicitation; the Vendor will be precluded from bidding on the subsequent RFP or other solicitation and from serving as a subcontractor to an awarded vendor. The State reserves the right to disqualify any bidder if the State determines that the bidder has used its position (whether as an incumbent Vendor, or as a subcontractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP or other solicitation.
- 4) **ELIGIBLE VENDOR:** The Vendor certifies that in accordance with N.C.G.S. §143-59.1(b), Vendor is not an ineligible vendor as set forth in N.C.G.S. §143-59.1 (a).
- 5) **ORAL EXPLANATIONS:** The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.
- 6) **INSUFFICIENCY OF REFERENCES TO OTHER DATA:** **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.
- 7) **CONFLICT OF INTEREST:** Applicable standards may include: N.C.G.S. §§143B-1352 and 143B-1353, 14-234, and 133-32. The Vendor shall not knowingly employ, during the period of the Agreement, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing Services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 8) **CONTRACT TERM:** A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be **two (2) years**, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend the Agreement for **one (1) additional year** period at its sole discretion.
- 9) **EFFECTIVE DATE:** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing the Vendor for goods provided nor

Services rendered prior to the appropriate signatures and the arrival of the effective date of the Agreement. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the Agreement.

- 10) **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the NCDIT Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 11) **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4 and any applicable Executive Order, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://ncadmin.nc.gov/businesses/hub/>.
- 12) **CLARIFICATIONS/INTERPRETATIONS:** Any and all amendments or revisions to this document shall be made by written addendum from the DIT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 13) **RIGHTS RESERVED:** While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
 - a) waive any formality;
 - b) amend the solicitation;
 - c) cancel or terminate this RFP;
 - d) reject any or all offers received in response to this RFP;
 - e) waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
 - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
 - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
 - h) if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.
- 14) **ALTERNATE OFFERS:** The Vendor may submit alternate offers for various levels of service(s) or products meeting specifications. Alternate offers must specifically identify the RFP specifications and advantage(s) addressed by the alternate offer. Any alternate offers must be clearly marked with the legend as shown herein. Each offer must be for a specific set of Services or products and offer at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be an offer with a different price and a separate RFP offer. Vendors may also provide multiple offers for software or systems coupled with support and maintenance options, provided, however, all offers must satisfy the specifications.

Alternate offers must be clearly marked
“Alternate Offer for ‘name of Vendor’”
and numbered sequentially with the first offer if separate offers are submitted.

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

- 15) **CO-VENDORS:** Vendors may submit offers as partnerships or other business entities. Such partners or other "co-Vendors", if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.
- 16) **SUBMITTING AN OFFER:** Each Vendor submitting an offer warrants and represents that:
 - a) The offer is based upon an understanding of the specifications and requirements described in this RFP.
 - b) Costs for developing and delivering responses to this RFP and any subsequent presentations of the offer as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their offers.
- 17) **SUBMITTED MATERIALS:** All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and the Vendor resulting from this RFP process.
- 18) **MODIFICATIONS TO OFFER:** An offer may not be unilaterally modified by the Vendor.

D. Evaluation Process

- 1) **BEST VALUE:** "Best Value" procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.
- 2) **SOURCE SELECTION:** A one-step process shall be used. Vendors shall submit Offers combining technical and price information together. A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award this RFP to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
 - a) The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the offer.
 - b) Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
 - c) To be eligible for consideration, a Vendor's offer **must** substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State.

Offers that do not meet the full intent of all specifications listed in this RFP may be deemed deficient. Further, a serious deficiency in the offer to any one factor may be grounds for rejection regardless of overall score.

- d) Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.
 - e) **Vendor Demonstrations – All responsive bidders to demonstrate capabilities and Ease of Use** – The Vendor, if invited, shall meet the NCDPI evaluation team in Raleigh, NC, at their own expense, to provide a Proof-of-Concept demonstration of their solution capabilities and help validate their written responses. The exact location, date(s) and time(s) shall be determined later. To the extent possible, Vendor's scheduling constraints shall be taken into consideration.
 - f) The Vendor, if requested shall provide the NCDPI evaluation team a license to use and operate the proposed RtAD SaaS for the purpose of a 30-day trial of the proposed solution. The trial shall allow the evaluation team to access all the features of the proposed solution without restrictions. The evaluation team shall have access to Vendor's custom tools, user guides, and training materials during the trial period.
- 3) **BEST AND FINAL OFFERS (BAFO):** If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional weight to the Vendors' respective offer. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.
- 4) **EVALUATION CRITERIA:** Each of the criteria below shall be evaluated in accordance with the solicitation documents:
- a) a) Demonstration of compliance with the Mandatory RFP Specifications. Proposals must meet the solicitation's mandatory specifications or the bid is not compliant and cannot be evaluated further.
 - b) Evaluation Criteria and Method. All responsive proposals will be evaluated and adjectively ranked in order of importance based on the strengths and weaknesses in meeting the State's requirements as determined by the evaluation team as set forth below. These criteria are stated in relative order of importance. The Vendor's bids would then be ranked 1, 2, 3, etc. in comparison to the criteria importance:
 - 1. **Substantial Conformity to Solicitation Specifications** – Refer [Attachment A : Tables A, B, C, D and E](#)
 - 2. **RFP Desired Specification** - Refer [Attachment A](#) Table F
 - 3. **Proof of Concept/Demonstration** – Responsive Vendors
 - 4. **Vendor Cost Proposal** – Refer [Attachment A](#) Table G
 - 5. **Vendor Relevant Experience and Reference Checks** - [See Section III](#) – Paragraph 14.
 - 6. **Vendor Financial Stability** - Refer [Section](#) V Paragraph 3
- 5) **PAST PERFORMANCE:** The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 6) **EVALUATION METHOD:** Adjective ranking will be used as described above under 4) **EVALUATION CRITERIA:** b) Evaluation Criteria and Method.

- 7) **INTERACTIVE PURCHASING SYSTEM (IPS)**: The State has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve offer award information electronically from our Internet web site: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-offer number (**40-IT00115-18-2**), and then search. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 8) **PROTEST PROCEDURES**: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within fifteen (15) calendar days from the date of this RFP award and provide specific reasons and any supporting documentation for the protest. **All protests will be governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

III. Technical Proposal

- 1) **ENTERPRISE 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 should refer to these Architecture documents when implementing enterprise applications and/or infrastructure.
- 2) **ENTERPRISE LICENSING**: RESERVED
- 3) **VIRTUALIZATION**: The State currently utilizes server virtualization technologies including VMware, Solaris and zLinux. The 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.
- 4) **NCID**: RESERVED
- 5) **CLOUD SERVICE PROVIDERS (CSPs)**: For offers featuring a cloud-hosted solution, vendors shall describe how the proposed solution will support the agency's information system security compliance requirements as described in the Statewide Information Security Manual, specifically relating to, and without limitation, the sections relating to cloud services: <http://it.nc.gov/statewide-resources/policies>. The Read to Achieve Software as a Service (RtAD SaaS) will be required to receive and securely manage [First and Last Name, Date of Birth, Email Address, Student and Staff Unique Identification Number]. As such, the Read to Achieve Software as a Service (RtAD SaaS) will be classified as **Department Critical /Moderate**. To comply with policy, State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls. This requirement additionally applies to all vendor provided, agency managed Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions. Assessment reports such as the Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, SSAE 16, and ISO 27001 are required and offered solutions already meeting these requirements are requested to include these reports as part of their submission. Refer to: <http://nvlpubs.nist.gov/nistpubs/FIPS/NIST.FIPS.199.pdf> for descriptions of NIST system confidentiality, integrity and availability categories.
- 6) **SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE**: For offers featuring a solution not hosted on State infrastructure, vendors shall describe how the proposed solution will support the agency's information system security compliance requirements as described in the Statewide Information Security Policies: <http://it.nc.gov/statewide-resources/policies>. To comply with these policies State agencies are required to perform annual security/risk assessments on their information systems using NIST 800-53 controls. This requirement additionally applies to all agency managed

Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions. Assessment reports such as the Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, SSAE 16, and ISO 27001 are preferred and offered solutions already meeting these requirements are requested to include these reports as part of their submission.

- 7) **BRANDING**: All offers that incorporate State design and branding, as specified by the State, shall adhere to the State style guide. The State style guide is located at: <http://digitalstyle.nc.gov>.
- 8) **EQUIVALENT ITEMS**: Whenever a material, article or piece of equipment is identified in the specification(s) by reference to a manufacturer's or Vendor's name, trade name, catalog number or similar identifier, it is intended to establish a standard for determining substantial conformity during evaluation, unless otherwise specifically stated as a brand specific requirement (no substitute items will be allowed). Any material, article or piece of equipment of other manufacturers or Vendors shall perform to the standard of the item named. Equivalent offers must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, may be returned to the Vendor at the Vendor's expense.
- 9) **LITERATURE**: All offers shall include specifications and technical literature sufficient to allow the State to determine that the proposed solution substantially meets all specifications. This technical literature will be the primary source for evaluation. If a specification is not addressed in the technical literature it must be supported by additional documentation and included with the offer. Offer responses without sufficient technical documentation may be rejected.
- 10) **EQUIVALENT GOODS**: The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
- 11) **DEVIATION FROM SPECIFICATIONS**: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specification." Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or non-equivalent goods or services may be rejected if not found substantially conforming; and if offered, must be supported by independent documentary verification that the offer substantially conforms to the specified goods or services specification.**
- 12) **SCOPE OF WORK**:
The Scope of the RtAD SaaS solution includes the following:
 - a. Deployment of a formative and diagnostic assessment service that allows teachers to monitor the development of each student's foundational reading skills and reading comprehension levels; provides instant analysis and reporting that identifies the needs of each student with recommended next steps to provide appropriate interventions and enhance student's reading skills and translates classroom and student level reports into customized instruction.
 - b. Ability to highlight patterns for detailed analysis and targeted instruction, and generate progress reports for parents.
 - c. Initial training for end users.
 - d. Deep dive training for NCDPI appointed representatives for ongoing end user training.Refer to the Specifications listed in Attachment A.
- 13) **TECHNICAL SPECIFICATIONS**: Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards,

maintenance standards, or similar terms. Substantial conformity with technical specifications is required.

- a) Site and System Preparation: Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed or implemented shall operate properly and efficiently within the site and system environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.
- b) Specifications: The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only processes, configuration, material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute Services, products, goods or other Deliverables. Alternate or substitute Services, products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified. See, Acceptance Criteria, below.
- c) Please describe your proposed solution's ability to meet the following specifications, including capabilities, features, and limitations:
 - i. Business Specifications: See Attachment A Table A
 - ii. Reporting Specification See Attachment A Table B
 - iii. Technical Specification See Attachment A Table C
 - iv. Project Management Specification. See Attachment A Table D
 - v. Service Level Specification See Attachment A Table E
 - vi. Desirable Technical Specifications: Vendor may comply with the Optional Specifications set forth in Attachment A (Table F). If Vendor chooses to respond to all, or any, of the Optional Specifications, Vendor shall include its responses in Vendor's offer in response to this RFP.

14) **REFERENCES:**

References: The Vendor shall provide three (3) references of customers utilizing the proposed solution fully implemented in an education setting. References from within the North Carolina K-12 community are encouraged.

The Vendor shall have implemented the respective proposed service within the last three (3) years. Customer references whose business processes and data needs are similar to those performed by NCDPI in terms of functionality, complexity, and transaction volume are encouraged. Please do not provide references for customers using a product other than the one the Vendor is proposing.

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

- a. Customer name.
- b. Customer address.
- c. Current telephone number of a customer employee most familiar with the proposed solution implementation.
- d. Customer email address
- e. Time period over which each proposed solution implementation was completed.
- f. Brief summary of the proposed solution implementation.

- g. List of proposed solution products installed and operational.
- h. Number of vendor or school technical staff supporting, maintaining and managing the proposed
- i. solution.
- j. Number of students in school district or state supported by the proposed solution.
- k. Number of school sites supported by the proposed solution.

IV. Cost Proposal

- 1) **OFFER COSTS:** The Vendor must list and describe any applicable offer costs and submit costs (inserting as many rows as necessary) in the Cost Response Form located in Attachment A Table G. Provide Costs separately for any optional/desired service features if not already included in the offered costs above.
- 2) **PAYMENT PLAN PROPOSAL:** For one-time costs outlined in the Cost Response Form above, provide a deliverables-based milestone payment schedule. For recurring costs, the State requires a quarterly payment plan. Provide a payment plan for any optional/desired services/features that require additional (optional) costs.

The initial quarterly invoice shall be pro-rated based on the fraction of the quarter remaining at the contract effective date.

For deliverable based payments, a retainage cost of up to 20% may be withheld from the final bill until the deliverable is completed and accepted by NCDPI.

- 3) **ALTERNATIVE COST RESPONSE:** Vendors who propose an Alternative cost response must submit a separate document labeled "ALTERNATIVE COST RESPONSE".

V. Other Requirements and Special Terms

- 1) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:** In accordance with N.C.G.S. §143B-1361(b), the Vendor must detail the manner in which it intends to utilize resources or workers in the RFP response. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor’s offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:
 - a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the Agreement and whether any of this work will be performed outside the United States
 - b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
 - c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States
 - d) Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided

Will any work under the Agreement be performed outside the United States? Where will Services be performed: _____	YES _____ NO _____
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2) **SPECIAL TERMS AND CONDITIONS:**

- a) Paragraph #16 in Attachment B DIT Terms and Conditions is supplemented as follows: The Agency reserves the right to perform post-delivery and post-training acceptance testing for a period beginning at installation and lasting 12 weeks. The Agency also reserves the right to have an independent Vendor conduct assurance testing pertaining to the functions, auditability, and related matters. At any time before the end of the test and assurance period the Agency may require any or all of the following:
- i) Have the Vendor modify the installed software to eliminate the deficiency to the Agency's satisfaction.
 - ii) Have the Vendor re-install a new copy of the software product(s).
 - iii) Extend the acceptance testing period for a period of 45 days to allow time for Vendor to remedy the problems.
 - iv) Remove the application software, cancel this Agreement, and recover payments extended from Agency funds.
- b) Maintenance – Maintenance and Support of the software will be provided by the vendor during the term of the contract as defined in the Service Level Agreement (SLA) including assigning dedicated resources for support; help desk support (as applicable); resolving issues meeting SLA targets and diagnosing the problem to determine the root cause.

3) **FINANCIAL STATEMENTS:** Agencies must determine that a Vendor has sufficient financial resources to perform. GS 143B-1350(h1). The Vendor shall provide evidence of financial stability with its response to this RFP as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements.

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

State law requires agencies to determine that a Vendor is financially capable of performing the Agreement before entering into a contract.

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

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

subcontractor, or any of the foregoing entities' then current officers or directors during the term of the Agreement or any Scope Statement awarded to the Vendor.

- b) The Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to the Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
 - c) All notices under subsection A and B herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the DIT Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.
- 5) **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.
 - 6) **SECURITY AND BACKGROUND CHECKS:** The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by the Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.
 - 7) **ASSURANCES:** In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of the Agreement, causes the State to be reasonably concerned about:
 - a) the ability of the Vendor or its subcontractor to continue to perform the Agreement in accordance with its terms and conditions, or
 - b) whether the Vendor or its subcontractor in performing Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of the Agreement or violation of law, regulation or public policy, then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform the Agreement in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing Services under the Agreement which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.
 - 8) **CONFIDENTIALITY OF DATA AND INFORMATION:** All RFP responses, information marked as confidential or proprietary, financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available

to the Vendor in order to carry out the Agreement, or which become available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

- 9) **PROJECT MANAGEMENT**: All project management and coordination on behalf of the Agency shall be through a single point of contact designated as the Agency Project Manager. The Vendor shall designate a Vendor Project Manager who will provide a single point of contact for management and coordination of the Vendor's work. All work performed pursuant to the Agreement shall be coordinated between the Agency Project Manager and the Vendor Project Manager. See Attachment A Table D for further details.
- 10) **MEETINGS**: The Vendor is required to meet with Agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Agreement. Meetings will occur as problems arise and will be coordinated by Agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at the Vendor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.
- 11) **STOP WORK ORDER**: The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under the Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.
 - a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:
 - i) Cancel the Stop Work Order, or
 - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.
 - b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of the Agreement, and
 - ii) The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the

State may receive and act upon an offer submitted at any time before final payment under the Agreement.

- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
 - d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.
- 12) **TRANSITION ASSISTANCE:** If the Agreement is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to six (6) months after the expiration or cancellation of the Agreement, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of the Agreement, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Agreement for Contract performance. If the State cancels the Agreement for cause, then the State will be entitled to offset the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.
- 13) **TERM EXTENSIONS:** Reserved
- 14) **FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY:**
- a) Pursuant to N.C.G.S. §143B-1350(h)(1), Agencies must conduct a risk assessment, including whether the Vendor has sufficient financial resources to satisfy the agreed upon limitation of liability prior to the award of a contract with Vendor.
 - b) Contract Performance Security. The State reserves the right to require performance guaranties pursuant to N.C.G.S. §143B-1340(f) and 09 NCAC 06B.1207 from the Vendor without expense to the State.
- 15) Project Assurance, Performance and Reliability Evaluation – Pursuant to N.C.G.S. §143B-1340, the State CIO may require quality assurance reviews of Projects as necessary.
- 16) **UNANTICIPATED TASKS:** RESERVED.
- 17) **DUE DILIGENCE:** RESERVED.
- 18) **AGENCY SITE VISITS:** RESERVED.
- 19) **VENDOR SITE VISITS:** RESERVED.

VI. Proposal Content and Organization

- 1) **CONTENTS OF PROPOSAL:** This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Offers will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.
- 2) **INFORMATION AND DESCRIPTIVE LITERATURE:** The Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said

information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with their offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.

- 3) **PROPOSAL CONTENT:** Demonstrate substantial conformity to the RFP specifications.
 - a) Clearly state your understanding of the problem(s) presented by this RFP.
 - i) Response to technical specifications
 - ii) Cost offer
 - b) Detailed description of the Vendor's firm should include all of the following:
 - i) Full name, address, and telephone number of the organization;
 - ii) Date established;
 - iii) Background of firm;
 - iv) Ownership (public company, partnership, subsidiary, etc.);
 - v) If incorporated, state of incorporation must be included.
 - vi) Number of full-time employees on January 1st for the last three years or for the duration that the Vendor's firm has been in business, whichever is less.
- 4) **ERRATA OR EXCEPTIONS:** Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
- 5) **OFFER FORMAT:** The offers should contain the entire solicitation and be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. **The Execution page of this RFP must be placed at the front of the Proposal.** Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the Vendor's offer. All offers should be typewritten 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.
- 6) **GENERAL INSTRUCTIONS:** Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the offer and subsequent evaluation process:
 - a) Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
 - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 7) **RFP RESPONSE ORGANIZATION:** The offer should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.
 - a) Letter of Transmittal - Each offer must be accompanied by a letter of transmittal that provides the following information:
 - i) Identify the submitting organization;
 - ii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized by the organization to contractually obligate the organization;
 - iii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the Agreement on behalf of the organization;
 - iv) Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;

- v) Acknowledge receipt of any and all amendments to this RFP.
 - b) Table of Contents.
 - c) Response to Technical Proposal.
 - d) Response to Other Requirements and Special Terms.
 - e) Response to Business Specifications.
 - f) Response to Technical Specifications.
 - g) Response to Reporting Specifications.
 - h) Response to Project Management Specifications.
 - i) Response to Service Level Specifications.
 - j) Response to Desirable Specifications.
 - k) Completed Cost Offer.
 - l) References.
 - m) Financial Information.
 - n) Conflict of Interest:
 - i) Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP;
 - ii) State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
 - iii) State the employing State Agency, individual's title at that State Agency, and termination date.
 - o) Errata and Exceptions, if any. Offers conditioned upon acceptance of Vendor Exceptions may be determined to be non-responsive by the State.
 - p) Copy of the Vendor's License and Maintenance Agreements, if any. The State reserves the right to edit or modify these agreements to conform to the best interest of the State.
 - q) Other Supporting Material Including Technical System Documentation.
 - r) Training and Other Materials, Samples or Examples.
 - s) Within each section of their offer, Vendors should address the items in the order in which they appear in this RFP. Forms, if any provided in the RFP, must be completed and included in the appropriate section of the offer. All discussion of proposed costs, rates, or expenses must be presented with the cost response.
 - t) Statement of agreement and understanding of [Attachment B](#)
- 8) **ADHERENCE TO INSTRUCTIONS:** Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
- 9) **ATTACHMENTS:** Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

Attachment A. Attachments or Exhibits

Table A - Business Specifications

Describe the Vendor proposed capabilities for the RtAD SaaS and provide specific details for each of the Business (functional) specifications below in your response. Give examples with detailed explanation for each applicable item.

Spec #	Business Specification
1.	<p>Describe how the proposed solution directly assesses reading and pre-reading behaviors to support student’s learning development at the various grade levels to inform instruction, including any observation-based practices if applicable:</p> <ul style="list-style-type: none"> a. oral language (expressive and receptive) b. phonological and phonemic awareness c. phonics d. vocabulary e. fluency f. comprehension
2.	<p>Describe how the proposed solution measures accuracy and rate for grades K, 1, 2, 3 (oral language, phonological and phonemic awareness, phonics, vocabulary, fluency, and comprehension) including any observation-based practices if applicable</p>
3.	<p>Describe the validity and reliability of the assessment in the following areas:</p> <ul style="list-style-type: none"> a. oral language b. phonological and phonemic awareness c. phonics d. vocabulary e. fluency f. comprehension
4.	<p>Describe how the proposed solution meets the requirements for a universal screener, including the following:</p> <ul style="list-style-type: none"> a. reliability at .80 or higher and concurrent or predictive validity at .60 or above b. benchmarking that provides large scale norm groups and/or research-based criterion c. adequate sensitivity and classification accuracy d. multiple equivalent forms of screening assessments that enable the teacher to gauge short term growth
5.	<p>Describe how the assessment identifies and reports students who may need intervention and enrichment.</p>
6.	<p>Describe how the following characteristics for progress monitoring between benchmarks are met by the proposed solution:</p> <ul style="list-style-type: none"> a. brief, b. repeatable, c. sensitive to improvement over time, including short term change d. multiple equivalent forms of screening assessments that enable the teacher to gauge short term growth (weekly or every other week), e. reliable, f. valid, g. measure accuracy and fluency with skills h. quantitative results charted over time to calculate and document rates of improvement i. Allow for off-grade level progress monitoring j. Ability for the results to be graphed against a goal (national norms and/or individualized goals) with 12-14 data points in 10 weeks’ time.

Spec #	Business Specification
7.	Describe how the proposed solution will be able to assess progress based on large scale norm groups and/or research-based criteria for district, school, grade level, class, group, individual, sub-group, and like peer group (refer to NC SLD policy https://ec.ncpublicschools.gov/2020PolicyAddendum.pdf)
8.	Describe how the measures align with best practices and adequately and accurately identify indicators of risk for dyslexia in grades K-3 as outlined in NC Session Law 2017-127. http://www.ncleg.net/Sessions/2017/Bills/House/PDF/H149v4.pdf
9.	Describe how the system uses developmentally appropriate practices to assess K-3 students.
10.	Describe how the system incorporates educators and/or students using digital devices to assess reading and pre-reading behaviors.
11.	Describe how the proposed solution is a formative reading assessment(s) tool for grades K, 1, 2, 3.
12.	Describe how the proposed solution is a diagnostic reading assessment(s) tool for grades K, 1, 2, 3.
13.	Describe the miscue and skills analysis features to assist with analyzing and identifying student's reading difficulties.
14.	Describe how the proposed solution reports and displays results of progress monitoring.
15.	Describe how the proposed solution minimizes impact to instructional time while ensuring formative and diagnostic assessments are conducted. Provide estimates of assessment time, for both benchmarking and progress monitoring, per student per grade.
16.	Describe how the solution adapts as students gain mastery and have demonstrated proficiency. Testing should not repeat for mastered skills unless the educator selects to repeat testing.
17.	Describe how the content standards will be aligned and realigned to State Board of Education adopted ELA Standard Course of Study (Spring 2017). Provide specific mapping to the current standards. http://www.ncpublicschools.org/curriculum/languagearts/scos/ .
18.	Describe how the proposed solution can demonstrate high rates of predictability as to student performance on National and State assessments.
19.	Explain how the proposed solution can yield data that can be used with EVAAS. Describe and provide any information that explains any alignment or relationship between the assessment and the Education Value-Added Assessment System (EVAAS). http://www.ncpublicschools.org/effectiveness-model/evaas/ https://www.sas.com/en_us/software/evaas.html
20.	NCDPI prefers a web-based software as a service application with the capability to support classroom student assessments without an internet connection. Describe how the proposed solution can satisfy this specification.
21.	Describe how the proposed solution allows for grouping and assigning student and educators outside of the Student Information System.
22.	Describe how the proposed solution establishes instructional reading groups based on data-specific student performance data.
23.	Describe how the proposed solution helps educators meet the individual needs of students by recommending adjustments to instructional practices.
24.	Describe how the Benchmarking process occurs in the proposed solution. NCDPI expects benchmarking three times a year for grades K, 1, 2 and 3.
25.	Describe how the proposed solution will provide data on the effectiveness of core support.
26.	Describe how the proposed solution will provide data on the effectiveness of supplemental and intensive support.
27.	Describe the vendor's proposed training model to train DPI Stakeholders (Estimated about 100), Master Literacy Coaches at the school districts (Estimated about 500) and K-3 Teachers, Exceptional Children Teachers, English as a Second Language Teachers, and literacy specialists (at least

Spec #	Business Specification
	25,000) initially and on an ongoing basis (refresher training). Include any real-time training in the classroom, practice components, etc.
28.	Describe how the vendor evaluates training effectiveness and adapts to meet the needs. Include any strategies for ensuring consistent scoring.
29.	Describe in detail the training and professional development content areas and variety of levels. For example, product training, usability for both diagnostic and progress monitoring, implementation, data analysis, etc.
30.	Describe all training methods that the vendor will make available for the trainers like Technology based training or Training Presentation. Include all associated training costs in Attachment G.
31.	Describe the strategy to provide demo site / accounts for trainers taking into account appropriate protections are in place to mask sensitive production data in the demo site. Please be sure to elaborate how the masked data resembles production data and is repeatable, while maintaining referential integrity.

Table B - Reporting Specification

Describe the Vendor proposed capabilities for the RtAD SaaS and provide specific details for each of the Reporting specifications below in your response. Give examples with detailed explanation for each applicable item.

Spec #	Reporting Specification
1.	Describe the proposed permissions for reporting services
2.	Describe the various report output formats i.e., graphs, charts, CSV, TXT; and the report delivery methods i.e., Email, Excel etc. If email is offered as an option describe the data security policies in place.
3.	Reporting feature is expected to provide the following capabilities: <ul style="list-style-type: none"> a. timely assessment results to teachers/administrators b. timely assessment results to parents/guardians c. reporting results at the district, school, grade, teacher, group, and individual student level by all subgroups ESSA d. an end-of-year student summary report for cumulative folder historical data year after year to identify consistent gaps and learning trends for district, school, grade, teacher, group, and individual student level by all subgroups <p>For each of the above, provide a timeframe for how frequently the data is refreshed (real-time, on demand, or some other interval).</p>
4.	Provide communication to parents in a format that is clear and easy to understand after each benchmark
5.	Describe the capability to track and report service usage.
6.	Describe any other reports that the solution offers.

Table C. Technical Specification

Describe the Vendor proposed capabilities for the RtAD SaaS and provide specific details for each of the technical specifications below in your response. Give examples with detailed explanation for each applicable item.

Spec #	Technical Specification
1.	Describe how the proposed solution is compatible with common digital devices including mobile and desktop devices. Describe any differences in the mobile offerings,

Spec #	Technical Specification
2.	Please include a preliminary Technical Architecture System Design (TASD) document (https://ncit.s3.amazonaws.com/s3fs-public/documents/files/Technical%20Architecture%20System%20Design%20Template.doc) that illustrates the proposed solution. (Describe in the TASD how the items outlined in this attachment are expected to be addressed with due consideration for all specifications in this document. Provide supporting narrative, appropriate technical diagrams depicting the flow of data and system architecture.)
3.	The preliminary TASD submitted with RFP response is expected to be revised after solution delivery to ensure the “as designed” and “as delivered” solution still conforms to NCDPI and NCDIT standards. Any architectural or security changes require NCDPI and NCDIT approval. Describe your proposed approach for meeting this specification.
4.	Describe how the proposed solution aligns with State Technical Architecture (STA): https://it.nc.gov/services/it-architecture/statewide-architecture-framework
5.	Describe the following in the TASD referenced in Spec # 2 - <ul style="list-style-type: none"> • Availability, • Securability, • Scalability and • Interoperability
6.	This service will be classified as “Program Critical/Moderate” based on the sensitivity of data used, the security controls under the “ Moderate ” category column need to be implemented. The vendor’s security policy should include all the control categories as specified under “Moderate” classification. Please refer to pages 4 through 10 for the security control baselines table in the State Information Security Manual document. For example, AC-1 (Access Control Policy and Procedures) under “Access Control” Family/Category is discussed in detail in the NIST 800-53 document. NC Statewide Information Security Manual - https://it.nc.gov/documents/statewide-information-security-manual a) Describe how you will ensure compliance to the NC Statewide Security Manual.
7.	Describe how the proposed service protects PII and FERPA data. Include details related to security of data stored at the vendor’s site as well as any server security policies.
8.	Describe the Vendor’s proposed hosting site. All hosting sites must reside in the continental United States of America. Include in the hosting description answers to the following questions: i. Who is the hosting provider? ii. Where is the primary site? iii. Where is the disaster recovery site? iv. Are the hosting facilities compliant with applicable governance (such as FERPA, PII, or SAS 70 certification)? If yes, please provide copies of the most recent audit(s).
9.	Describe how penetration testing is done and the current frequency.
10.	Describe the proposed solution’s system management practices with information on security patching. How often servers are patched, and what the Vendor’s methodologies are for handling patching?
11.	Describe what processes the Vendor has in place to allow the NCDPI to audit the physical environment (could apply to production, secondary site, etc.) where the application/service is hosted. The NCDPI reserves the right to audit the physical environment.

Spec #	Technical Specification
12.	Describe how encryption is used within the application. Include in your description whether database encryption, network encryption (e.g. SSL, IPsec, SSH, SFTP/FTPS, etc.), data-at-rest/data-in-motion encryption, and/or backup encryption are used. If the proposed solution uses any of the foregoing types/methods of encryption, describe the encryption.
13.	Describe the Vendor's process for handling and notifying a breach of FERPA; PII and other non-public data.
14.	Describe the security auditing and related capabilities in place. Refer to State Security Manual referenced above.
15.	Describe any proposed system security provisions not already addressed above.
16.	Currently NCDPI has about 26,000 K-3 staff and 500,000 K-3 students. Describe how the proposed solution will scale without impacting performance.
17.	<p>Describe how the proposed solution can integrate with NCDPI's Identity and Access Management (IAM) Service. Here is a brief description of the integration methodology using NCEdCloud –</p> <p>1. Provisioning Authorized user is expected to have an account in a system to login and use that system. The NCEdCloud IAM Service supports two methods of implementing automated lifecycle management of accounts for both provisioning and de-provisioning.</p> <p>1.1. Provisioning via SAML 1.1.1. The first method for target application account provisioning is via SAML. This method requires the target system to use a SAML Service Provider (SP) and it must support the on-demand creation (auto-provisioning) of user accounts via this method. Not all systems that provide SP capability may support this method.</p> <p>1.2. Provisioning via Data Synchronization 1.2.1. The second method for target application account provisioning is via data synchronization. One component of the NCEdCloud IAM service is Identity Automation's DSS product. Using DSS adapters, the IAM service will communicate directly with the target system in order to provision accounts. This process occurs in near real-time as user accounts are created and updated in the Central Directory. Depending on the integration path for SSO/RSO, this provisioning process may include synchronization of user credentials.</p> <p>2. Authentication The NCEdCloud IAM Service will support three methods of implementing a simplified authentication service for end users accessing target application systems. The term "simplified authentication" refers to the concept that users won't have to keep track of multiple credentials when accessing the different target systems. From the end user perspective, this could be either an SSO or an RSO experience, depending on the method used to provide the authentication integration. The term single logout is the counter solution to SSO. For example, if you log in to five applications via SSO, you could log out of all sessions with a single logout link. The NCEdCloud IAM service will provide a single logout capability for SAML-enabled target systems but cannot enforce its implementation by all target systems. So, if an end-user clicks on the single logout option of an application, it would log them out of all sessions that were accessed using SAML. Unfortunately, only closing the browser application itself can guarantee that all sessions are absolutely ended.</p> <p>2.1. SAML Authentication</p>

Spec #	Technical Specification
	<p>2.1.1. The first (and preferred) method for target system authentication integration is via SAML. This method requires the target system to use a SAML Service Provider (SP). Once integrated, the login page for every target system using SAML will be the NCEdCloud IAM login page (branded to illustrate the use of the NCEdCloud Username and Password). The first application accessed will require the user to authenticate (via the IAM Service Login), however, each subsequent SAML-enabled application the user accesses will provide an SSO experience (no additional login required).</p> <p>2.2. Native Authentication</p> <p>2.2.1. The second method for target system authentication would be native authentication. With this method the user will access the target system and will login with credentials that have been synchronized to that system (See 1.2. Provisioning via Data Synchronization). In this case, the application is storing the user account credentials locally, thus it is using native authentication. This method will provide an RSO experience because the credentials used will be the same credentials as the NCEdCloud.</p> <p>2.3. LDAP Authentication</p> <p>2.3.1. The third method for target system authentication integration is via LDAP. This method requires the target system to support an option to use LDAP for authentication as an alternative to local/native authentication. The NCEdCloud IAM Service will provide a load balanced, fault tolerant LDAP endpoint for target systems for authentication. This method will provide an RSO experience because the credentials used will be the same credentials as the NCEdCloud.</p>
18.	Describe how the proposed solution restricts access to users. What are the various attributes to restrict access and maintain confidentiality. Define their hierarchy and hierarchy attributes.
19.	<p>Describe the proposed system's data integration capabilities with other NCDPI authorized system(s). Explain how your solution consumes and publishes data with other solutions. Define the integration priorities and integration interface. Planned data integration points may include but are not limited to Student Information System (student enrollment, transfers across districts, dual enrollment, summer camps, teacher data, school calendars, etc.), Every Child Accountability Tracking System and State Operational Data Store (SODS).</p> <p>List all other products (suite) that may integrate with the service and the mechanism of integration.</p>
20.	Describe how the proposed solution is aligned with CEDS.
21.	Describe the solution's use of SIF.
22.	Provide a list of data elements currently in the system.
23.	Describe in detail the ETL process in place.
24.	Describe in detail the items and services to be covered under operational maintenance and support of the proposed solution.
25.	Describe in detail the data conversion processes to migrate detailed historical data and setup new students. Historical data should be retained for a minimum of four years based on current retention requirements and can be updated depending on need. This information can include previous assessment data and student information data.

Spec #	Technical Specification
26.	Describe your capabilities and approach for transitioning the NC K-3 assessment data to the State at the end of the subscription service should NCDPI decide to end the use of the service in the future. Include what format the data will be provided e.g. Excel, Comma Delimited.
27.	NCDPI will provide student and staff information which should be used as a system of record for students and staff. Describe the proposed solution's data processing, cleansing and security process envisioned for NCDPI. Include any data transformation, data latency messaging capabilities.
28.	All K-3 Assessment results (benchmark and progress monitoring) will be reported back to NCDPI or systems authorized by NCDPI. Describe your current data transfer capabilities using state of the art protocols and services. Describe the system's ability to recover from failed or partial data transfer and your current notification process for the same.
29.	NCDPI will be involved in User Acceptance Testing (UAT) prior to initial deployment and testing enhancements before each planned release or adhoc bug fixes. Describe the vendor's software delivery process including the types of testing undertaken and Test Environment Management Process in supporting application releases and project delivery.
30.	Describe how the proposed solution conforms to current accessibility standards, including Section 508, W3C WCAG 2.0, in accordance with N.C.G.S. § 168A-7 and the Code of Federal Regulations (CFR) at 28 CFR parts 35 (title II) and 36 (title III).
31.	Describe the vendor's disaster recovery plan including the current Recovery Time Objective (RTO) and Recovery Point Objective (RPO)
32.	Describe the vendor's capability to provide Tier 1 through Tier 3 customer support and help desk capabilities for school districts to provide a unified single point of contact assistance with Technical issues. Describe the industry standard that is adopted for support.
33.	Describe your proposed process for collecting and prioritizing user feedback and providing NCDPI a roadmap for enhancements and changes every quarter.
34.	Provide the minimum hardware, software and network bandwidth requirements for optimal performance of the proposed solution. Also indicate the sunseting plan.
35.	Provide a 3 rd party attestation, one of the following based on the system proposed: SOC2 Type II, SSAE-16, FEDRAMP, ISO 27001
36.	Provide completed Vendor Readiness Assessment Report (VRAR) – https://files.nc.gov/ncdit/documents/files/Vendor-Security-Assessment-Guide-v3.pdf

Table D. Project Management Specification

Describe the Vendor proposed capabilities for the RtAD SaaS and provide specific details for each of the project management specifications below in your response. Project Management activities include, but are not limited to, defining and executing processes, systems and techniques to effectively balance schedule, cost, quality and resource constraints to successfully deliver the project. All deliverables will be formally reviewed and approved by NCDPI.

Give examples with detailed explanation for each applicable item.

Spec #	Project Management Specification
1.	<p>Include an initial schedule and the associated Work Breakdown Structure (WBS) for the proposed implementation plan.</p> <p>Describe any pilot or other implementation strategies you plan to employ.</p> <p>The Project Schedule in the proposal to include significant phases, activities, tasks, milestones and resource requirements necessary for NCDPI to evaluate the plan.</p>

Spec #	Project Management Specification
	<p>In addition to all the project management phases and tasks, please be sure to include the following milestones in the project plan. If the vendor omits or revises these milestones to tailor the approach, please provide supporting justification.</p> <ol style="list-style-type: none"> a. SCAP compliant credential vulnerability scan before Go-Live b. Third party security compliance reports (required within the first year of contract award) c. Annual disaster recovery plan
2.	<p>Include your current processes for the following –</p> <ol style="list-style-type: none"> a. Configuration Management, b. Change Management, c. Quality Assurance, d. Risk and Issue Management, e. Communication Management.
3.	<p>Vendor is expected to provide a full-time experienced Project Manager to oversee and coordinate the daily activities of the Vendor’s project team and serve as the primary contact for the project. NCDPI prefers that the assigned Project Manager hold a current Project Management Professional (PMP) certification from the Project Management Institute (PMI) or equivalent (i.e., project management degree or certificate from a university). Please include resume of the proposed Project Manager for this deployment/implementation.</p>
4.	<p>Acknowledge by stating your understanding of the following – NCDPI expects the following from the vendor. These expectations and frequency can be finalized after contract award. Please elaborate if any of the expectation are not applicable or cannot be met:</p> <ol style="list-style-type: none"> a. Weekly Monitoring/Status Call participation b. Meeting Agendas and Notes (as needed) c. Weekly Status Reports Issue & Risk Tracking d. There are select project decision points where the vendor(s) is(are) expected to participate. These can be defined after award and prior to schedule finalization. e. Quarterly face-to-face project management meetings will be held to assess progress against timelines and budget, and the quality of service delivery. f. The Vendor will be expected to prepare and provide timely agendas and minutes for each meeting unless otherwise designated by NCDPI. At a minimum, these status calls to include: <ol style="list-style-type: none"> i. Review of previous week’s progress in comparison to the Project Plan and Schedule; ii. Status of major milestones and project deliverables completed, planned, delayed or added; iii. An updated Risk Matrix iv. An updated Issues Log v. An updated Project Schedule reflecting actuals and progress since the last report comparing and contrasting the proposed or planned tasks with the schedule since the last report. g. The Vendor shall comply with and support State IT project processes (State required processes including participation in and forms are described here: https://it.nc.gov/services/service-directory/project-management/project-approval-oversight-epmo)
5.	<p>The vendor will be expected to deliver the following documents. Please acknowledge your agreement to deliver and where the deliverables are tailored, please provide supporting justification.</p> <ol style="list-style-type: none"> a. The vendor is expected to deliver a Technical Implementation Plan and Project Schedule within the first 30 days following the RFP award. The plan must include specific, detailed tasks and responsibilities (including supporting Microsoft Project Plan file (.mpp format) or other

Spec #	Project Management Specification
	<p>detailed project plan/schedule file which includes resource assignments, dependencies, milestones, summary tasks and constraints).</p> <p>b. In addition to the Technical Implementation Plan, the vendor is expected to deliver at least the following documents, as proposed and agreed upon with NCDPI within the first 60 days of contract award and updated annually or as negotiated with NCDPI</p> <ul style="list-style-type: none"> i. Configuration Management Plan ii. Change Management Plan iii. Quality Assurance iv. Risk and Issue Management Plan v. Communication Management Plan vi. Disaster Recovery Plan vii. Incident Response Plan viii. Test Plan, as applicable ix. Test Results
6.	<p>Key Personnel: Please include resumes for all key project personnel required to deliver the proposed work in the RFP response.</p> <p>Prior to making personnel changes for key human resources outlined in the project plan, the vendor must provide an opportunity for NCDPI to review resumes and transition plan and request a meeting with replacement resources. Acknowledge your agreement to this term.</p>

Table E. Service Level Specification

Describe the Vendor proposed capabilities for the RtAD SaaS and provide specific details for each of the service level specifications below in your response. Give examples with detailed explanation for each applicable item.

Spec #	Service Level Specification
1.	Provide a copy of the standard Service Level Agreement (SLA) with this proposal submission, including provisions establishing remedies, such as refunds or service credits for NCDPI in the event that Vendor fails to meet the performance metrics established in the SLA.
2.	Describe the proposed solution’s historical Uptime, Availability and Reliability.
3.	Include recent detailed performance reporting of the proposed interactive web page’s response times in milliseconds. If end user service desk calls reflect a trend of sluggish performance that exceed agreed upon SLA response times for the service, the Vendor may be expected to provide reports on demand to help determine the cause and corrective action for degraded performance.
4.	Describe your proposed Help Desk reporting process reflecting details such as: First Call Resolution, Number of calls Daily, Weekly, Monthly, and Number of calls resolved after 30 minutes.

Table F. Desirable RtAD Specification

These features are desirable, but not required. Vendor may describe how the proposed solution will provide the stated functionality. Please be detailed.

Spec #	Desired Specification
1.	The Vendor's RtAD SaaS Solution may provide touchscreen functionality to conduct student assessments on supported devices.
2.	Support at least 99.9% uptime availability. However, if the vendor proposal is recommended by the evaluation team to the competitive range, all SLA terms may be negotiated at that time.
3.	Support 3 to 5 second or less web page response times. However, if the vendor proposal is recommended by the evaluation team to the competitive range, all SLA terms may be negotiated at that time.
4.	Incorporates a personalized blended approach to assessment and learning, including multiple teaching and assessing modals to meet the demands of diverse student populations with a wide range of learning needs.
5.	The assessment system incorporates innovative and evidence-based approaches utilizing assessment results to assist in recommending instructional strategies. Describe the system's capability to provide on demand (real time) assessment data and instructional strategies recommendation.
6.	Electronic student, class, school, and district reports on assessment results to help all educators make instructional decisions based on the data, including a report that tracks student progress/growth.
7.	Online professional development options for teachers and administrators pertaining to the use of the assessment system and how to analyze and use the data to make informed instructional decisions for students.
8.	Describe how your solution provides communications to parents including the ability to generate strategies/tools for them to be able to help their children at home. Explain the research and vetting process for these recommendations.
9.	Describe how the proposed solution includes a constructed response feature for responding to text dependent questions (NAEP) - https://nces.ed.gov/nationsreportcard/
10.	Describe the proposed service's ability for authorized users to upload evidence of learning.
11.	Describe the proposed service's ability to maintain a portfolio of student's ongoing development over time.
12.	Describe how the proposed solution approaches print awareness for young children.
13.	Describe other open standards (other than CEDS defined in Technical Specification #20) that are used for interoperability.
14.	Describe the open standards that can be used for interoperability with your service.

Table G. Cost Proposal

The Vendor must submit costs (inserting as many rows as necessary) in the following Cost Response Form. Refer to [Section IV](#) for alternative cost response.

*Submit a separate proposal for Desirable Specifications.

Cost component	One-Time Cost	Describe Cost Basis		
Project Management	\$			
Customization required for implementation	\$			
Project Deliverables and User Documentation (Specify details)	\$			
Installation / Conversion / Migration / Implementation Costs	\$			
Training including all training materials	\$			
Others (describe)	\$			
Total One-Time Costs	\$			
Cost component	Recurring Costs			Describe Cost Basis
	Year 1	Year 2	Year 3	
Subscription fees or cost *	\$	\$	\$	
Enhancement Cost	\$	\$	\$	
Technical Support / Customer Service	\$	\$	\$	
Others (describe)	\$	\$	\$	
Total Recurring Cost	\$	\$	\$	
				Contract Total
Grand Total for the entire Contract				\$

*Estimated number of students – 469,445

*Estimated number of teachers ~ 26,000

Invoicing and Payment:

1. The final amount due and payable may be adjusted based on the actual number of students as agreed upon by the Parties.
2. For deliverable based payments, a retainage cost of up to 20% may be withheld from the final bill until the deliverable is completed and accepted by NCDPI.
3. The initial quarterly invoice shall be pro-rated based on the fraction of the quarter remaining at the contract effective date.
4. Invoices should be submitted to the NCDPI Project Manager and should contain pertinent Deliverable Acceptance forms to authorize payment.
5. Recurring Operations and Maintenance Costs (e.g.. Subscription fees, enhancements, technical support, customer service, etc.) will not be paid until the one-time project implementation is successfully completed and Go-Live Readiness process is complete to approve Production roll-out.

Attachment B. Department of Information Technology Terms and Conditions

General Terms and Conditions Applicable to Software as a Service

1) DEFINITIONS:

- a) "Data" includes means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- b) Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State as included in Paragraph 7) c) of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.
- c) "Services" shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
- d) "State" shall mean the State of North Carolina, the Department of Information Technology as an agency, or the agency identified in this solicitation as the Purchasing Agency and Award Authority.
- e) "Support" includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

2) ACCESS AND USE OF SAAS SERVICES:

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et. seq.*
- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS tenants for similar Services. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided

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

- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.
- g) Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

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 paragraph below. If not otherwise provided, the automatic remedies for nonavailability of the Subscription Services during a month are:
1. A 10% service credit applied against future fees if Vendor does not reach 99.9% availability.
 2. A 25% service credit applied against future fees if Vendor does not reach 99% availability.
 3. A 50% service credit applied against future fees or eligibility for early termination of the Agreement if Vendor does not reach 95% availability.

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

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

5) EXCLUSIONS:

- a) Except as stated above in Paragraphs 3 and 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- b) The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions or service failures substantially caused by:
 - i) Actions of non-Vendor personnel;
 - ii) Failure to follow Vendor's written instructions relating to the Services provided to the State; or
 - iii) Force Majeure conditions set forth hereinbelow.
 - iv) The State's sole misuse of, or its own inability to use, the Services.

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

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

- a) Where 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 Services and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the 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, 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.

8) Vendor's Liability for Injury to Persons or Damage to Property:

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than

agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Services 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 tangible 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.
 - 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.
- 9) MODIFICATION OF SERVICES:** If Vendor modifies or replaces the Services provided to the State and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.
- 10) TRANSITION PERIOD:**
- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, 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.
- 11) TRANSPORTATION:** Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.
- 12) TRAVEL EXPENSES:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed. In the event that the Vendor may be eligible to be reimbursed for travel expenses specifically agreed to in writing and arising under the performance of this Agreement, reimbursement will be at the out-of-state rates set forth in 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 Agreement.
- 13) 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. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements with the Vendor. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1207, or other provision of law.
- 14) AVAILABILITY OF FUNDS:** Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the State for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the State's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent

to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the State will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to terminate any Services supplied to the State under this Agreement, and relieve the State of any further obligation thereof. The State shall remit payment for Services accepted on or prior to the date of the aforesaid notice in conformance with the payment terms.

15) PAYMENT TERMS:

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein, but shall not increase more than 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.

16) ACCEPTANCE CRITERIA:

- a) Initial acceptance testing is required for all Vendor supplied Services before going live, unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and 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 ten (10) days following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State of any Vendor re-performance or correction shall not be unreasonably withheld, but may be conditioned or delayed as required for confirmation by the State that the issue(s) in the notice have been successfully corrected.

- 17) CONFIDENTIALITY:** The State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1, *et seq.* Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate information, Products, Services or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, or portion of a page, the Vendor

warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked "confidential" meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked "confidential," the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

18) SECURITY OF STATE DATA:

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.
- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The Service Provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy (<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any breaches of security within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.
- d) Family Educational Rights and Privacy Act: Student educational records are subject to 20 U.S.C. 1232g, Family Educational Rights and Privacy Act (FERPA). The Vendor shall ensure that the Vendor and Vendor's Services fully complies with FERPA and every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The Vendor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information shall be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this Agreement.
- e) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- f) The Vendor shall certify to the State:
 - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
 - ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid 3rd party security certification not to exceed 1 year and is consistent with the data classification level and a

security controls appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.

iii) That the Services will comply with the following:

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

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

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

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

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

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

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

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

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 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 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. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

- 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 in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
 - (1) The scale and quantity of the State Data loss;
 - (2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
 - (3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
 - (4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

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

- 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 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.
- 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.

19) ACCESS TO PERSONS AND RECORDS: 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.

- 20) ASSIGNMENT:** Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days of any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement 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 Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 21) NOTICES:** Any notices required under this Agreement should be delivered to the Agreement Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.
- 22) TITLES AND HEADINGS:** Titles and Headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 23) AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.
- 24) 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 Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 25) GOVERNING LAWS, JURISDICTION, AND VENUE:** This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
- 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, or Vendor fails to meet the material requirements and specifications herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- a) If Vendor fails to deliver or provide correct Services within the time required by this Contract, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide Services as provided herein.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such Vendor failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure. Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- 27) FORCE MAJEURE:** Except as provided for herein, 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.
- 28) 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 and the provision of Services hereunder, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 29) TERMINATION:** Any notice or termination made under this Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. The parties may mutually terminate this Agreement by written agreement at any time.
- a) The State may terminate this Agreement, in whole or in part, pursuant to the Paragraph entitled "Default," above, or pursuant to 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, Services, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Agreement, 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 Paragraph 7), entitled "Limitation of Liability." 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 Agreement. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
- ii) Termination for Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Services performed in conformance with the Agreement. In the event the Agreement is terminated for the convenience of the State the State will pay for all Services and work performed or delivered in conformance with the Agreement up to the date of termination.

30) DISPUTE RESOLUTION: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's Agreement 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 Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

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

32) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The Parties agree that the State shall be entitled to any and 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.

33) 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. The E-Procurement fee does not normally apply to services.

a) Reserved.

b) Reserved.

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

d) 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.