

<b>STATE OF NORTH CAROLINA</b> <b>Department of Information Technology</b> <b>IT Contracts and Strategic Sourcing</b>	<b>REQUEST FOR PROPOSAL NO. ????</b>	
	Offers will be publicly opened: ???	
	Issue Date: Jan ??, 2017	
<b>Refer ALL inquiries regarding this RFP to:</b> Joetta Brunson, Purchasing Agent Joetta.brunson@doa.nc.gov (919) 807-2464	Commodity Number: 920-66	
	Description: Consulting Services, New Statewide Election Information Management System	
	Using Agency: NC State Board of Elections	
<b>See page 2 for mailing instructions.</b>	Requisition No.: ??	

**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, except as amended, the Department of Information Technology Terms and Conditions, the Department of Information Technology Supplemental Terms and Conditions for Software and Service, and 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.**

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

Offer valid for ninety (90) days from date of offer opening unless otherwise stated here: \_\_\_\_\_ days

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

<b>FOR STATE USE ONLY</b> Offer accepted and contract awarded this ____ day of _____, 20__, as indicated on attached certification, by _____ (Authorized representative of DOA).
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**DELIVERY INSTRUCTIONS:** Vendor must deliver one (1) **signed original** and one (1) **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. Vendor also must submit one (1) signed, executed electronic copy** of its offer on USB Flash Drive(s). The files should not be password-protected and should be capable of being copied to other media.

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.**

<b>DELIVER TO:</b>
OFFER NUMBER: ????
North Carolina Department of Administration Office of Fiscal Management - Purchasing Attn: Joetta Brunson, Purchasing Officer Street: 116 West Jones Street, 2 <sup>nd</sup> Floor, Room 2054 Raleigh, NC 27603

Sealed offers, subject to the conditions made a part hereof, will be received at 116 West Jones Street, Raleigh, NC 27603 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.

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 requirements are to be addressed to the contact person listed on Page One.

**VENDOR STANDARD AGREEMENT(S):** The terms and conditions of Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this Agreement may apply to the extent such terms and conditions do not materially change the terms and conditions of this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the Vendor's standard agreement(s), the terms and conditions of this Agreement relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the DIT Terms and Conditions herein shall apply in all cases and supersede any provisions contained in Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns; nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

**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."

Written questions concerning this RFP will be received until December 30, 2016 at 10:00am Eastern Standard Time. They must be sent via e-mail to: Leroy.Kodak@nc.gov. Please insert “**Questions 100154**” 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 Leroy Kodak 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 requirements or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

**NOTICE TO VENDORS:** The State objects to and 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 Offeror agrees that any additional or modified 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:** North Carolina Vendor Portal 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:** Contact by the Offeror with the persons shown below for contractual and technical matters related to this RFP is only permitted if expressly agreed to by the procurement officer named on Page 2, or upon award of contract:

<b>Vendor Contractual Point of Contact</b>	<b>Vendor Technical Point of Contact</b>
Name: [NAME OF VENDOR] Street: [STREET ADDRESS] City: [CITY], State: [STATE], Zip: ZIP Attn: Assigned Contract Manager	Name: [NAME OF VENDOR] Street: [STREET ADDRESS] City: [CITY], State: [STATE], Zip: ZIP Attn: Assigned Technical Lead

<b>State Contractual Point of Contact</b>	<b>State Technical Point of Contact</b>
North Carolina Department of Administration Office of Fiscal management - Purchasing Street: 116 West Jones Street 2 <sup>nd</sup> Floor Rm 2054 Raleigh, NC 27603 Attn: Joetta Brunson, Purchasing Officer	NC Department of administration State Board of Elections 441 N. Harrington Street Raleigh, NC 27603 Attn: Marc Burris

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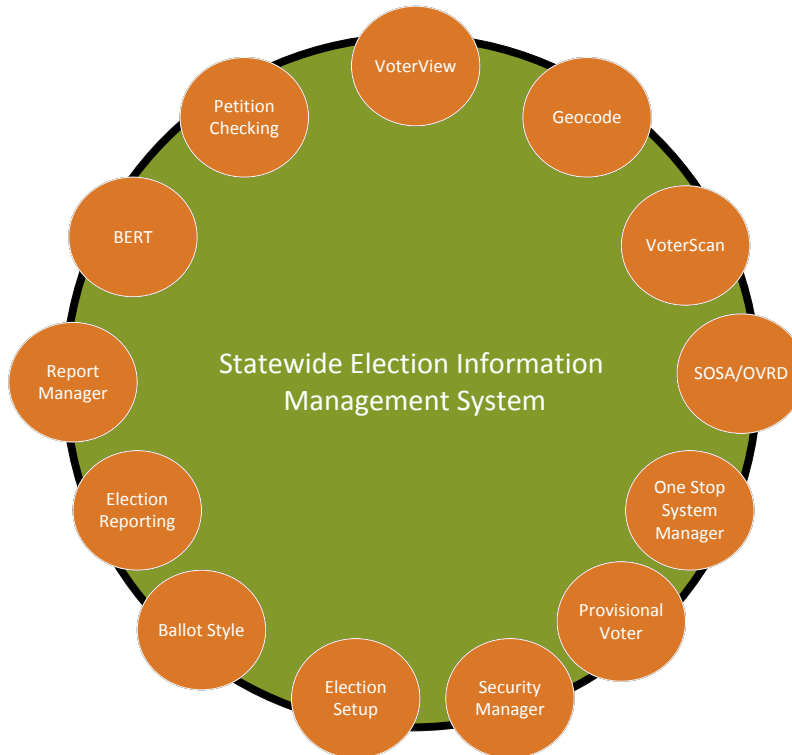
# I. Introduction

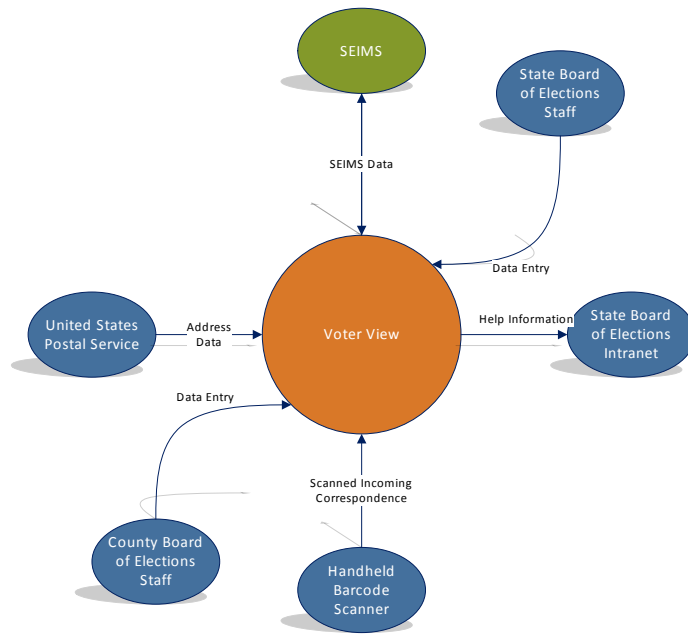
## A. State Board of Elections Purpose & Authority

The State Board of Elections (SBOE) is charged with the overall responsibility for administration of the elections process in North Carolina for the state's 100 county boards of elections. In addition, the State Board of Elections is responsible for developing and implementing a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems. The current statewide voter registration database system, referred to as the State Elections Information Management System (hereinafter "SEIMS"), was fully implemented in each North Carolina county in 2006.

## B. SEIMS Information

SEIMS is developed, maintained, and supported internally by IT staff employed with the State Board of Elections. Modifications and enhancements to SEIMS applications are coordinated with the agency's business and legal units. SEIMS currently consists of 13 separate applications:





VoterScan	
VoterView	
Geocode	
Election Setup	
Ballot Style	
Provisional Module	
Election Reporting	
Security Manager	
Report Manager	
Petition Module	
One-stop System Manager	

State One-stop Application/On-site Voting Registration Database (SOSA/OVRD)	
Board of Elections Reporting Tool (BERT)	
ScanTest	

Not including users of the electronic poll book applications (SOSA/OVRD) SEIMS has currently \_\_\_\_ application users divided amongst North Carolina’s 100 county boards of elections. The number of voter records in the system total \_\_\_\_\_, including over 6.7 million currently registered voters, \_\_\_\_\_ removed records, and \_\_\_\_\_ denied voter records. As of February \_\_\_\_\_, there are \_\_\_\_ unprocessed records in VoterScan, including \_\_\_\_ archived records. There are \_\_\_\_\_ scanned images in the system and \_\_\_\_\_ clipped voter signatures.

SEIMS currently has an inter

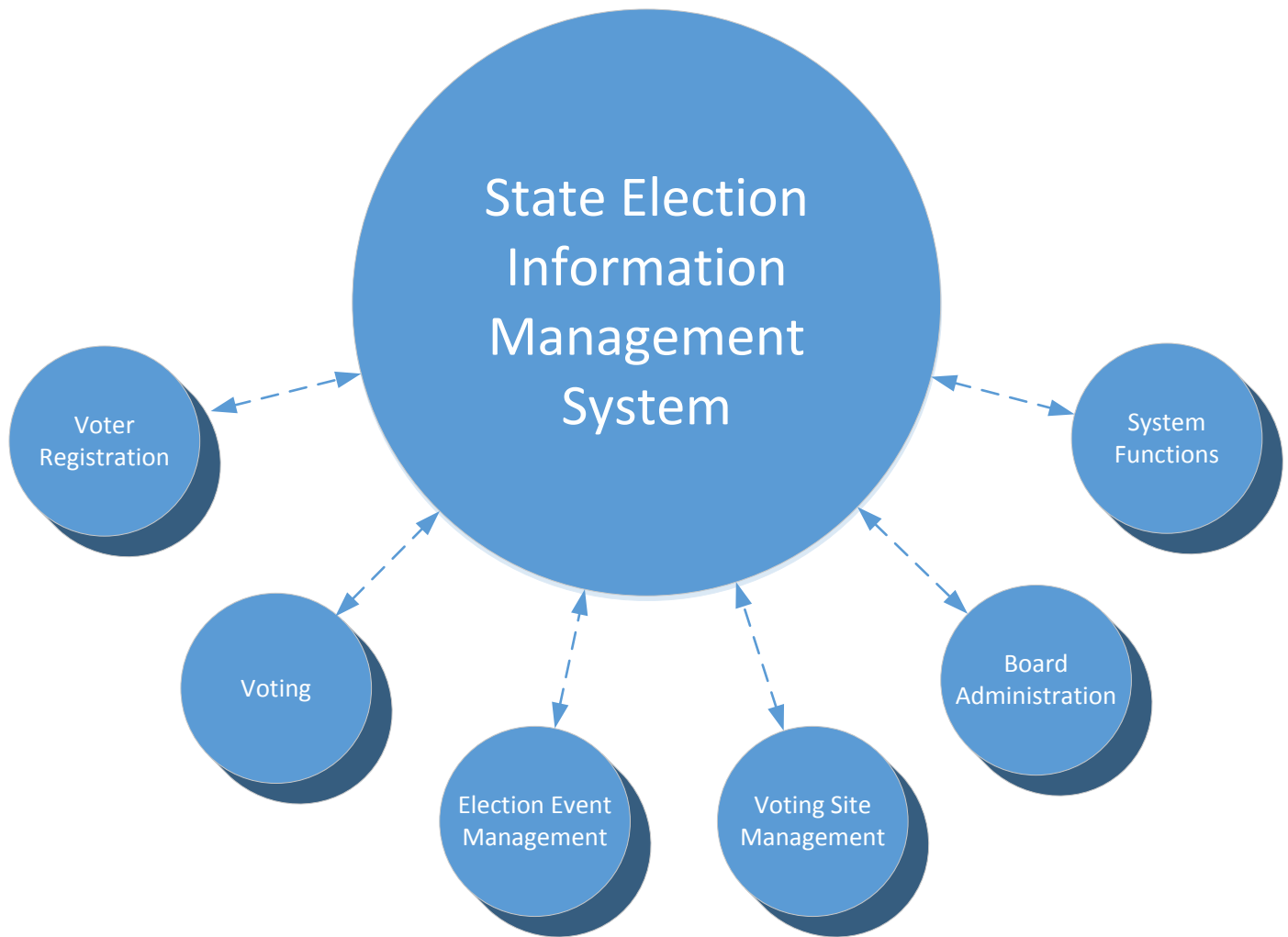
### C. Project Goal and Purpose

The goal of this project is to update the core applications in SEIMS: VoterScan, VoterView, Geocode and Election Setup. These applications are written in **outdated** programming language and making necessary enhancements to these applications has been increasingly difficult and risky. In addition, the architecture of SEIMS is an **executable-distributed system that replicates to the state’s database**. To improve efficiency and add additional functionality, NCSBE desires to centralize the core applications and move SEIMS architecture to a cloud-based or hybrid cloud solution.

The purpose of this RFP and any resulting contract award is to solicit proposals for a complete redesign and redevelopment of SEIMS. The solution would include all types of elections from local municipalities to presidential candidates. The State’s intent is to provide support services in managing elections and election data for voters and candidates into an information technology based solution provided by the selected vendor.

The State Board of Elections has identified six (6) major business components for the SEIMS system.





Each of these six (6) components has specific business needs and requirements. NCSBE is requesting information and pricing on each of the six (6) components to evaluate the totality of the proposed solution.

**DEFINITE QUANTITY CONTRACT:** This request is for a close-ended contract between the awarded Vendor and the State to furnish a pre-determined quantity of a good or service during a specified period of time.

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

## II. Bidding Information

### A. 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) **TIME FOR CONSIDERATION:** Unless otherwise indicated on the first page of this document, Vendor's offer must be valid for ninety (120) days from the date of offer opening.
- 4) **FAILURE TO MEET THE RFP SPECIFICATIONS:** While it is not anticipated that the awarded Vendor will fail to meet the RFP specifications, if such should occur, the right is reserved to further evaluate the responses to this RFP for substantial conformity to the specifications of this RFP (N.C.G.S. 143B-1350(h), and then to recommend an award to the next Vendor response that represents the best interest of the State.
- 5) **PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 6) **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.
- 7) **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>
- 8) **ORGANIZATION:** Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 9) **E-PROCUREMENT: This is an e-procurement solicitation.** See paragraphs 46 and 47 of the attached North Carolina Department of Information Technology Procurement Office General Terms and Conditions for Goods and Related 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, vendor must register in NC E-Procurement @ Your Service at the following web site: <https://vendor.ncgov.com/vendor/login>
  - 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.
- 10) **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.
- 11) **IRAN DIVESTMENT ACT:** Pursuant to N.C.G.S. §147-86.55 *et seq.*, the State shall not enter into a contract unless the awarded Vendor provides a certification of compliance with the Iran Divestment Act to the awarding agency, and on a periodic basis thereafter as may be required by the State. Vendors

are directed to review the foregoing laws. The State will provide the required certification to any awarded Vendor.

## B. General Conditions for Proposals

- 1) **DEFINITIONS, ACRONYMS AND ABBREVIATIONS:** Generally, see the North Carolina Administrative Code, 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. **Bid Documentation:** A file containing all of the information and records relating to the bid.
  - c. **Buyer:** State buyer participating in the solicitation development, bidding process and contract administration.
  - d. **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
  - e. **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. **Reserved:** For possible future use. The vendor is not expected to respond to these items.
  - h. **RFP:** Request for Proposal
  - i. **SaaS:** Software as a Service is a software distribution model in which the application is hosted by a vendor or service provider and made available to customers over the Internet.
  - j. **DOA:** Department of Administration
  - k. **NCAS:** North Carolina Accounting System
  - l. **IPS:** North Carolina Interactive Purchasing System used for advertisement of solicitations
  - m. **eVP:** North Carolina electronic Vendor Portal for vendor registration
  - n. **NCEP:** North Carolina electronic procurement system for purchasing Goods or Services
  - o. **SBE:** State Board of Elections (used synonymously with SBOE or NCSBE).
  - p. **SBOE:** State Board of Elections (used synonymously with SBE or NCSBE).
  - q. **SIEMS:** State Election Information Management System.
  - r. **NCSBE:** North Carolina State Board of Elections (used synonymously with SBOE or SBE)
  - s. **The State:** The state of North Carolina, and its Agencies
  - t. **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- 2) **READ AND REVIEW:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all 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.
- 4) **ELIGIBLE VENDOR:** 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 this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing Services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 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 **one** (1) year, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for up to **two** (2) additional **one** (1) year periods at its sole discretion.
- 9) **EFFECTIVE DATE:** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing Vendor for Goods provided nor Services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.
- 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, which would not have significant impact on any 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 responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more Vendors.

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

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Alternate offers must be clearly marked  
**“Alternate Offer for ‘name of Vendor’”**

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

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

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15) **CO-VENDORS:** Vendors may submit offers as partnerships or other business entities. Such partners or other “co-Vendors”, if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean all such partners or co-Vendors.

16) **SUBMITTING AN OFFER:** Each Vendor submitting an offer warrants and represents that:

- a. The offer is based upon an understanding of the specifications and requirements described in this RFP.
- b. Costs for developing and delivering responses to this RFP and any subsequent presentations of the offer as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their offers.

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

18) **OFFER MODIFICATION:** An offer may not be unilaterally modified by the Vendor for a ninety (90)-day period following the delivery of the offer, or of any best and final offer.

19) **NON-RESPONSIVE OFFERS:** Vendor shall submit a firm offer. 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.

### C. Evaluation Process

- 1) **BEST VALUE:** "Best Value" procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.
- 2) **SOURCE SELECTION:** A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the overall 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, if requested.
  - 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 include specific page numbers and sections stated in such 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 merit.
  - d. Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.
- 3) **BEST AND FINAL OFFERS (BAFO):** If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional weight to the Vendors' respective offer. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.

- a) Demonstration of substantial compliance with any RFP requirements, including, without limitation submission of all materials required to be submitted in the RFP and compliance with Section VI below. *(Note – offers must meet any solicitation requirements or the offer is not compliant and cannot be evaluated any further).*
- b) Evaluation of Substantial Conformity to Solicitation Specifications. Vendor qualifications substantially impact the evaluation process, and will be evaluated based upon the evaluation criteria. The evaluation criteria is listed in order of importance and shall be evaluated based on each Vendor’s response to the solicitation documents.

**EVALUATION CRITERIA:**

- i. Compliance with RFP Requirements
- ii. Technical Specifications
- iii. Desirable Technical Specifications
- iv. Cost Proposal
- v. Application Security Specifications
- vi. Vendor Implementation Plan
- vii. Training Plan
- viii. References
- ix. Key Personnel Qualifications
- x. Financial Statements

4) **EVALUATION METHOD:** An ordinal method of ranking will be utilized in this procurement. Qualified bids will be evaluated and an award will be made in accordance with Best Value procurement practices as defined by GS §143-135.9, 9 NCAC 6A and 6B.0302. A tradeoff methodology will be used to evaluate bids using the criteria set forth in Section II.C.5). These criteria are stated in relative order of importance. The Vendors’ bids will then be ranked 1, 2, 3, based on the strengths and weaknesses of each bid regarding the listed criteria and by considering the relative importance of those criteria.”

5) **PROCUREMENT SCHEDULE:**

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

<b>Action</b>	<b>Responsibility</b>	<b>Date</b>
Issue of RFP	DIT	2/21/17
Deadline to Submit Questions	Potential Vendors	3/7/17 10 am EST
Response to Written Questions/RFP Amendments	State of NC	3/14/17
Submission of Offer	Vendor	4/6/17 at 2pm EST
Offer Evaluation	Evaluation Committee	5/1/17

Action	Responsibility	Date
Selection of Finalists	Evaluation Committee	5/1/17
Oral Presentation and/or Product Demonstrations by Finalists (optional)	Vendors	5/24/17
Negotiations (optional)	Evaluation Committee designees and selected Vendor(s)	5/7/17
Best and Final Offers from Finalists (optional)	Vendors	5/14/17
Contract Award	State of NC	5/28/17
Protest Deadline	Vendors	15 days after award

- 6) **DISQUALIFICATION:** Vendor may be disqualified from any evaluation or award if 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.
- 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 (ITS-100154), 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 the contract 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 Specifications

Vendor's proposal must address each of the following requirements in the order presented.

- 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:** In offering the best value to the State, Vendors are encouraged to leverage the State's existing resources and license agreements when practicable. The agreements may be viewed at: <http://it.nc.gov/services/license-and-agreements>
  - a. Identify components or products that are needed for your solution that may not be available with the State's existing license agreements.



- b. Identify and explain any components that are missing from the State's existing license agreements.
  - c. If the Vendor can provide a more cost effective licensing agreement, please explain in detail the agreement and how it would benefit the State.
  - d. Explain the transportability and transferability of the proposed license agreements. Any licenses or warranties purchased on behalf of the State for this project must be transferable at the time the vendor is paid under contract for said component.
- 3) **VIRTUALIZATION:** Reserved.
- 4) **NCID:** The proposed solution must externalize identity management and will be required to utilize the North Carolina Identity Service (NCID) for the identity management and authentication related functions performed by this application. NCID is the State's enterprise identity management (IDM) service. It is operated by the North Carolina Department of Information Technology. Additional information regarding this service can be found in the ITS Service Catalog at: <http://it.nc.gov/it-services> (see Identity Management - NC Identity Management under the main menu item Application Services) and the NCID Web site at: <https://www.ncid.its.state.nc.us/>.
- 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 Policies: <http://it.nc.gov/statewide-resources/policies>. 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 agency managed Infrastructure as a Service (IaaS), Platform as a Service (PaaS), and Software as a Service (SaaS) solutions. Assessment reports such as the Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, SSAE 16, and ISO 27001 are preferred and offered solutions already meeting these requirements are requested to include these reports as part of their submission.
- 6) **SOLUTIONS NOT HOSTED ON STATE INFRASTRUCTURE:** 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 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 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, 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 equipment meets all requirements. This technical literature will be the primary source for evaluation. If a requirement 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) **SUBSTITUTE OR 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"; otherwise, it will be considered that items offered comply with these specifications, and Vendor will be held responsible. 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 equivalent goods may be rejected; and if offered, must be supported by independent documentary verification of equivalence to the specified goods.**
- 12) **SCOPE OF WORK (SOW)**: The purpose of this project is to select and implement an appropriate solution that will enhance the State's ability to award and manage contracts (Contract Management). The current methodologies are manual, cumbersome, and redundant. This project seeks to streamline and integrate the State's current processes into an Information Technology based solution as provided by the Vendor. The State desires a solution that can be implemented across the enterprise and made available to all governmental entities eligible to utilize State Contracts. The proposed system will need to be integrated with the State's existing systems utilizing a web service protocol such as, XML, SOAP, WSDL or UDDI. Other integration protocols and formats will be considered; the previous examples are listed for illustrative purposes only.

### 13) BUSINESS REQUIREMENTS

The goal of this RFP is to develop a new State Elections Information Management System (SEIMS) that meets the requirements to administer elections in North Carolina. These business requirements are categorized into six core process groups. In order to evaluate any proposal, a vendor must separately address each listed requirement by: (1) identifying whether you have the ability to provide a solution for the requirement and (2) describing how your solution meets the requirement.

For each requirement listed in the table that follows, identify whether you can provide a solution for the requirement by entering the appropriate numbered response:

<b>Response</b>	<b>Ability to Provide a Solution</b>
2	Vendor has a solution that satisfies the requirement.
1	Vendor has the skills and resources to design and develop a solution that satisfies the requirement.
0	Vendor does not have and cannot provide a solution for the requirement.

In addition, in a separate document, describe in detail how your proposed solution best meets the requirements and any expected functionality.

#### 1. Voter Registration

The State voter registration system is the official voter registration list for the conduct of all elections in the State. The State Board of Elections and the county board of elections, consistent with North Carolina law, keep copies of voter registration data electronically. A completed and signed registration application form, if available, once approved by the county board of elections, becomes backup to the official registration record of the voter.

No person shall be permitted to vote who has not been registered under the provisions of North Carolina law. North Carolina county boards of elections shall register every person qualified to vote in that county who makes an application to register to vote. Every person registered to vote by a county board of elections in accordance with the law shall remain registered until the voter becomes disqualified.

The State Board of Elections by law must develop and implement a statewide computerized voter registration system to facilitate voter registration and to provide a central database containing voter registration information for each county. The system shall serve as the single system for storing and managing the official list of registered voters in the State. The system shall serve as the official voter registration list for the conduct of all elections in the State. The system shall encompass both software development and purchasing of the necessary hardware for the central and distributed-network systems.

The State Board of Elections shall develop and implement the system so that each county board of elections can do all the following:

1. Verify that an applicant to register in its county is not also registered in another county.
2. Be notified automatically that a registered voter in its county has registered to vote in another county.
3. Receive automatically data about a person who has applied to vote at a drivers license

office or at another public agency that is authorized to accept voter registration applications.

The State Board of Elections must maintain the statewide computerized voter registration list and database to meet the requirements of section 303(a) of the Help America Vote Act of 2002 and North Carolina law. Each county board of elections shall be responsible for registering voters within its county according to law. Each county board of elections shall maintain its records by using the statewide computerized voter registration system. Each county board of elections shall enter through the computer system all additions, deletions, and changes in its list of registered voters promptly to the statewide computer system.

To meet these requirements, the solution must manage the following core voter registration processes:

**1.1. Manage voter registration applications**

Persons may use a voter registration application developed by the State Board of Elections, including forms developed for use by National Voter Registration Act (NVRA) agencies, or the interstate form developed by the Election Assistance Commission (EAC) to: (1) Register to vote; (2) Change party affiliation or unaffiliated status; (3) Report a change of address within a county; (4) Report a change of name; or (5) Preregister to vote. Voters may also return various verification or confirmation notices to update voter information or return incomplete registration notices to complete a voter registration attempt. The State Absentee Ballot Request Form is a voter registration update form. Further, persons qualified under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) may use forms developed by the Federal Voting Assistance Program for use by military-overseas citizens to register to vote. Any voter registration application or update form must be scanned or uploaded into SEIMS and used to complete the voter registration transaction. These electronic documents are then maintained on the registrants' record.

In addition to forms, voter registration transaction data must be imported into SEIMS and used to complete a voter registration application transaction.

1.1.1.	<p>The solution must allow the processing of voter registration applications to be managed in a voter registration application processing queue.</p> <p>Within the voter registration processing queue, a voter registration application transaction record must consist of voter registration data and if applicable, the image of a voter registration application or update document.</p> <p>In managing voter registration applications, the solution will be required to have the capability of: (1) adding a new voter record to the voter registration list in a county, (2) updating an existing voter record in a county, (3) and confirming that an application is a duplicate registration in a county and there are no changes to the record.</p>	
1.1.2.	<p>The solution must permit a voter registration application or update document to be scanned, imported, or uploaded to the voter registration processing queue.</p>	
1.1.3.	<p>The solution must perform a statewide search based on pre-defined logic to identify an existing voter record for the</p>	

	applicant or identify any transactional records related to incomplete process records. If an existing statewide voter record or unprocessed transactional record is identified, the solution must link the current application transaction with the found voter record.	
1.1.4.	For each voter registration transaction record, the solution must permit application data to be entered manually into pre-defined fields or the application data may be imported from acceptable electronic sources. The solution must require that certain fields are complete on the application. If required fields are not provided, the missing elements must be flagged and the system must treat the application as incomplete.	
1.1.5.	The solution must manage voter addresses by requiring the entry of a physical residential address and validating whether: (1) the GIS-based address point is valid in the county processing the application; (2) the GIS-based address point needs to be added to the county address database; (3) the GIS-address point is valid in another North Carolina county; (4) the address is an out-of-state address; or (5) the address is invalid, incomplete or cannot be recognized. If the address is valid in the county processing the application, the solution must assign the registrant to the proper precinct and electoral districts based on the address point. The solution must permit the user to enter an alternative address for the applicant's physical residential address and permit the user to enter an applicant's mailing address if the applicant indicates he does not receive mail at his residential address.	
1.1.6.	The solution must manage voter signature processes, including the ability to capture and save the signature on a voter registration application document or import a signature image from the NCDMV or another third-party electronic source. The solution must permit a user to compare the captured signature with previous signatures images on the voter record, if applicable.	
1.1.7.	The solution must manage Help America Vote Act (HAVA) ID validation processes.	
1.1.8.	The solution must manage incomplete voter registration application when required voter registration fields are not provided.	
1.1.9.	The solution must manage voter qualifications. If the applicant is not qualified for voter registration, the solution must manage a registration denial process.	
1.1.10.	The solution must manage voter registration deadline processes and determine the registrant's eligibility date.	
1.1.11.	The solution must manage the final disposition of a processed voter registration application (save as complete, save as incomplete, or deny based on a determination the applicant is not qualified to vote).	
1.1.12.	The solution must manage special registration processes like	

	same day registration, online voter registration, preregistration and UOCAVA registration.	
1.1.13.	The solution must capture NVRA statistics for voter registration application transactions.	
1.1.14.	The solution must initiate mail verification processes for new registrations, changes of address, changes of name, and changes of party affiliation.	
<b>1.2.</b>	<b>Manage Voter Records</b>	
1.2.1.	The solution must maintain a comprehensive statewide voter record for every registered voter that may be viewed by any user with the proper permissions.	
1.2.2.	The solution must permit the search of voter records.	
1.2.3.	The solution must maintain voter status changes.	
1.2.4.	The solution must display voter record details.	
1.2.5.	The solution must also maintain a history of signatures and attached documents for the voter. The solution must maintain document images attached to a voter record.	
1.2.6.	The solution must display voter history records.	
1.2.7.	The solution must manage administrative updates to the voter record and restrict changes to a voter record to pre-defined processes, including an administrative update process.	
1.2.8.	The solution must maintain voter comments.	
1.2.9.	Theo solution must maintain UOCAVA history on military and overseas citizens.	
<b>1.3.</b>	<b>Manage Voter Mailings</b>	
1.3.1.	The solution must permit voter mailings to be managed from a voter mailing processing queue.	
1.3.2.	The solution must manage the mail verification process.	
1.3.3.	The solution must manage the address confirmation mailing process.	
1.3.4.	The solution must manage the notification of the denial of voter registration process.	
1.3.5.	The solution must manage the incomplete notification mailing process.	
1.3.6.	The solution must manage the late registration notification mailing process.	
1.3.7.	The solution must manage the cancellation notification mailing process.	
1.3.8.	The solution must manage the National Change of Address (NCOA) confirmation mailing process.	
1.3.9.	The solution must manage the HAVA ID notification mailing process.	
1.3.10.	The solution must manage the biennial no-contact confirmation process.	
<b>1.4.</b>	<b>Manage List Maintenance</b>	
North Carolina has a uniform program that makes a diligent effort: (1) To remove the names of ineligible voters from the official lists of eligible voters, and (2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters. The		

program is nondiscriminatory and complies with the provisions of the Voting Rights Act of 1965, as amended, and the NVRA.		
1.4.1.	The solution must permit list maintenance processes to be managed from a list maintenance process queue. The solution must allow a voter status to be changed to removed. The solution must capture the reason for a voter status change. The solution must provide the ability to audit a voter status change	
1.4.2.	The solution must manage voter cancellations due to moves out of the county and out of the state.	
1.4.3.	The solution must manage voter status changes based on the address confirmation mailing process.	
1.4.4.	The solution must manage cancellations due to death.	
1.4.5.	The solution must manage voter cancellations due to duplicate registrations.	
1.4.6.	The solution must manage voter cancellations due to felony conviction.	
1.4.7.	The solution must manage the legal presence process.	
1.4.8.	The solution must manage the voter record merge process.	
1.4.9.	The solution must manage the National Change of Address (NCOA) process.	
1.4.10.	The solution must manage voter status changes due to the not contact mailing process.	
1.4.11.	The solution must manage cancellations due to the biennial list maintenance process.	
1.4.12.	The solution must manage the cross-county voter record transfer process.	
1.4.13.	The solution must manage State list maintenance processes involving the import and distribution of reports from the NC Department of Motor Vehicles (voter moves and death notification), Department of Health and Human Services (death notifications) or Department of Public Safety (felony convictions).	
1.4.14.	The solution must permit voluntary removal by a voter.	
1.5.	<b>Update Related Election Processes</b>	
Once a voter registration application transaction is saved to the voter registration database, the solution must update any related processes.		
1.5.1.	The solution must update absentee voting processes.	
1.5.2.	The solution must update NVRA statistical processes.	
1.5.3.	The solution must update petition signing processes.	
1.5.4.	The solution must update incomplete processes.	
1.5.5.	The solution must update candidate filing processes.	
1.5.6.	The solution must update election worker processes.	

**2. Voting**

There are four methods of voting in North Carolina: (1) absentee by-mail; (2) one-stop absentee voting; (3) election day voting; and (4) provisional voting. Using one of these methods, a person may vote either in person at a recognized voting site in a county or by-mail. When voting in-person, a person may either enter the voting enclosure, or if qualified to do so, the person may vote “curbside” in the vehicle conveying the person to the voting site.

**Absentee by-mail Voting:** Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections. To vote by absentee ballot, a qualified voter simply needs to complete a written request form created by the State Board of Elections and signed by the voter or that voter's near relative or verifiable legal guardian. Further, and person covered under North Carolina’s Uniform Military and Overseas Voters Act (UOCAVA), may register to vote may apply for a military-overseas ballot by using either the state’s regular application or one of the forms prescribed under the Uniformed and Overseas Citizens Absentee Voting Act. Non-UOCAVA voters may return their voted ballot in-person or by mail. UOCAVA voters may return their voted ballots by mail, fax or email.

**Absentee One-stop Voting:** North Carolina voters may also cast an in-person absentee ballot during a one-stop absentee voting period. At the time of this RFP, this period of early voting occurs not earlier than the third Thursday before an election, in which absentee ballots are authorized, and not later than 1:00 P.M. on the last Saturday before an election. The voter would need to appear in person only at the office of the county board of elections, at an approved site in lieu of the county board of elections, or at approved additional one-stop sites to cast the ballot. To vote, the person would need to state his or her name, address, and if applicable, his or her party affiliation. If the voter is found to be qualified, the voter is given an application for an absentee ballot. After the signing the application, the voter would be issued the appropriate ballot and allowed to vote. Qualified voters in the county may present to any one-stop voting site in his or her county of residence to vote. If a person is not registered to vote, if the voter is qualified and provides proof of residence, then he or she may register the same day and then cast a regular one-stop ballot.

**Election Day Voting:** On Election Day, to cast a “regular” ballot, a voter is required to present to the voting site for his or her proper precinct. If a voter does not present to his or her proper precinct, then the voter may vote a provisional ballot “out of precinct.”

**Provisional Voting:** If an individual seeking to vote claims to be a registered voter in a county and though eligible to vote in the election, does not appear on the official list of eligible registered voters in the voting place, that individual may cast a provisional official ballot.

To meet these requirements, the solution must manage the following core processes related to voting in North Carolina

<b>2.1. Manage General Voting Tasks</b>	
2.1.1.	The solution must manage voter attestation and detail gathering when a voter presents to vote.
2.1.2.	The solution must manage voter eligibility.



2.1.3.	The solution must manage voter changes when a voter presents to vote.	
2.1.4.	The solution must be able to confirm the voter's vote was cast.	
2.1.5.	The solution must be able to manage absentee voting administrative tasks.	
2.1.6.	The solution must manage absentee ballot challenges.	
<b>2.2.</b>	<b>Manage Absentee By-mail Voting</b>	
2.2.1.	The solution must manage absentee requests.	
2.2.2.	The solution must manage transmittal of absentee voting materials.	
2.2.3.	The solution must permit the management of returned absentee ballots.	
<b>2.3.</b>	<b>Manage One-stop Absentee Voting</b>	
2.3.1.	The solution must permit a search for a voter record.	
2.3.2.	The solution must permit a voter record to be viewed.	
2.3.3.	The solution must manage voter eligibility.	
2.3.4.	The solution must manage the issuance of a one-stop application.	
2.3.5.	The solution must manage voter changes when a voter presents to vote.	
2.3.6.	The solution must be able to confirm the voter's one-stop vote was cast.	
2.3.7.	The solution must manage same day registration tasks.	
2.3.8.	The solution must permit the audit and reconciliation of one-stop voting transactions.	
<b>2.4.</b>	<b>Manage Election Day Voting</b>	
2.4.1.	The solution must permit a search for a voter record.	
2.4.2.	The solution must permit a voter record to be viewed.	
2.4.3.	The solution must manage voter eligibility.	
2.4.4.	The solution must manage voter changes when a voter presents to vote.	
2.4.5.	The solution must manage the issuance of an Authorization to Vote (ATV) form.	
2.4.6.	The solution must be able to confirm the voter's election day vote was cast.	
2.4.7.	The solution must manage precinct transfers.	
2.4.8.	The solution must permit the audit and reconciliation of election day voting transactions.	
<b>2.5.</b>	<b>Manage Provisional Voting</b>	
2.5.1.	The solution must manage the issuance of the provisional voting application.	
2.5.2.	The solution must manage provisional research.	
2.5.3.	The solution must manage the disposition of the provisional voting application.	

**3. Election Event Management**

**Statewide Elections:** A statewide primary and general election is held in North Carolina during even-numbered years. During non-Presidential years, the primary election is held on Tuesday next after the first Monday in May preceding each general election to be held in November. The general election is held on Tuesday next after the first Monday in November. During Presidential election years, the date of the statewide primary may be held earlier than May. Even-numbered election years will include federal, statewide, legislative, judicial, prosecutorial and county contests. Some local jurisdictions (municipal, school board, etc.) may also conduct its elections during even-numbered years as well. Most of contests during even-numbered years are partisan. North Carolina has a semi-closed primary system. Voters who are affiliated with a political party may only participate in their party’s primary; however, unaffiliated voters may choose whose primary in which they wish to participate.

**Local Elections:** During odd-numbered years, most of North Carolina’s 550+ municipalities conduct their elections using one of four municipal election methods: (1) simply plurality; (2) nonpartisan primary and election; (3) partisan primary; or (4) election and runoff. Election event dates during odd-numbered years only occur in September, October or November and the actual dates for a county depend on one of the municipal election methods.

North Carolina restricts special elections to one of the normally scheduled election event dates, except in exceptional circumstances.

**Ballot Configuration and Election Reporting:** Currently, when administering an election event, the creation of the ballots and the information needed to configure election media is derived from SEIMS. County boards of elections enter candidate filing information in SEIMS. Contest jurisdictions, contest information, candidate information and party information are all exported from SEIMS to create the voting system import files. Once ballot styles are created by the counties’ voting systems vendor, information concerning each ballot style as well as the ballot style images are entered into SEIMS in order to manage the issuance of the proper ballots to voters during voting processes. On Election Day, election results are imported into SEIMS for cross-county or statewide aggregation and eventual public display. The write-in allocation also occurs in SEIMS.

**Election Finalization:** Once all election returns are finalized, the county boards of elections and if necessary, the State Board of Elections will certify the election at the official canvass. The final canvass and certification documents must be generated by SEIMS. Finalization tasks are also needed for voter history. All accepted and valid ballots must be reconciled with the voters who are identified through vote authorization documents as having cast the ballots.

Based on these business requirements, any proposed solution must manage the following election event processes:

3.1. Manage Master Election Event Profile		
3.1.1.	The solution must permit the creation of election event profiles.	
3.1.2.	The solution must permit election event profiles to be maintained.	
3.1.3.	The solution must permit election event profiles to be viewed.	

3.1.4.	The solution must permit an election event profiled to be certified.	
3.2.	Manage Election Event Contests	
3.2.1.	The solution must permit a master contest profile to be applied to an election event profile.	
3.2.2.	The solution must permit election event contests to be maintained.	
3.2.3.	The solution must permit the adding of ad-hoc election event contests.	
3.2.4.	The solution must permit election event contests to be viewed.	
3.3.	Manage Candidates	
3.3.1.	The solution must permit a candidate filing record to be created for an election event.	
3.3.2.	The solution must manage candidate filing fees.	
3.3.3.	The solution must permit candidate filing records to be maintained.	
3.3.4.	The solution must manage the creation of an online voter guide.	
3.3.5.	The solution must manage candidate reports.	
3.3.6.	The solution must manage candidate correspondence.	
3.4.	Ballot Style Management	
3.4.1.	The solution must manage voting systems configuration.	
3.4.2.	The solution must manage ballot styles.	
3.4.3.	The solution must permit ballot styles to be viewed.	
3.4.4.	The solution must manage ballot style images.	
3.4.5.	The solution must manage ballot style reports.	
3.5.	Manage Election Results	
3.5.1.	The solution must manage election results configuration.	
3.5.2.	The solution must manage election results imports.	
3.5.3.	The solution must manage manual edits of election results.	
3.5.4.	The solution must manage election results aggregation.	
3.5.5.	The solution must permit election results to be viewed and displayed publicly.	
3.5.6.	The solution must manage write-in allocation.	
3.5.7.	The solution must permit election results to be finalized.	
3.6.	Manage Reconciliation & Canvass	
3.6.1.	The solution must manage ballot duplication.	
3.6.2.	The solution must manage election results and voter history reconciliation.	
3.6.3.	The solution must manage sample audit count procedures.	
3.6.4.	The solution must manage contest recounts.	
3.6.5.	The solution must manage canvass procedures.	
3.7.	Manage Voter History	
3.7.1.	The solution must permit the display of voter history details.	
3.7.2.	The solution must permit voter history to be added manually.	
3.7.3.	The solution must permit voter history to be imported.	
3.7.4.	The solution must permit voter history to be assigned based on	

	approval of valid ballots.	
3.7.5.	The solution must permit voter history to be maintained.	
3.7.6.	The solution must permit voter history to be viewed.	
3.7.7.	The solution must permit voter history to be finalized.	
3.7.8.	The solution must permit voter history reports to be generated.	
3.8.	Manage Election Costs	
3.8.1.	The solution must allow election event costs to be added.	
3.8.2.	The solution must permit election event costs to be maintained.	
3.8.3.	The solution must permit election costs to be viewed.	
3.9.	Manage Campaign Finance	
3.9.1.	The solution must manage campaign finance export data.	
3.9.2.	The solution must manage campaign finance import data.	

#### 4. Voting Site Management

**Election Day Voting Sites:** Each North Carolina county is divided into a convenient number of precincts for the purpose of voting on election day. Voters from a given precinct may be temporarily transferred, for the purpose of voting, to an adjacent precinct. At the voting place, the county board of elections shall provide a suitable structure or part of a structure in which registration and voting may be conducted. The polling place for a precinct must be located within the precinct or on a lot or tract adjoining the precinct.

**One-stop Voting Site:** During the one-stop absentee voting period, counties must conduct voting five days each week during regular business hours and must be open on the last Saturday before the election. A county board of elections by unanimous vote of all its members may provide for one or more additional one-stop sites. A county board of elections may also propose in its one-stop plan not to offer one-stop voting at the county board of elections office; but instead, offer a site reasonably proximate to the county board of elections office. These additional or alternative sites must be approved by the State Board of Elections. If a county board of elections has considered a proposed Plan or Plans for Implementation and has been unable to reach unanimity in favor of a Plan, a member or members of that county board of elections may petition the State Board of Elections to adopt a plan for it. If petitioned, the State Board may also receive and consider alternative petitions from another member or members of that county board. The State Board of Elections may adopt a Plan for that county.

**Election Officials (election day):** The county boards of elections in North Carolina appoint persons to act as judges of election for election day voting. One person is appointed to act as chief judge and two other persons to act as judges of election for each precinct in the county. It is the duty of the judges to conduct the primaries and elections within their respective precincts. Each county board of elections is also authorized to appoint two or more assistants for each precinct to aid the chief judge and judges. County boards of elections may also appoint student election assistances to work under the direct supervision of the election judges.

**Election Officials (one-stop):** The persons who conduct the administrative duties related to one-stop absentee voting may be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Most counties use either staff, experience precinct officials, or hire temporary staff to work as election officials during one-stop voting.

**Election Technology:** County boards of elections may provide for the purchase, preservation, and maintenance of voting booths, ballot boxes, registration and pollbooks, maps, flags, cards of instruction, and other forms, papers, and equipment used in registration, nominations, and elections; and to cause the voting places to be suitably provided with voting booths and other supplies required by law. County boards of elections may permit the use of electronic registration records in the voting place in lieu of or in addition to a paper pollbook or other registration record. County boards of election must use the electronic pollbook developed by the State Board during one-stop absentee voting.

Based on the this voting site requirements, the proposed solution must manage the following processes related to voting site management:

<b>4.1. Manage Voting Site Locations</b>		
4.1.1.	The solution must manage adding voting site location records to a county database.	
4.1.2.	The solution must permit voting site location records to be maintained.	
4.1.3.	The solution must permit voting site location records to be viewed.	
4.1.4.	The solution must permit voting site locations to be assigned to be assigned to precincts.	
4.1.5.	The solution must manage voting site correspondence.	
<b>4.2. Manage Election Officials</b>		
4.2.1.	The solution must manage adding elections official records to a county database.	
4.2.2.	The solution must manage the assignment of election official roles.	
4.2.3.	The solution must permit election official records to be maintained.	
4.2.4.	The solution must permit election official records to be viewed.	
4.2.5.	The solution must manage election official training.	
4.2.6.	The solution must manage election official correspondence.	
<b>4.3. Manage Master Voting Site Equipment Resources</b>		
4.3.1.	The solution must manage adding election equipment.	
4.3.2.	The solution must manage the assignment of election equipment.	
4.3.3.	The solution must maintain election equipment.	
4.3.4.	The solution must permit election equipment to be viewed.	
4.3.5.	The solution must manage preventative maintenance.	
<b>4.4. Manage Election Event Resources</b>		
4.4.1.	The solution must manage the assignment of election day voting sites to an election event.	
4.4.2.	The solution must manage the assignment of one-stop voting sites to an election event.	
4.4.3.	The solution must manage the assignment of election officials to an election event.	
4.4.4.	The solution must manage the assignment of election equipment to an election event.	
4.4.5.	The solution must manage the generation of poll books for an election event.	

## 5. Board Administration

**Addresses (Legal Voting Residence):** Every person who shall have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election (primary, second primary, general election, special election, or referendum), is qualified by residence to vote in the precinct in which the person resides. Removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which the person has removed until 30 days after the person's removal. For purposes of qualification to vote in an election, a person's residence shall be:

That place . . . in which that person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning. In the event that a person's habitation is divided by a State, county, municipal, precinct, ward, or other election district, then the location of the bedroom or usual sleeping area for that person with respect to the *location of the boundary line* at issue shall be controlling as the residency of that person.

**Governing Jurisdiction:** The State of North Carolina and the political subdivisions therein are governing jurisdictions, in that the state, the counties, the state's municipalities and various other geographical entities have the authority to enact statutes, rules and regulations that govern the electorate that lives within its boundaries. These governing jurisdictions have offices that are elected by qualified voters who live within the jurisdiction's boundaries and candidates for these offices must also typically reside within the boundary of the jurisdiction, with rare exceptions. In addition to determining who may have for office and who may vote for an office, a governing jurisdiction has rules concerning its contests, including the method of election, the name and the number of offices, the term of the offices, the election year type, the number of votes a single voter may cast for a contest, whether absentee voting is permitted, etc. Based on the various governing jurisdictions in North Carolina, and beyond statewide and countywide contests, there are at least eleven distinct election district types that can be used to configure North Carolina ballots. Along with county precinct boundaries, these governing jurisdictional boundaries may be layered over the North Carolina map. A voter's address point on the map is thus surrounded by various geographical boundaries. The address location within the various jurisdictions determines the electoral and filing jurisdictions associated with a voter's record.

The solution must permit the boards of elections staff efficiently and effectively manage address processes and processes related to managing voting jurisdictions.

### County Boards of Elections

In every county, there is a county board of elections, consisting of persons who are registered voters in the county in which they are to act and who are appointed by the State Board of Elections.

The county boards of elections within their respective jurisdictions exercise all powers granted to such boards by North Carolina law, and they perform all the duties imposed upon them by law, which shall include the following:

1. To make and issue such rules, regulations, and instructions as it may deem necessary for the guidance of election officers and voters.

2. To appoint all chief judges, judges, assistants, and other officers of elections, and designate the precinct in which each shall serve; and to remove any chief judge, judge of elections, assistant, or other officer of election appointed by it
3. To investigate irregularities, nonperformance of duties, and violations of laws by election officers and other persons
4. As provided law, to establish, define, provide, rearrange, discontinue, and combine election precincts as it may deem expedient, and to fix and provide for places of registration and for holding primaries and elections.
5. To review, examine, and certify the sufficiency and validity of petitions and nomination papers.
6. To provide for the printing of ballots and other voting supplies and materials used at voting places.
7. To provide voting system equipment and other voting site technology.
8. To provide for the issuance of all election notices, advertisements, and publications
9. To receive election results, canvass the returns, and certify election results.
10. To hire the board's staff.
11. To prepare and submit a budget estimating the cost of elections for the ensuing fiscal year.
12. To perform such other duties as may be prescribed by law or directives from the State Board of Elections, including hearing and making dispositions of various challenges.

### **State Board of Elections**

The State Board of Elections is an independent regulatory and quasi-judicial agency that has general supervision over the primaries and elections in the State, and it has the authority to make such reasonable rules and regulations with respect to the conduct of primaries and elections as it may deem advisable so long as they do not conflict with any provisions of law. The State Board of Elections appoints all members of the county boards of elections and advise them as to the proper methods of conducting primaries and elections.

The State Board of Elections may exercise all powers granted to it by the North Carolina General Statutes, and shall perform all the duties imposed upon it by law, including the following:

1. To investigate when necessary or advisable, the administration of election laws, frauds and irregularities in elections in any county and municipality.
2. To determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, tally sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections.
3. To instruct the county boards of elections as to the printing of county and local ballots.
4. To certify the appropriate county boards of elections the names of candidates for district offices who have filed notice of candidacy with the State Board and whose names are required to be printed on county ballots.
5. To tabulate the primary and election returns, to declare the results, and to prepare abstracts of the votes cast in each county in the State for offices which, according to law, shall be tabulated by the Board.
6. To provide for a training and screening program for chief judges and judges.
7. To perform such other duties as may be prescribed by law, including hearing appeals from county board proceedings.



To carry out these enumerated duties, both the county boards of elections and the State Board of Elections and their staff, need tools that permit the efficient and effective management of board administrative processes.

5.1. Manage Addresses		
5.1.1.	The solution must manage the creation of a master address file.	
5.1.2.	The solution must permit addresses to be standardized.	
5.1.3.	The solution must permit an address geographical location to be assigned.	
5.1.4.	The solution must permit jurisdictions to be assigned to addresses.	
5.2. Manage Governing Jurisdictions		
5.2.1.	The solution must manage governing jurisdictional profiles.	
5.2.2.	The solution must manage jurisdictional boundaries.	
5.2.3.	The solution must manage the creation of a master contest profile.	
5.2.4.	The solution must manage precincts.	
5.2.5.	The solution must manage election districts.	
5.3. Manage Board Offices		
5.3.1.	The solution must manage board contact information.	
5.3.2.	The solution must permit the management of board members.	
5.3.3.	The solution must permit the management of board meetings.	
5.3.4.	The solution must permit the management of election costs.	
5.3.5.	The solution must permit the management of emergency and disaster planning.	
5.4. Manage Challenges & Protests		
5.4.1.	The solution must maintain challenge proceedings.	
5.4.2.	The solution must manage voter registration challenges.	
5.4.3.	The solution must manage absentee ballot challenges.	
5.4.4.	The solution must manage candidate filing challenges.	
5.4.5.	The solution must manage election protests.	
5.5. Manage Petitions		
5.5.1.	The solution must manage petition setup.	
5.5.2.	The solution must manage the review of petition signatures.	
5.5.3.	The solution must manage the disposition of filed petitions.	
5.5.4.		
5.5.5.		
5.6. Manage Investigations		
5.6.1.	The solution must permit the management of election investigation cases.	

<b>6. System Functions</b>		
To effectively manage key processes, certain system-wide functionality will be expected in the SEIMS System.		
6.1. Find Voter		
6.1.1.	The solution must have predefined logic that allows the system to identify an existing statewide voter record or a process transaction record.	

<b>6.2.</b>	<b>Document Management</b>	
6.2.1.	The solution must permit documents to be attached to a voter record.	
6.2.2.	The solution must permit document to be attached to a transaction process record.	
6.2.3.	The solution must permit documents to be obtained through document scanning.	
6.2.4.	The solution must permit documents to be obtained through uploading processes.	
6.2.5.	The solution must permit images to be obtained through snipping a screen image.	
6.2.6.	The solution must maintain document images attached to a voter record or transaction record.	
6.2.7.	The solution must permit documents to be viewed and displayed.	
6.2.8.	The solution must permit documents to be saved to a file or printed.	
6.2.9.	The solution must permit documents to be redacted.	
6.2.10.	The solution permit form, notice and correspondence templates to be managed by state users.	
6.2.11.	The solution must permit custom document templates to be managed by county users.	
6.2.12.	The system must permit county users to upload key documents related to a process task.	
6.2.13.	The system must permit state users to transmit confidential or sensitive documents to a county by uploading the document and placing the document in a related process queue.	
<b>6.3.</b>	<b>Provide Process Queues</b>	
6.3.1.	The solution must provide various queues that serve as a central portal for identifying transaction records related to the same processes.	
6.3.2.	The solution must allow transaction records to be added to a queue.	
6.3.3.	The solution must allow transaction records to be maintained in a process queue.	
6.3.4.	The solution must allow transaction records to be viewed.	
6.3.5.	The solution must allow transaction records to be archived.	
<b>6.4.</b>	<b>Capture Signature</b>	
6.4.1.	The solution must permit a voter's signature to be clipped from various documents.	
6.4.2.	The solution must permit voter signatures to be imported from the NC DMV or other valid sources.	
6.4.3.	The solution must maintain various images of a voter's signature by date and source.	
<b>6.5.</b>	<b>Barcode Reading</b>	
6.5.1.	The solution must accept input from a barcode reader for data entry.	
6.5.2.	The solution must have the ability to perform a search function	

	by scanning a barcode on a document.	
6.5.3.	The solution must be capable of adding a voter ID barcode to any system-generated documentation and correspondence.	
6.5.4.	The solution must be capable of including a 2D or 3D barcode on documentation generated by the system, including a voter's SVR.	
<b>6.6.</b>	<b>Manage Communication</b>	
6.6.1.	The solution must integrate key tasks with email and messaging functionality.	
6.6.2.	The solution must integrate key tasks with calendaring functionality.	
6.6.3.	The solution must be able to integrate with commonly used software for the purposes of email, messaging and calendaring functionality.	
<b>6.7.</b>	<b>Manage Data and Records</b>	
6.7.1.	The solution must use common data format and comply with current VIP, IEEE and NIST data standards.	
6.7.2.	The solution must provide for data security.	
6.7.3.	The solution must provide for data imports.	
6.7.4.	The solution must provide for data integration.	
6.7.5.	The solution must provide for data synchronization.	
6.7.6.	The solution must provide for data and system auditing.	
6.7.7.	The solution must provide for data archiving.	
6.7.8.	The solution must provide for data visualization.	
<b>6.8.</b>	<b>Manage Dynamic Reporting</b>	
6.8.1.	The solution must provide dynamic reporting.	
6.8.2.	The solution must provide standard reports.	
6.8.3.	The solution must allow for data to be extracted.	
6.8.4.	The solution must provide a public portal that permits web users to run a custom query on public voter registration and voting data.	
<b>6.9.</b>	<b>Manage Roles &amp; Permissions</b>	
6.9.1.	The solution must allow user roles and permissions to be created.	
6.9.2.	The solution must allow user roles and permissions to be maintained.	
6.9.3.	The solution must allow user roles and permissions to be searched and displayed.	
<b>6.10.</b>	<b>Manage Web Applications</b>	
6.10.1.	The system must provide various web applications that permit the public to access public information and tools.	
<b>6.11.</b>	<b>Manage Help Files</b>	
6.11.1.	The solution must contain online help guides for all functionality.	

#### 14) **FUNCTIONAL REQUIREMENTS**

See attached spreadsheet

- 15) **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 compliance with technical specifications is required.

Please describe your approach to system integration and methodology to most effectively support the specified business requirements.

Please describe your approach for project management and methodology to most effectively support the specified business requirements.

Please describe your recommendation for data conversion and migration of existing SIEMS data, which most effectively supports the specified

#### **IV. Cost Offer**

- 1) **APPLICABLE OFFER COSTS**: The vendor must list and describe all offer costs, which shall include the following, if applicable:
- a. Software License fees or costs
  - b. Base system software
  - c. Customization required or proposed addressing specification
  - d. Configuration required or proposed addressing specification
  - e. Additional modules required or proposed addressing specifications
  - f. Additional options proposed addressing specifications
  - g. 3rd party software, if any, required for the operation of the system
  - h. Technical and user documentation
  - i. Installation/conversion/integration/transition costs
  - j. Training including training materials
  - k. Maintenance costs, to include, per year
  - l. Existing software upgrade/integration/training
  - m. Updates to supplemental files
  - n. Revisions to documentation
  - o. Utilities
  - p. New functionality
  - q. Technical support/customer service, per year
  - r. Hosting services
  - s. Project management services

- t. Data migration services
- u. Other costs (*describe any cost that is not included in the proposed solution. This would also include any future known cost*)
- v. Unlimited phone technical support for the technical staff
- w. The costs for customization shall be detailed on an attached sheet of paper by item and cost for each base system modification.
- x. The consulting and other value added service hourly rates or costs shall be listed separately by type of service. Travel and lodging expenses, if any, must be thoroughly described; and are limited by the State's General Terms and Conditions for Goods and Services.

2) **ALTERNATIVE COST RESPONSES:** 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 contract and whether any of this work will be performed outside the United States
- b. The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
- c. Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States
- d. Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided

Will any work under this contract be performed outside the United States? Where will Services be performed: _____	YES _____ NO _____
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2) **SPECIAL TERMS AND CONDITIONS:** Paragraph #13 of the DIT Terms and Conditions is supplemented as follows: The Agency reserves the right to perform post-delivery and post-training acceptance testing for a period beginning at installation and lasting eight (8) 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:

- a. Have the Vendor modify the installed software to eliminate the deficiency to the Agency's satisfaction.
- b. Have the Vendor re-install a new copy of the software product(s).
- c. Extend the acceptance testing period for a period of 120 days to allow time for Vendor to remedy the problems.
- d. Remove the application software, cancel this Agreement, and recover payments extended from Agency funds.

- 3) **FINANCIAL STATEMENTS:** The Vendor shall provide evidence of financial stability with its response to this RFP as further described herein below. As used herein, Financial Statements shall exclude tax returns and compiled statements.
- a. For a publicly traded company, Financial Statements for the past 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, 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 the contract award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.
- 4) **DISCLOSURE OF LITIGATION:** Reserved
- 5) **CRIMINAL CONVICTION:** Reserved
- 6) **SECURITY AND BACKGROUND CHECKS:** Reserved
- 7) **ASSURANCES:** Reserved
- 8) **CONFIDENTIALITY OF DATA AND INFORMATION:** Reserved
- 9) **SOFTWARE TERMS:** Reserved
- 10) **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. Vendor shall designate a Vendor Project Manager who will provide a single point of contact for management and coordination of Vendor's work. All work performed pursuant to this Contract shall be coordinated between the Agency Project Manager and the Vendor Project Manager.
- 11) **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 Contract. 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 Contract.
- 12) **TRANSITION ASSISTANCE:** If this Contract 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 this Contract, 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 this Contract, (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 Contract for Contract performance. If the State cancels this Contract 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) **QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY:** The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1207 from the Vendor without expense to the State.

- a. Cross reference to any acceptance testing
- b. Contract Performance Security
- c. Project Assurance, Performance and Reliability Evaluation

15) **UNANTICIPATED TASKS:** In the event that additional work must be performed that was wholly unanticipated, and that is not specified in this Contract, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed. For each item of unanticipated work, Vendor shall prepare a work authorization in accordance with the State's practices and procedures.

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

16) **DUE DILIGENCE:** Reserved

- 17) **VENDOR SITE VISITS:** The State reserves the right to conduct Vendor Site Visits to ensure compliance with the requirements of this solicitation as part of the evaluation process and after contract award as needed.

## **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:** 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 compliance with requirements, and 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 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 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 must 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 contract 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 Specifications
  - d. Completed Cost Offer
  - e. Contact information for a minimum of three (3) References
    - i) References should be from organizations that have implemented the proposed solution. Describe the products and services provided to references. Vendor shall identify any material differences between the proposed solution and the solution implemented for the reference.
    - ii) References should be from implementations similar in size and complexity to the State of North Carolina's implementation.
    - iii) One of the references should be from a government customer.
  - f. Financial Information.
  - g. 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.
  - h. Errata and Exceptions, if any. Bids conditioned upon acceptance of Vendor Exceptions may be determined to be non-responsive by the State.
  - i. Copy of 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.
  - j. Other Supporting Material Including Technical System Documentation
  - k. Training and Other Materials, Samples or Examples
  - l. 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.

- 8) **ADHERENCE TO INSTRUCTIONS**: Any offer that does not adhere to these requirements 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: Department of Information Technology Terms and Conditions**

### **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) "Services" shall mean the duties and tasks undertaken by the Vendor to fulfill the requirements and specifications of this solicitation, including, without limitation, providing web browser access by authorized users to certain Vendor online software applications identified herein, and to related services, such as Vendor hosted Computer storage, databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.
- c) "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.
- d) "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 non-infringing. 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 re-perform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State.

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

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

If, however, Services meet the 99.9% service availability level for a month, but are not available for a consecutive 120 minutes during that month, the Vendor shall grant to the State a credit of a pro-rated one-day of the monthly subscription Services fee against future Services charges. Such credit(s) shall be applied to the bill immediately following the month in which 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 herein below.

- 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 herein below.
  - 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 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.
- 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 must be included in the Vendor's proposed costs. Separately stated or invoiced 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 or treated 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 or provision of Services hereunder shall be provided to the State as part of the Services.
- b) 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.
- c) Protection of Personal Identifying Information (PII). Vendor acknowledges its responsibility for securing any PII 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. Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain security of PII; provide reasonable care and efforts to detect fraudulent activity involving information PII; and promptly notify the State of any breaches of security involving PII.
- d) Vendor will provide and maintain secure backup of the State Data. Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and from hacks, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State’s access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State’s infrastructure as the State requires or as may be provided by law.
- e) 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 FISMA certification and accreditation consistent with the minimum security requirements assigned against a low-impact information system (per Federal Information Processing Standards Publications 199, “Standards for Security Categorization of Federal Information and Information Systems” and 200, “Minimum Security Requirements for Federal Information and Information Systems”).The State reserves the right to independently evaluate, audit, and verify such FISMA certification and accreditation.
  - iii. That the Services will comply with the following:
    - (1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policies;
    - (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 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.
  - (6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.
- f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75-60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.
- g) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. In the event that Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall

reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and also in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
  - 1) The scale and quantity of the State Data loss;
  - 2) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
  - 3) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
  - 4) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.

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

- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.

19) **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §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.

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 shall 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.

26) **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.

27) **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.

28) **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.

29) **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.

30) **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.

31) **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.

32) **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.