

<p>Asheboro CITY SCHOOLS <i>A learning community of excellence!</i></p>	<p align="center">Asheboro City Schools</p> <p align="center">Request for Proposals</p> <p align="center">Purchasing Department</p> <p align="center">1126 S. Park Street</p> <p align="center">Asheboro, NC 27203</p> <p align="center">(336)625-5104</p>
<p>Direct All Inquiries To: Gina Delk gdelk@asheboro.k12.nc.us</p>	<p>Request For Proposals: 147-2025 Banking Services</p>
<p>Questions Due Date: 2:00 PM April 01, 2025</p>	<p>Proposal Due Date: 2:00 PM April 10, 2025</p>

NOTICE TO BIDDERS

Proposals, subject to the conditions made a part hereof will be received at this office 1126 S. Park Street, Asheboro NC 27203, until **2:00 PM EST** on the day of opening for furnishing and delivering the commodity/services as described herein. Proposals submitted via facsimile (FAX) machine and email in response to this Request for Proposals **will not** be accepted.

EXECUTION

In compliance with this Request for Proposals (RFP), and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are proposed, at the prices set opposite each item within the time specified herein. By executing this proposal, the undersigned Vendor certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Vendor’s knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded because of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

Offer valid for 60 days from date of opening, unless otherwise stated. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

1.0 PURPOSE AND BACKGROUND

Asheboro City Schools (ACS) is seeking proposals from qualified and interested banking institutions who operate within the legal jurisdiction of Asheboro City. Please see section 4.0 REQUEST FOR PROPOSAL DOCUMENT for further information.

2.0 GENERAL INFORMATION

This RFP is comprised of the base bid document, any attachments, and any addenda released before contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference. Proposals shall be submitted in accordance with the terms and conditions of this RFP and any addenda issued hereto.

Minority and Women Owned Business Enterprise (MWBE)

The Board of Education awards public contracts without regard to race, religion, color, creed, national origin, sex, age or handicapped condition as defined by North Carolina General Statutes, 168A-3. ACS Board of Education promotes full and equal access to business opportunities with Asheboro City Schools. Minority businesses are encouraged to submit bids for this project. All vendors shall have a fair and reasonable opportunity to participate in ACS business opportunities.

Terms and Conditions

It shall be the vendor's responsibility to read the instructions, terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued relating to this RFP.

SPECIFIC INFORMATION

Proposal Questions

Upon review of the RFP documents, vendors may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the proposal questions process, vendors shall submit any such questions by **2:00 PM, April 01, 2025**.

Instructions:

Written questions shall be emailed to Gina Delk (gdelk@asheboro.k12.nc.us) by the date and time specified above. Vendors will enter "RFP 147 2025 Banking Services – Questions" as the subject for the email. Question submittals will include a reference to the applicable RFP section and be submitted in a format shown below:

Reference	Vendor Question
<i>RFP Section, Page Number</i>	<i>Vendor Question?</i>

Questions received prior to the submission deadline date, ACS's response, and any additional terms deemed necessary by ACS will be posted in the form of an addendum. No information, instruction or advice provided orally or informally by any ACS personnel, whether made in response to a question or otherwise regarding this RFP, shall be considered authoritative or binding. Vendors shall be entitled to rely only on written material contained in an addendum to this RFP.

Proposal Submittal

Sealed proposals, subject to the conditions made a part hereof and the receipt requirements described below, shall be received at the address indicated below, as described herein. Two (2) copies of the proposal should be addressed in an envelope with the RFP number as shown below. It is the responsibility of the bidder to have the proposal in the Asheboro City Schools Purchasing office by the specified time and date of opening. Proposals shall be marked on the outside of the sealed envelope with the Vendor's name, RFP number and date and time of opening. Attempts to submit a proposal via facsimile (FAX) machine, e-mail, or telephone, in response to this Request for Proposals will not be accepted. Proposals are subject to rejection unless submitted with the information above included on the outside of the sealed package.

Mailing Instructions (Delivered By US Postal Service or Any Other Means):

RFP 147 2025 Banking Services
Gina Delk/Purchasing Department
Asheboro City Schools
1126 S. Park Street
Asheboro, NC 27203

3.0 AWARD AND PROPOSAL EVALUATION

Review and Award

Please see 4.0 REQUEST FOR PROPOSAL DOCUMENT, H. Statements, 10. Proposal Evaluation, section. Asheboro City Schools reserves the right to reject any or all proposals presented and to waive any informalities and irregularities. All projects are awarded contingent upon funding. No bid may be withdrawn after the scheduled closing time for the receipt of proposals for a period of 60 days.

Evaluation Criteria

All qualified proposals will be evaluated, and award will be made based on consideration of criteria. Please see 4.0 REQUEST FOR PROPOSAL DOCUMENT, H. Statements, 10. Proposal Evaluation, section.

4.0 REQUEST FOR PROPOSAL DOCUMENT

1. Introduction

Asheboro City Schools (ACS) is seeking proposals from qualified and interested banking institutions who operate within the legal jurisdiction of Asheboro City.

The vendor must be able to demonstrate previous experience with the type of work described herein. The submittal should include the firm's qualifications, project team, resumes, detailed scope/requirements below. A schedule of applicable hourly rates should be included in the submittal should they be required.

2. **Scope of Work**

Requested Banking Services

The Board maintains fourteen (14) accounts through our current Banks. The following accounts will be included:

- Current Expense Account (Main)
- Payroll Clearing Account
- Child Nutrition Account (Main)
- Non-Interest-Bearing Account
- Money Market Account
- 9 Separate School Accounts

1. Account Requirements

- A. Cash balances referred to above will be invested in instruments meeting the requirements of North Carolina General Statute 159-30.

Agree to Provide: _____

Comments:

- B. The Board requires the use of the Pooling Method of collateralization for public deposits in excess of the FDIC \$100,000 coverage. Indicate that the Bank is a Pooling Method financial institution.

Agree to Provide: _____

Comments:

C. All methods presented to invest cash balances have been approved by the Local Government Commission as acceptable for school systems, meeting both legal and safekeeping requirements.

Agree to Provide: _____

Comments:

D. The Bank will allow the account to be drafted as requested by the Board for State and Federal agencies.

Agree to Provide: _____

Comments:

2. Banking Supplies & Remote Deposit

A. The Bank will provide all necessary banking transaction items such as deposit slips, night deposit bags, and coin and currency wrappers as required. Also, provide the necessary equipment to do remote (on-line) check deposit.

Agree to Provide: _____

Comments:

3. Processing Procedures

- A. The Bank shall give all deposits received by 5:00 p.m. credit as good ledger balance funds for the same day.

Agree to Provide: _____

Comments:

- B. The available funds or collected balance will be determined by the following maximum clearing schedule:

Same Day: Cash, wire transfers, ACH items, transfers between accounts and items drawn on Bank.

Next Day: Items on local institutions and warrants. Other items will follow the Federal Reserve Availability Schedule.

Agree to Provide: _____

Comments:

- C. All checks returned for uncollected or insufficient funds must be presented twice before debiting the Board's account.

Agree to Provide: _____

Comments:

- D. The Board would like to receive same day notification when an item has been returned due to errors, uncollected or insufficient funds.

Agree to Provide: _____

Comments:

- E. Bank-generated debits and credits must be forwarded to the Accounting Department of the Board the next business day. Duplicate copies must be sent on all ACH debits and credits related to Payroll items.

Agree to Provide: _____

Comments:

- F. The Bank should provide a secure, internet-based banking package that allows authorized Board employees to issue stop payments and check balances of accounts. Requests should be processed the same day. As a backup, the Bank will provide the Board with alternate procedures to issue stop payments and will process requests on the same day.

Agree to Provide: _____

Comments:

- G. Research items (lost check, deposits, etc.) will be furnished within 48 hours of the request.

Agree to Provide: _____

Comments:

4. Wire Transfers and ACH

- A. The Bank must maintain wire transfer facilities to the Federal Reserve Bank and, on a same-day basis, conduct electronic wire transfers of funds for both outgoing and incoming wire transfers.

Agree to Provide: _____

Comments:

- B. The Bank must maintain ACH facilities to the Federal Reserve Bank and, on the effective date provided by the Board, conduct electronic transfers of funds for both outgoing and incoming ACH items.

Agree to Provide: _____

Comments:

- C. All incoming wires and ACH credits received prior to the Federal Reserve deadline will be considered collected funds in the Board's account for that business day.

Agree to Provide: _____

Comments:

- D. The Bank should provide a secure, internet-based banking package that can be used to initiate and process account transfers, wire transfer and ACH items including any related payroll tax deposits, federal or state, from authorized Board employees. As a backup, the Bank will provide the Board with alternate procedures to process these requests.

Agree to Provide: _____

Comments:

- E. The Bank's deadline for accepting outgoing wire transfer and ACH items should be no earlier than 12:00 p.m. Please state the deadline for both.

Agree to Provide: _____

Comments:

- F. The Bank will trace from origin to destination all wire transfers ordered by 12:00 p.m. and not received by the destination party by 3:00 p.m. and also ascertain the identity of the party responsible for delaying the transfer.

Agree to Provide: _____

Comments:

- G. The Bank will trace from origin to destination all ACH items initiated by the Board and not received by the Board or destination party the next business day and also ascertain the identity of the party responsible for delaying the transfer.

Agree to Provide: _____

Comments:

- H. The Bank will be responsible for any loss sustained by the Board as a result of the Bank's failure to transfer funds as instructed; however, in such a case, liability shall extend only to the resulting direct loss, and not to any consequential special loss or damages.

Agree to Provide: _____

Comments:

5. Direct Deposits

- A. The Board currently provides direct deposit of its employees' payroll checks. The Bank should provide this capability and assist the Board in the implementation of this process. A complete disclosure of the processing requirements should be provided.

Agree to Provide: _____

Comments:

6. Monthly Statements/Account Analysis/Reconciliation Services

- A. The Bank shall deliver, within ten (10) calendar days after the end of each month, a detailed itemized statement showing date and amount of each transaction, including check number (if applicable).

Agree to Provide: _____

Comments:

7. Online Banking Requirements

- A. The Bank is to provide a secure, internet-based banking package that allows authorized Board employees to access account information. The Bank should assist the Board in setup and training of the package.

Name of Package: _____

Agree to Provide: _____

Comments:

- B. The system should allow the Board to verify wire transfer/ACH debits and credits and access all associated detail received by the Bank regarding these items.

Agree to Provide: _____

Comments:

8. Positive Pay Service

- A. The Board would like to have the ability to provide positive pay services for the Board's Accounts Payable and Payroll check batches for fraud prevention purposes. Accounts Payable batches are run three to four times a week, and Payroll batches are run twice a month. Please provide details and all costs for the Bank's positive pay program.

Bank is able to provide this service? _____

Compensation

The Board will compensate the Bank by either the holding of a non-interest-bearing time deposit at the Bank or through the payment of direct fees. The Bank may use one or both of the compensation methods.

Compensation Balance Required: \$ _____

Comments:

3. Preparation of Response

All submittals must be signed by an authorized official. Submittals that contain omissions, erasures, alterations, or additions not called for, conditional responses, or that contain irregularities of any kind may be rejected. Rates for reimbursable expenses, including office supplies and travel expenses, as well as a schedule of hourly rates shall be included with the response. Taking exception to the terms and conditions included in this RFQ or submitting conflicting language will cause the submittal response to be considered unresponsive and will be rejected.

4. Clarifications

Asheboro City Schools reserves the right to make clarifications, corrections, or changes in this RFP at any time prior to the time proposals are opened. Questions and requests for information must be submitted before to 2 p.m. local time on April 01, 2025 to Gina Delk at gdelk@asheboro.k12.nc.us. All prospective Consultants will be informed of said clarifications, corrections, or changes via an emailed addendum.

5. ACS General Provisions

1. Issuance of this RFP does not commit ACS to select a product, vendor, or make an award.
2. Responding vendor is responsible for all expenses incurred by vendor in the preparation of a response to this RFP. This includes attendance at interview, presentations, or other meetings and demonstrations, where applicable.
3. All proposals must adhere to the instructions and format requirements outlined in this RFP and all written supplements and amendments issued by ACS.
4. ACS will consider materials provided in the proposal, information obtained through interviews/presentations, and internal ACS information of previous contract history with vendor (if any) in consideration of proposal scoring. ACS also reserves the right to consider other reliable references and publicly available information in evaluating a vendor's experience and capabilities.
5. The proposal must be signed by a person authorized to legally bind the vendor.
6. The proposal must contain a statement that the proposal pricing/services contained therein will remain valid for a period of 1-year from the date and time of the proposal submission.
7. The RFP and vendor's proposal, including all appendices and attachments, may be incorporated in the final contract, if awarded.
8. Public Record and Confidential Information
 - i. Following announcement of an award decision, all submissions in response to this RFP will be considered public records for public inspection pursuant to the State of North Carolina General Statutes, Chapter 132.
 - ii. In the event a request is made to produce a proposal, ACS will provide the proposal to the requester. ACS will not undertake to determine where any proposal or part of proposal is confidential or otherwise protected from disclosure.
 - iii. ACS, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals.
9. If a vendor cannot meet the specifications as described in this RFP, vendor may propose a functionally equivalent alternate solution. Vendor must provide an explanation of the equivalency. ACS reserves the right to refuse an alternative proposal.

10. All applicable laws, whether or not herein contained, will be included by this reference. It will be vendor's responsibility to determine the applicability and requirements of any such laws and to abide by them.

11. For purposes of contract, arbitration, and other legal matters, the Asheboro City Board of Education will be the binding legal entity and authority. No state laws or statutes other than those of North Carolina are considered binding.

6. Number of Awards and Contract

1. ACS anticipates making a single award as a result of this RFP process. This award will take the form of a contract or purchase agreement between the qualified vendor and ACS.
2. ACS is seeking a proposal to provide services, as defined in this RFP.

7. RFP Response Submission

1. Responses must be addressed and delivered to:

Gina Delk, Purchasing Agent
Asheboro City Schools
1126 S. Park Street
Asheboro, NC 2203
gdelk@asheboro.k12.nc.us

2. Sealed responses bearing the title of the RFP must be received at the above address no later than the date and time listed in the Schedule of Events.
3. Response may be delivered by USPS, courier, package delivery service, or in person. Fax and e-mail responses are not accepted.
4. Responses arriving any time after the date and time listed in the Schedule of Events will not be accepted.

8. Completeness and Intention

1. Each responding vendor is advised to read this RFP carefully. Any and all exceptions to an item in this RFP must be duly noted and explained in the response. Failure to take exception to any item will be considered as both the intention and the ability of vendor to fully comply with that item.
2. Responding vendors should make a careful examination of the scope of work and its proper implementation, so as to include in their response proper and sufficient information to ensure ACS of vendor's capability to meet the service requirements.

9. Partnerships and Subcontracts

1. ACS intends to identify one vendor to deliver the goods/orchestrate the services sought through this RFP process and contract term.
2. Public agencies, private for-profit companies, and non-profit companies and institutions are invited to submit proposals in response to this RFP. Partnerships and consortia of entities may work together to respond to this RFP. However, each proposal must clearly identify a prime vendor. The prime vendor will be responsible for providing all deliverables as defined by any resulting contract or purchase agreement according to the terms and conditions as set forth in any resulting contract or purchase agreement.

3. Vendors submitting proposals as a prime vendor as one of a team of vendors may wish to provide all of the proposed services directly, or provide certain elements directly, and provide the remainder through subcontracts under the following conditions:

- A. Any and all subcontractors must be identified in the response to this RFP;
- B. Vendor must notify ACS of any change of the subcontractor's status with vendor;
- C. Sub-contractors may not sub-contract their assigned responsibilities and duties without the permission of ACS;
- D. The prime vendor is solely responsible for all products and services provided to satisfy the requirements of this RFP.

10. Proposal Evaluation

1. Evaluation of vendor proposals will be based upon meeting the requirements of this RFP as determined by:

- A. Vendor's RFP response as to its completeness and conformity to all requirements
- B. Vendor's experience with the services requested
- C. Compliance with the terms and conditions
- D. Vendor's client history and business stability
- E. Vendor's client references
- F. Overall costs
- G. Any other factors which ACS deems to be in its best interests

2. Final selection will be made on a "best value" basis, according to the solution deemed to be the most advantageous to Asheboro City Schools.

11. Schedule of Events

RFQ Posted	March 18, 2025
Deadline for Written Questions	April 01, 2025 by 2:00 pm
Posting of Answers as Addendum	April 03, 2025
RFP Due Date	April 10, 2025 by 2:00pm

12. Notice of Acceptance

- 1. ACS or designee will notify the selected vendor of the acceptance after any/all presentations and interviews (deemed necessary).
- 2. Vendor may be requested to present their proposal to an ACS Review-Committee meeting. Travel expenses are the responsibility of the vendor(s).
- 3. Upon acceptance and approval by the ACS Board of Education, ACS will notify the selected vendor and finalize the contract award

5.0 REFERENCES

1. Vendor will include a brief synopsis of at least three (3) experiences of similar scope and complexity to the work under this RFP. This whole section should not exceed 3 pages. For each reference, please provide for each project reference:

- A. The reference school district name
- B. The location where services have been or are being rendered
- C. The dates that services occurred or are occurring
- D. The contact name and title
- E. The contact phone number
- F. The contact email address
- G. A description of the project and/or services provided

6.0 TERMS AND CONDITIONS

Part 1 General

The following terms and conditions are in addition and complimentary to terms and conditions stated elsewhere in this RFP.

Part 2 Performance and Default

1. If, through any cause, vendor fails to fulfill in a timely and proper manner the obligations under this agreement, ACS will thereupon have the right to terminate this contract by giving written notice to vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by vendor will, at the option of ACS, become its property, and vendor will be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, vendor will not be relieved of liability to ACS for damages sustained by ACS by virtue of any breach of this agreement, and ACS may withhold any payment due to vendor for the purpose of setoff until such time as the exact amount of damages due ACS from such breach can be determined.
2. In case of default by vendor, ACS may procure the services from other sources and hold vendor responsible for any excess cost occasioned thereby. ACS reserves the right to require a performance bond or other acceptable alternative performance guarantees from vendor without expense to ACS.
3. In case of default by vendor under this contract, ACS may immediately cease doing business with vendor, immediately terminate for cause all existing contracts ACS has with vendor, and de-bar vendor from doing future business with ACS.
4. Upon vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against vendor, ACS may immediately terminate, for cause, this contract and all other existing contracts vendor has with ACS, and de-bar vendor from doing future business with ACS.
5. Neither party will be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

APPENDIX A: GENERAL CONTRACTUAL TERMS AND CONDITIONS

1. **BEST VALUE.** Any contract resulting from this Request for Proposals shall be awarded to the Responder that submits the best overall proposal as determined by the Requestor in accordance with N.C.G.S. 143-129.8. The Requestor may negotiate with any Responder(s) in order to obtain a final contract that best meets the needs of the Requestor.
2. **VOLUNTARY.** All submissions by Responder are voluntary and become the property of the Requestor who is under no obligation to return or pay for the creation, development, or delivery of any of the material submitted by the Responder as a result of this RFP.
3. **RIGHTS RESERVED.** The Requester reserves the right to waive any formality; amend the solicitation; cancel or terminate this RFP; to reject any or all of the proposals submitted, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; noncompliance with the requirements or intent of this solicitation; waive any undesirable, inconsequential, or inconsistent provisions of this document which would not have significant impact on any proposal; if the response to this solicitation demonstrates a lack of competition, negotiate directly with one or more Responders; not award, or if awarded, terminate any contract if the Requestor determines adequate funds are not available; or any other determination that rejection would be in the best interest of the Requestor.
4. **NON-EXCLUSIVE CONTRACT.** This contract is non-exclusive and shall not in any way preclude the Requestor from entering into any similar contracts and/or arrangements with other Responders or from acquiring similar equal or like goods and/or service from other entities or sources. (Does not apply to service related contracts).
5. **ASSIGNMENT.** The Responder shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this RFP or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without the previous written consent of the Requestor.

The Requestor reserves the right to declare the Responder in default and terminate the contract for cause.

Responder shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Responder shall affirm that the assignee is fully capable of performing all obligations of Responder under this Contract. An assignment may be made, if at all, in writing by the Responder and Assignee setting forth the foregoing obligation of Responder and Assignee.

6. **INSURANCE COVERAGE.** Providing and maintaining adequate insurance coverage described herein is a material obligation of the Responder and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be

obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Responder shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Responder shall not be interpreted as limiting the Responder's liability and obligations under the Contract. The Responder(s) shall obtain and maintain in force at all times during the term of the contract derived from this RFP, insurance coverage pertaining to Comprehensive General Liability, Comprehensive Automobile Liability, and Workers Compensation in the following amounts and types:

- a. Comprehensive General Liability – Responder(s) to supply the Requestor with original certificates of General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
 - b. Comprehensive Automobile Liability – Responder(s) to supply the Requestor original certificates of insurance, to include liability coverage, covering all owned, hired and no owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
 - c. Workers' Compensation/Employers Liability Insurance - The Responder(s) shall furnish the Requestor with original certificates showing that all its employees who are engaged in any work under this Contract are protected under Worker's Compensation insurance policies with a limit no less than the minimum required by North Carolina state statutes. If any work is sublet, the Responder shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract.
7. GENERAL INDEMNITY. The Responder shall hold and save the Requestor, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, 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. The foregoing indemnification and defense by the Responder shall be conditioned upon the following:
- a. The Requestor shall give Responder written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
 - b. The Responder shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Requestor shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

8. INVOICE. Orders shall be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices shall be submitted by the Responder upon presentation of properly executed invoice after goods have been received, inspected and accepted. Invoices shall be paid within 60 days or receipt of properly executed invoice, or receipt of goods, whichever is later.

PAYMENTS SHALL BE PAID TO RESPONDER(S) AT ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED.

9. FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT. Student educational records are subject to 20 U.S.C. 1232g, Family Rights and Privacy Act (FERPA) and may not be disclosed except in very limited circumstances. The contractor shall ensure that every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The contractor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information shall be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this contract.
10. DEBARMENT. If any of the services rendered under this contract are to be paid with federal funds, the contractor hereby certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.
11. WARRANTIES: Responder shall assign all applicable third-party warranties for Deliverables to the Requestor.
12. PERSONNEL: Responder shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Requestor's Contract Administrator. Any desired substitution shall be noticed to the Requestor's Contract Administrator accompanied by the names and references of Responder's recommended substitute personnel. The Requestor will approve or disapprove the requested substitution in a timely manner. The Requestor may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Requestor may request acceptable substitute personnel or terminate the contract services provided by such personnel.
13. SUBCONTRACTING: The Responder may subcontract the performance of required services with other Responders or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Responder shall provide the Requestor with complete copies of any agreements made by and between Responder and all subcontractors. The selected Responder remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Responder. Any contracts made by the Responder with a subcontractor shall include an affirmative statement that the Requestor is

an intended third-party beneficiary of the contract; that the subcontractor has no agreement with the Requestor; and that the Requestor shall be indemnified by the Responder for any claim presented by the subcontractor. Notwithstanding any other term herein, Responder shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

14. **RESPONDER'S REPRESENTATION:** Responder warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Responder agrees that it will not enter any agreement with a third party that might abridge any rights of the Requestor under this Contract. Responder will serve as the prime Responder under this Contract. Should the Requestor approve any subcontractor(s), the Responder shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third-party Responders or subcontractors of Responder may appear for purposes of convenience in Contract documents; and shall not limit Responder's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Responder. Responder will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
15. **REGISTERED SEX OFFENDERS:** Responder acknowledges that Requestor's "Registered Sex Offenders" policy prohibits anyone registered or required to register as a sex offender from being present on any Requestor property for any reason, whether before, during or after school hours, or on or off of Requestor's property. Responder expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from Requestor's property by Requestor and/or law enforcement officials and may also be subject to criminal prosecution. If Responder, any of Responder's employees, or any of Responder's subcontractors or employees of subcontractors will have any direct interaction with students, then Responder or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on Requestor property.
16. **TRAVEL EXPENSES:** If expressly authorized in the contract Responder may be reimbursed for travel expenses arising under the performance of this Contract at the rates set forth in GS §138-6; as amended from time to time. Responder agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Responder incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the Requestor within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the Requestor. The Requestor will reimburse travel allowances only for days on which the Responder is required to be in North Carolina performing services under this Contract.

17. **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Responder shall provide written notification of the necessary alteration(s) to the Requestor Contract Administrator. The Requestor reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The Requestor may advise Responder of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the Requestor. In such event, Responder shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the Requestor, the Requestor may terminate this Contract and compensate Responder for sums due under the Contract.

18. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Responder warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Requestor for the purpose of obtaining any contract or award issued by the Requestor. Responder further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the Requestor, except as shall have been expressly communicated to the Requestor's Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Responder and their authorized signatory further warrant that no officer or employee of the Requestor has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the Requestor of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Responder(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

19. **AVAILABILITY OF FUNDS:** Any and all payments to Responder are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Requestor for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Requestor's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years, subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds from which payment can be made for the purposes set forth in the Contract. If funds to effect payment are not available, the Requestor will provide written notification to Responder. If the Contract is terminated under this paragraph, Responder agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Requestor under this Contract, and relieve the Requestor of any further obligation thereof. The Requestor shall

remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

20. **PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Requestor. The Requestor is responsible for all payments under the Contract.
21. **ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the Requestor shall have the obligation to notify Responder, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the Requestor shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the Requestor may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Responder fails to promptly cure the defect or replace the Deliverables, the Requestor reserves the right to cancel the Purchase Order, contract with a different Responder, and to invoice the original Responder for any differential in price over the original Contract price. When Deliverables are rejected, the Responder must remove the rejected Deliverables from the premises of the Requestor within seven (7) calendar days of notification, unless otherwise agreed by the Requestor. Rejected items may be regarded as abandoned if not removed by Responder as provided herein.
22. **EQUAL EMPLOYMENT OPPORTUNITY:** Responder shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
23. **INSPECTION AT RESPONDER'S SITE:** The Requestor reserves the right to inspect, during Responder's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Responder prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
24. **ADVERTISING / PRESS RELEASE:** The Responder absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the Requestor.

25. **CONFIDENTIALITY:** All responses to this RFP become a matter of public record at the time of award. In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the competitive bidding process, the Requestor 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. Responder may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Responder warrants that it has formed a good faith opinion that, having received such necessary or proper review by counsel and other knowledgeable advisors, the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The Requestor may serve as custodian of Responder's confidential information and not as an arbiter of claims against Responder's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the Requestor to disclose information marked confidential, the Responder agrees that it will intervene in the action through its counsel and participate in defending the Requestor, including any public official(s) or public employee(s). The Responder agrees that it shall hold the Requestor and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the Requestor in the action. The Requestor agrees to promptly notify the Responder in writing of any action seeking to compel the disclosure of Responder's confidential information. The Requestor shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Requestor shall have no liability to Responder with respect to the disclosure of Responder's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law. If an entire response is marked confidential or trade secret, it will be disqualified from consideration.
26. **CARE OF INFORMATION:** Responder agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the Requestor during performance of any contractual obligation from loss, destruction or erasure. Responder warrants that all its employees and any approved third-party Responders or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Responder will, upon request of the Requestor, verify and produce true copies of any such agreements. Production of such agreements by Responder may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Responder produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The Requestor may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the Requestor for Responder's execution. The Requestor may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and

Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Requestor pursuant to future statutory or regulatory requirements.

27. **NONDISCLOSURE:** Responder agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the Requestor.
28. **DELIVERABLES:** Deliverables, as used herein, shall comprise all project materials, including goods, software licenses, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the Requestor. Proprietary Responder materials licensed to the Requestor shall be identified to the Requestor by Responder prior to use or provision of services hereunder and shall remain the property of the Responder. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed non exclusively to the Requestor, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.
29. **LATE DELIVERY, BACK ORDER:** Responder shall advise the Requestor's contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Responder shall state the projected delivery time and date. In the event the delay projected by Responder is unsatisfactory, the Requestor shall so advise Responder and may proceed to procure substitute Deliverables or services.
30. **PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**
 - a. Responder has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the Requestor, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general-purpose consulting and software tools, utilities and routines (collectively, the "Responder Technology"). To the extent that any Responder Technology is contained in any of the Deliverables including any derivative works, the Responder hereby grants the Requestor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Responder Technology in connection with the Deliverables for the Requestor's purposes.
 - b. Responder shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records,

documentation, data or derivative works thereof, or other work products provided by the Requestor to Responder. The Requestor hereby grants Responder a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Responder's internal use to non-confidential Deliverables first originated and prepared by the Responder for delivery to the Requestor.

- c. The Responder, at its own expense, shall defend any action brought against the Requestor to the extent that such action is based upon a claim that the services or Deliverables supplied by the Responder, or the operation of such Deliverables pursuant to a current version of Responder supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Responder shall pay those costs and damages finally awarded against the Requestor in any such action. Such defense and payment shall be conditioned on the following:
 - i. That the Responder shall be notified within a reasonable time in writing by the Requestor of any such claim; and,
 - ii. That the Responder 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 Requestor shall have the option to participate in such action at its own expense.
- d. Should any services or software supplied by Responder, or the operation thereof become, or in the Responder's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the Requestor shall permit the Responder, at its option and expense, either to procure for the Requestor the right to continue using the goods/hardware or software, or to replace or modify the same to become non infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the Requestor shall be prevented by injunction, the Responder agrees to take back such goods/hardware or software, and refund any sums the Requestor has paid Responder less any reasonable amount for use or damage and make every reasonable effort to assist the Requestor in procuring substitute Deliverables. If, in the sole opinion of the Requestor, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Responder under this Contract impractical, the Requestor shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Responder agrees to take back such Deliverables and refund any sums the Requestor has paid Responder less any reasonable amount for use or damage.
- e. Responder will not be required to defend or indemnify the Requestor if any claim by a third party against the Requestor for infringement or misappropriation (i) results from the Requestor's alteration of any Responder-branded product or Deliverable, or (ii)

results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

- f. Nothing stated herein, however, shall affect Responder's ownership in or rights to its preexisting intellectual property and proprietary rights.
31. ACCESS TO PERSONS AND RECORDS: Pursuant to N.C. General Statute 147-64.7, the Requestor, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Responder insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency or political subdivision of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Responder shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency or political subdivision, if in the Agency's or political subdivision's opinion, such requirement is imposed by federal or state law or regulation (e.g. "E-Rate" is five (5) years after the completion of the contract).
32. DISPUTE RESOLUTION: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Responder shall be submitted in writing to the Requestor's Contract Administrator for decision. A claim by the Requestor shall be submitted in writing to the Responder's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
33. DEFAULT: In the event any Deliverable furnished by the Responder during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the Requestor and if the failure is not cured within ten (10) days, or Responder fails to meet the requirements of ACCEPTANCE CRITERIA herein, the Requestor may cancel and procure the articles or services from other sources; holding Responder liable for any excess costs occasioned thereby, subject only to the limitations provided in "LIMITATION OF RESPONDER'S LIABILITY" and "RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY" and the obligation to informally resolve disputes as provided in "DISPUTE RESOLUTION" of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The Requestor reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Responder without expense to the Requestor. The rights and remedies of the Requestor provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

If Responder fails to deliver Deliverables within the time required by this Contract, the Requestor may provide written notice of said failure to Responder, and by such notice require payment of a penalty.

Should the Requestor fail to perform any of its obligations upon which Responder's performance is conditioned, Responder shall not be in default for any delay, cost increase or other consequences due to the Requestor's failure. Responder will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Responder's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the Requestor shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

Responder shall provide a plan to cure any default if requested by the Requestor. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Responder may deem necessary or proper to provide.

34. WAIVER OF DEFAULT: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Requestor and the Responder, and made as an amendment to this Contract pursuant to Paragraph "CHANGES" herein below.
35. TERMINATION: Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated. The parties may mutually terminate this Contract by written agreement at any time. The Requestor may terminate this Contract, in whole or in part, pursuant to Paragraph "DEFAULT", or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - a. TERMINATION FOR CAUSE: In the event any goods, software, or service furnished by the Responder during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Responder, the Requestor may cancel and procure the articles or services from other sources; holding Responder liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs "LIMITATION OF RESPONDER'S LIABILITY" and "RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY" herein. The rights and remedies of the Requestor provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Responder shall not be relieved of liability to the Requestor for damages sustained by the Requestor arising from Responder's breach of this Contract; and the Requestor 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 Responder shall be cause for termination.

b. TERMINATION FOR CONVENIENCE WITHOUT CAUSE: The Requestor may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Responder. Responder shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the Requestor, the Requestor will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

36. LIMITATION OF RESPONDER'S LIABILITY: a. Where Deliverables are under the Requestor's exclusive management and control, the Responder shall not be liable for direct damages caused by the Requestor's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the Requestor's intended use of the Deliverables. b. The Responder's liability for damages to the Requestor for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. c. The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Responder's negligence or willful or wanton conduct. This limitation of liability does not apply to 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.

37. RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:

- a. The Responder shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the Requestor, employees of the Requestor, persons designated by the Requestor for training, or person(s) other than agents or employees of the Responder, designated by the Requestor for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Responder's site or at the Requestor's place of business, provided that the injury or damage was caused by the fault or negligence of the Responder.
- b. The Responder agrees to indemnify, defend and hold the Requestor and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible,

arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Responder, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.

- c. Responder shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Responder, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Responder's goods.
38. **CHANGES:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Responder are hereby rejected unless accepted in writing by the Requestor. The Requestor shall not be responsible for Deliverables or services delivered without a purchase order from the Requestor.
 39. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Contract.
 40. **INDEPENDENT CONTRACTORS:** Responder and its employees, officers and executives, and subcontractors, if any, shall be independent contractors and not employees or agents of the Requestor. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.
 41. **TRANSPORTATION:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Requestor. In cases where parties, other than the Responder ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
 42. **NOTICES:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
 43. **TITLES AND HEADINGS:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
 44. **AMENDMENT:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Requestor and Responder.

45. TAXES: The Requestor is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Responder or for any taxes levied on employee wages. Agencies or political subdivisions 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 Responder by Agencies or political subdivision, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.
46. GOVERNING LAWS, JURISDICTION, AND VENUE:
- a. This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Randolph County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Responder agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Randolph County shall be the proper venue for all matters.
 - b. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.
47. FORCE MAJEURE: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
48. COMPLIANCE WITH LAWS: The Responder shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
49. SEVERABILITY: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirements, 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.

50. FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT: The Parties agree that the Requestor shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.
51. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. THIS CONTRACT, IF FEDERAL FUNDING IS USED, IS A COVERED TRANSACTION FOR PURPOSES OF 2 C.F.R. §200.216. RECIPIENTS AND SUBRECIPIENTS ARE PROHIBITED FROM OBLIGATING OR EXPENDING LOAN OR GRANT FUNDS TO:
- a. Procure or obtain.
 - b. Extend or renew a contract to procure or obtain; or
 - c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

For the purpose of public safety, security of government facilities, physical security surveillance of Critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance services provided by such entities or using such equipment.

Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. See Public Law 115-232, section 889 for additional information. See also §200.471.

52. Federal Funds: The following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as may be applicable):
- a. Equal Employment Opportunity (41 C.F.R. Part 60);
 - b. Davis-Bacon Act (40 U.S.C. 3141-3148);
 - c. Copeland “Anti-Kickback” Act (40 U.S.C. 3145);
 - d. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708);
 - e. Clean Air Act (42 U.S.C. 7401-76711q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387);
 - f. Debarment and Suspension (Executive Orders 12549 and 12689);
 - g. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
 - h. Procurement of Recovered Materials (2 C.F.R. § 200.322);
 - i. Record Retention Requirements (2 C.F.R. § 200.324); and
 - j. Solid Waste and Disposal Act (42 U.S.C. 6002)