1. PERFORMANCE AND DEFAULT:

a) It is anticipated that the tasks and duties undertaken by the Vendor shall include services or the manufacturing, furnishing, or development of goods and other tangible features or components as deliverables that are directly correlated and/or ancillary to performance. Except as provided immediately below, and unless otherwise mutually agreed in writing prior to award, any deliverables provided by Vendor in performance of the contract shall remain property of the University. During performance, Vendor may provide proprietary components as part of the deliverables that are identified in the solicitation response. Vendor grants the University a personal, permanent, non-transferable license to use such proprietary components of the service deliverables and other functionalities, as provided under this Agreement. Any technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the University shall be and remain the property of the Vendor or such other party, respectively. Vendor agrees to perform under the contract in the same or similar manner provided to comparable users. The University shall notify the Vendor of any defects or deficiencies in performance or failure of deliverables to conform to the standards and specifications provided in this solicitation. Vendor agrees to remedy defective performance or any nonconforming deliverables upon timely notice provided by the University.

b) Vendor has a limited, non-exclusive license to access and use University Data provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as may be further provided herein. Vendor or its suppliers shall at a minimum, and except as otherwise specified and agreed herein, provide assistance to the University related to all services performed or deliverables procured hereunder during the University’s normal business hours. Vendor warrants that its support, customer service, and assistance will be performed in accordance with generally accepted and applicable industry standards.

c) If, through any cause, Vendor shall fail to fulfill in a timely and proper manner the obligations under the contract, the University shall have the right to terminate the contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverables under the contract prepared by the Vendor shall, at the option of the University, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the University for damages sustained by the University by virtue of any breach of the contract, and the University may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the University from such breach can be determined. The University may require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to the State.

d) In the event of default by the Vendor, the University may procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under the contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the University may immediately cease doing business with the Vendor, immediately terminate the contract for cause, and may take action to debar the Vendor from doing future business with the State.

2. GOVERNMENTAL RESTRICTIONS: In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship or performance of the Services offered prior to acceptance, it shall be the responsibility of the Vendor to notify the Contract Lead at once, in writing, indicating the specific regulation which required such alterations. The University
reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

3. **AVAILABILITY OF FUNDS**: Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in the contract.

4. **TAXES**: Any applicable taxes shall be invoiced as a separate item.
   a) G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
   b) The agency(ies) participating in the contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
   c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

5. **SITUS AND GOVERNING LAWS**: This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.

6. **PAYMENT TERMS**: Payment terms are Net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.

7. **NON-DISCRIMINATION**:
   a) The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
   b) The Vendor will take necessary action to ensure its internal employee policies and procedures are consistent with Executive Order #82 (Roy Cooper, December 6, 2018), which extends workplace protections and accommodations to pregnant employees.

8. **CONDITION AND PACKAGING**: Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

9. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY**: Vendor shall hold and save the University, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material,
patented or patent-pending invention, article, device or appliance delivered in connection with the contract.

a. Vendor warrants to the best of its knowledge that:
   i. Performance under the contract does not infringe upon 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 deliverables 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 University the right to continue using the deliverables, 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 deliverables and refund any sums the University has paid Vendor and make every reasonable effort to assist the University in procuring substitute deliverables. If, in the sole opinion of the University, the cessation of use by the University of any such deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the University 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 University paid for unused Services or Deliverables.

c. The Vendor, at its own expense, shall defend any action brought against the University or State to the extent that such action is based upon a claim that the deliverables 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 University or 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 University or 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 University or 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 deliverables or services, or from the continued use of the deliverable(s) or Services after receiving notice of infringement on a trade secret of a third party.

10. TERMINATION FOR CONVENIENCE: If this contract contemplates deliveries or performance over a period of time, the University may terminate this contract at any time by providing 60 days’ notice in writing from the University to the Vendor. In that event, any or all finished or unfinished deliverables prepared by the Vendor under this contract shall, at the option of the University, become its property. If the contract is terminated by the University as provided in this section, the University shall pay for those items for which such option is exercised, less any payment or compensation previously made.

11. ADVERTISING: Vendor agrees not to use the existence of the contract or the name of the University of North Carolina at Greensboro as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the University is willing to act as a reference by providing factual information directly to other prospective customers.

12. ACCESS TO PERSONS AND RECORDS: During and after the term hereof, the State Auditor and any using agency’s internal auditors shall have access to persons and records related to the contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).

13. ASSIGNMENT: No assignment of the Vendor’s obligations nor the Vendor’s right to receive payment
hereunder shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the University may:

a) Forward the Vendor’s payment check directly to any person or entity designated by the Vendor, and
b) Include any person or entity designated by Vendor as a joint payee on the Vendor’s payment check.

In no event shall such approval and action obligate the University to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the University may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor’s assets. Any purported assignment made in violation of this provision shall be void and a material breach of the contract.

14. INSURANCE:

**COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a) **Worker’s Compensation** - The Vendor shall provide and maintain Worker’s Compensation Insurance, as required by the laws of North Carolina, as well as employer’s liability coverage with minimum limits of $500,000.00, covering all of Vendor’s employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of $1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be $250,000.00 bodily injury and property damage; $250,000.00 uninsured/under insured motorist; and $2,500.00 medical payment.

**REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor’s liability and obligations under the Contract.

15. GENERAL INDEMNITY: The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge
of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State’s agents who are involved in the delivery or processing of Vendor deliverables or Services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of the contract.

16. **INDEPENDENT CONTRACTOR:** Vendor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such employees shall not be employees of or have any individual contractual relationship with the Agency.

17. **SUBCONTRACTING:** Performance under the contract by the Vendor shall not be subcontracted without prior written approval of the University’s assigned Contract Lead. Unless otherwise agreed in writing, acceptance of a Vendor’s proposal shall include approval to use the subcontractor(s) that have been specified therein.

18. **CONFIDENTIALITY:** Any University information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the contract shall be kept as confidential, used only for the purpose(s) required to perform the contract and not divulged or made available to any individual or organization without the prior written approval of the University.

19. **CARE OF UNIVERSITY DATA AND PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any data owned and furnished to the Vendor by the University (University Data), or other University property in the hands of the Vendor, for use in connection with the performance of the contract or purchased by or for the University for the contract. Vendor will reimburse the University for loss or damage of such property while in Vendor’s custody.

The University’s Data in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or other eventuality. Such University Data shall be returned to the University in a form acceptable to the University upon the termination or expiration of this Agreement. The Vendor shall notify the University of any security breaches within 24 hours as required by G.S. 143B-1379. See G.S. 75-60 et seq.

20. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State contract to a location outside of the United States.

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

22. **ENTIRE AGREEMENT:** This solicitation and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This solicitation, any addenda hereto, and the Vendor’s proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties
contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

23. **ELECTRONIC RECORDS:** The University will digitize all Vendor responses to solicitations, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."

24. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the University and the Vendor.

25. **NO WAIVER:** Notwithstanding any other language or provision in the contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the University under applicable law. The waiver by the University of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.

26. **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.

27. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the University under applicable law.

28. **CERTIFICATIONS:** Vendor certifies to each of the following:

   a). that its quote is submitted competitively and without collusion, as required by G.S. 143-54;

   b). that none of its officers, directors or controlling owners 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);

   c). that no employee or agent of Vendor has offered, and no State employee has accepted, any gift or gratuity in connection this contract, in violation of N.C.G.S. § 133-32;

   d). that it, and each of its sub-contractors under this contract, 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, as required by G.S. §143-48.5; and

   e). that the Vendor is not an ineligible vendor due to being identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran, in accordance with the Iran Divestment Act of 2015, G.S. 147-86.55 et seq. The Treasurer’s Divestment List may be reviewed at: https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.asp.