

STATE OF NORTH CAROLINA NC Department of Public Instruction (NCDPI)	REQUEST FOR PROPOSAL NO. 40-IT00114-15
	Offers will be publicly opened: 1/11/2016 2PM EST
Refer <u>ALL</u> Inquiries to: Mike Beaver Telephone No. 919-807-3683	Date Issued: November 17, 2015 Commodity: Exceptional Children Accountability Tracking System
E-Mail: Michael.Beaver@dpi.nc.gov	Using Agency Name: NC Dept. of Public Instruction
(See page 2 for delivery instructions)	Agency Requisition No. RQ18365871

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

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

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

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

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

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

FOR NCDPI USE ONLY Offer accepted and contract awarded this ___ day of _____, 20___, as indicated on attached certification, by _____ (Authorized representative of NCDPI).
--

DELIVERY INSTRUCTIONS: Vendor must deliver one (1) **signed original** and one (1) **copy** of the Offer to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front. **Vendor must return all the pages of this solicitation in their response. Vendor must also submit fourteen (14) electronic, signed copies (this would be the exact same copy as the signed original) of its proposal on USB Flash Drives. The files should not be password-protected and should be capable of being copied to other media.**

Address envelope and insert offer number as shown below. Please note that the US Postal Service does not deliver any mail (US Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the offer in this Office by the specified time and date of opening.**

DELIVER TO:
BID NUMBER: 40-IT00114-15
NC Dept. of Public Instruction
Attn: Mike Beaver, Procurement Manager
301 N. Wilmington Street, Room B04
Raleigh, NC 27601

Sealed offers, subject to the conditions made a part hereof, will be received at **Department of Public Instruction's Purchasing & Contracts Office, Room B04 of the Education Building at 301 N. Wilmington Street, Raleigh, NC 27601 until 2:00 P.M.** Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted in a sealed package with the Execution page signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed offer shall result in disqualification. All offers must comply with Section VI, Proposal Content and Organization. A proposal is considered "delivered" only when it physically arrives in room B04 at 301 North Wilmington Street, Raleigh, NC.

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

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

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

Written questions concerning this RFP will be received until December 10, 2015 at 2:00pm Eastern Standard Time. They must be sent via e-mail to: Michael.Beaver@dpi.nc.gov or faxed to 919-807-3660. Please insert “**Questions RFP40-IT00114-15**” as the subject for the email. The questions should be submitted in the following format:

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

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

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

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

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

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

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

LATE OFFERS: Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor’s sole risk to ensure delivery at the designated office by the designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

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

Table of Contents

Section I	Introduction	5
Section II	Bidding Information	6
A.	Instruction to Vendors	6
B.	General Conditions of Proposal	6
C.	Evaluation Process	12
Section III	Technical Specifications	14
Section IV	Cost Proposal	21
Section V	Other Requirements and Special Terms	22
Section VI	Proposal Content and Organization	28
Section VII	Contractual Terms and Conditions	31
Section VIII	Attachments or Exhibits	42

I. Introduction

The purpose of this Request for Proposal (RFP) and any resulting contract award is to solicit proposals from qualified Vendors to provide a unified and comprehensive Exceptional Children Accountability Tracking System, hereafter referred to as "ECATS". The intent of this RFP is to award a contract to the Vendor whose proposal best meets the needs of the North Carolina Department of Public Instruction (NCDPI) and the PK-13 Educational Institutions, as determined by NCDPI.

The NCDPI is seeking a Special Education case management and data analysis Support Software as a Service Solution (SaaS), Medicaid SaaS, and a Multi-Tiered Services of Support (MTSS) SaaS hereinafter referred to individually or collectively as "**the ECATS Service**" that will serve the NCDPI and all current and future North Carolina Local Education Agencies (LEAs), Charter Schools, Regional Schools, Educational Services for the Deaf and Blind Schools (ESDB), and other public schools and entities under their purview as the need may arise (hereinafter referred to individually as "**PK-13 Educational Institution**" or collectively as "**PK-13 Educational Institutions**").

NCDPI is responsible for the oversight of all PK-13 Educational Institutions in North Carolina. Part of this oversight includes the Division of Exceptional Children (DEC) ensuring that all students with disabilities develop intellectually, physically, emotionally, and vocationally through the provision of an appropriate individualized education program in the least restrictive environment.

Federal regulations require that states collect, maintain and report data on exceptional children in support of No Child Left Behind (NCLB) and Individuals with Disabilities Education Act (IDEA). The NCLB law can be found at 20 U.S.C. 6301, *et. seq.* Additional information on NCLB can be found at <http://www2.ed.gov/nclb/landing.ihtml>. The IDEA can be found at 20 U.S.C. 1400, *et. seq.* Additional information on IDEA can be found at <http://idea.ed.gov/>. ECATS must comply with federal regulations and support the extraction of data in formats required for, but not limited to, reporting to the Office of Special Education Programs (OSEP), used in the State Performance Plan (SPP) and Annual Progress Report (APR), and reporting for Continuous Improvement Performance Plan (CIPP). Information on OSEP can be found at <http://www2.ed.gov/about/offices/list/osers/osep/index.html>, information about SPP and APR can be found at <http://ec.ncpublicschools.gov/reports-data/state-performance-plan> and information about CIPP can be found at <http://ec.ncpublicschools.gov/reports-data/cipp-monitoring>.

This RFP anticipates three modules of a successful solution: Special Education, Multi-Tiered Systems of Support (MTSS) and Medicaid which are detailed in [Section III – Technical Specifications](#). The Special Education module is a case management and data analysis module that offers NCDPI and PK-13 Educational Institutions a means to manage and analyze exceptional children data. The MTSS is a multi-tiered framework which promotes PK-13 Educational Institution improvement through engaging, research-based academic and behavioral practices. The MTSS employs a systems approach using data-driven problem-solving to maximize growth for all. Public PK-13 Educational Institutions may receive Medicaid funds for some health services provided to students at school. The healthcare services must be medically necessary and the student must be eligible for Medicaid and Special Education.

The Vendor must include all of the modules in an offer. It will be the Vendor's responsibility to integrate the Special Education module, MTSS module and the Medicaid module providing a single user interface. The Vendor will be responsible for the development and maintenance of a combined set of data or Operational Data Store (ODS) from the Special Education module, MTSS module, and Medicaid module, hereinafter referred to as the "ECATS ODS". Reports produced from the ECATS ODS may contain any combination of data, based on user access, from the Special Education, MTSS, and Medicaid modules. The Vendor will also be responsible for a single user interface providing access, based on user security, to all three modules: Special Education, MTSS, and Medicaid.

Refer to ['Attachment A: ECATS Data Flow'](#) for an ECATS data flow diagram.

Section II. Bidding Information

A. Instructions to Vendors

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

- 1) Offers submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) EXECUTION: Failure to sign under EXECUTION section will render offer invalid.
- 3) TIME FOR CONSIDERATION: Unless otherwise indicated on the first page of this document, Vendor's offer must be valid for ninety (90) days from the date of offer opening
- 4) PROMPT PAYMENT DISCOUNTS: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 5) MISCELLANEOUS: Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 6) VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/Vendor/VendorPubMain.aspx>
- 7) ORGANIZATION: Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 8) E-PROCUREMENT: **This is an e-procurement solicitation.** See paragraphs #47 and 48 of the attached North Carolina Department of Information Technology Procurement Office General Terms and Conditions for Goods and Related Services made part of this solicitation contain language necessary for the implementation of North Carolina's statewide e-procurement initiative. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to e-procurement.
 - a. General information on the e-procurement service can be found at <http://eprourement.nc.gov/>
 - b. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <http://eprourement.nc.gov/Vendor.html>
 - c. As of the RFP submittal date, the Vendor must be current on all e-Procurement fees. If the Vendor is not current on all e-Procurement fees, the State may disqualify the Vendor from participation in this RFP.
- 9) E-VERIFY: Pursuant to N.C.G.S. § 143B-1323(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

B. General Conditions for Proposals

Definitions, Acronyms and Abbreviations. Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:

- a) **The State**: Is the State of North Carolina, and its Agencies.
- b) **NCDIT or DIT**: The NC Department of Information Technology, formerly Office of Information Technology Services.
- c) **Goods**: Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).

- d) **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- e) **Open Market Contract:** A contract for the purchase of goods or Services not covered by a term, technical, or convenience contract.
- f) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- g) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- h) **RFP:** Request for Proposal
- i) **APR:** Annual Progress Report
- j) **AYP:** Adequate Yearly Progress
- k) **BI:** Business Intelligence
- l) **BSS:** Behavioral Support Service
- m) **Business Day:** Any single day of the business week, from Monday through Friday, except State holidays
- n) **Business Hours:** 8:00 AM to 5:00 PM EST/EDT
- o) **CIPP:** Continuous Improvement Performance Plan
- p) **CEIS:** Coordinated Early Intervening Services
- q) **Charter School** - Publicly funded elementary or secondary schools which operate independent of many of the rules, regulations, and statutes that apply to school districts
- r) **COSF:** Child Outcome Summary Form
- s) **DEC:** Division of Exceptional Children
- t) **EC:** Exceptional Children
- u) **ECATS (Exceptional Children Accountability Tracking System)** - solution to be provided by the vendor to the State pursuant to this RFP comprising of the Exceptional Children module, Multi-Tiered Systems of Support (MTSS) module, and the Medicaid module.
- v) **Error:** (1) the difference between a computed, observed, or measured value or condition and the true, specified, or theoretically correct value or condition. For example, a difference of 30 meters between a computed result and the correct result. (2) An incorrect step, process, or data definition. For example, an incorrect instruction in a computer program. (3) An incorrect result. For example, a computed result of 12 when the correct result is 10. (4) A human action that produces an incorrect result. For example, an incorrect action on the part of a programmer or operator. Note: While all four definitions are commonly used, one distinction assigns definition 1 to the word 'error', definition 2 to the word 'fault', definition 3 to the word 'failure', and definition 4 to the word 'mistake'
- w) **Fault:** (1) A defect in a hardware device or component; for example, a short circuit or broken wire. (2) An incorrect step, process, or data definition in a computer program. Note: This definition is used primarily by the fault tolerance discipline. In common usage, the terms 'error' and 'bug' are used to express this meaning.
- x) **Graceful Degradation:** This is where the system maintains limited functionality even when a large portion of it has failed or been rendered inoperative. In graceful degradation, the

- operating efficiency or speed declines gradually as an increasing number of components fail.
- y) **IDEA:** Individuals with Disabilities Education Act.
 - z) **IEP:** Individualized Education Program: a written statement for a child with a disability that is developed, reviewed, and revised in accordance with NC 1503-4 through NC 1503-5.1 which can be found at <http://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities/policies-children-disabilities.pdf>
 - aa) **LEA:** Local Education Agency, a school district, an entity which operates local public primary and secondary schools.
 - bb) **MTSS:** Multi-Tiered Systems of Support
 - cc) **NCDPI:** North Carolina Department of Public Instruction
 - dd) **NCLB:** No Child Left Behind
 - ee) **ECATS ODS:** Operational Data Store: combined set of data or Operational Data Store (ODS) from the Special Education module, Multi-Tiered Systems of Support module, and Medicaid module.
 - ff) **OSEP:** Office of Special Education Programs
 - gg) **PK-13 Educational Institution:** All current and future North Carolina Local Education Agencies (LEAs), Charter Schools, Regional Schools, Educational Services for the Deaf and Blind Schools (ESDB), and other public schools and entities under their purview as the need may arise (individually or collectively). The following URL is a link which contains a wealth of statistics on NC schools, students, teachers and staff: <http://www.localschooldirectory.com/state-schools/NC>
 - hh) **POC:** Plan of Care
 - ii) **Program Report Code 29 (PRC29):** Behavioral Support Service Funds (PRC 29) are allotted on a needs basis. PRC29 funds are designated as add-on funds. They are to be used to make the "critical difference" in the successful development and implementation of the IEP. These funds may not be used to supplant or replace other funding sources (e.g., state aid exceptional children funds). They are to be used only to provide services to children with disabilities and accompanying chronic and acute behavioral/emotional needs including students previously served by Department of Health and Human Services as Willie M class members.
 - jj) **Recovery Point Objective (RPO)** - relates to recovery point (time between last backup and outage event). It outlines the point in time to which data must be restored to successfully resume system processing (maximum tolerable period in which data might be lost).
 - kk) **Recovery Time Objective (RTO)** - relates to system downtime. It outlines the target time set for resuming service after an outage event
 - ll) **Referential Integrity:** This is a database concept that ensures that relationships between tables remain consistent. When one table has a foreign key to another table, the concept of referential integrity states that you may not add a record to the table that contains the foreign key unless there is a corresponding record in the linked table. It also includes the techniques known as cascading update and cascading delete, which ensure that changes made to the linked table are reflected in the primary table.
 - mm) **Software as a Service (SaaS):** Vendor-Managed SaaS solution means that all the Hardware and Software (HW/SW) components of the vendor proposed service solution are the sole responsibility of the vendor and where possible shall be hosted by the Vendor and

delivered remotely over a network, typically the Internet. The Vendor is responsible for all aspects of system and software performance of the proposed vendor-managed SaaS solution components.

- nn) **SAR:** School Activity Report
- oo) **Service Deliverables:** the ECATS Services described and requested herein.
- pp) **SLA - Service Level Agreement** or support agreement which sets forth provisions for service provider to provide hosting services to the State and outlines the Roles and Responsibilities of each party. The SLA defines and provides appropriate controls on the rights and responsibilities of each of the parties.
- qq) **SIS:** Student Information System
- rr) **Software Bug:** See error or fault
- ss) **SOP:** State-Operated Program
- tt) **SPP:** State Performance Plan
- uu) **ECATS Service:** refers to an Exceptional Children (EC) Software as a Service (SaaS) solution referred to individually or collectively as “the ECATS Service”, comprised of three modules: Special Education, MTSS, and Medicaid.
- vv) **User-Friendly:** compatible with its intended user’s business area and ability; easy to learn, use, understand, or deal with.
- ww) **Waiver of Competition (Sole Source):** Under conditions listed in 09 NCAC 06B .0901 where it is deemed in the public interest to procure with a specific vendor for a specific brand. North Carolina Department of Information Technology Policies and Procedures, Department of Information Technology Statewide IT Procurement Office <http://www.its.state.nc.us/itprocurement/>

- 2) **Read and Review.** It shall be the Vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State’s intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from the State’s contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
- 3) **Vendor Responsibility.** The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs thereof. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying Services, maintenance, warranties, value added Services or other criteria identified herein.
- 4) Vendor certifies that in accordance with N.C.G.S. §143-59.1(b), Vendor is not an ineligible vendor as set forth in N.C.G.S. § 143-59.1 (a).
- 5) **Oral Explanations.** The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor’s offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.

- 6) Insufficiency of References to Other Data. **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.
- 7) Conflict of Interest. Applicable standards may include: N.C.G.S. §§ 143B-1327, 14-234, 133-32. The Vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing Services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 8) Contract Term. A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be two (2) years, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for **one** (1) additional **one** (1) year periods at its sole discretion.
- 9) Effective Date. This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing Vendor for goods provided nor Services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.
- 10) Recycling and Source Reduction. It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the NCDIT Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 11) Historically Underutilized Businesses. Pursuant to N.C.G.S. §§143-48 and 143-128.4 and Executive Order 13, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://www.doa.nc.gov/hub/>
- 12) Clarifications/Interpretations. Any and all amendments or revisions to this document shall be made by written addendum from the DIT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 13) Rights Reserved. While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
 - a) waive any formality;
 - b) amend the solicitation;
 - c) cancel or terminate this RFP;
 - d) reject any or all offers received in response to this RFP;
 - e) waive any undesirable, inconsequential, or inconsistent provisions of this RFP, which would not have significant impact on any RFP;

- f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
- g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
- h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more Vendors.

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

Alternate offers must be clearly marked

“Alternate Offer for ‘name of Vendor’”

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

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

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

16) Submitting an Offer. Each Vendor submitting an offer warrants and represents that:

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

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

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

19) Non-Responsive Offers: Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

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

C. Evaluation Process

- 1) "Best Value" procurement methods are authorized by N.C.G.S. §143-135.9. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.
- 2) Source selection. A One-Step (Technical Response and Cost, submitted together, trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
 - i. The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the offer.
 - ii. Evaluation Process Explanation. State Agency employees will review all offers. All offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
 - iii. To be eligible for consideration, a Vendor must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the State. Offers that do not meet the full intent of all requirements listed in this RFP may be deemed deficient. Further, a serious deficiency in the offer to any one factor may be grounds for rejection regardless of overall score.
 - iv. Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.
- 3) Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional weight to the Vendors' respective offer. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.
- 4) Each of the criteria below shall be evaluated in accordance with the solicitation documents:
 - a) Compliance with the RFP Specifications.
 - b) Evaluation Criteria. Vendor qualifications substantially impact the evaluation process, and will be evaluated for the following:

Components for Evaluation – Listed in order of Importance

- 1. Technical Solution** - see [Section III. Technical Specifications 10\) Technical Specifications subsection b.](#) and [Appendix B – “Module Technical Specifications”](#).
- 2. Functional Specifications** - see [Section III Technical Specifications 10\) Technical Specifications subsection a.](#) and [Appendix A – “Module Service Specifications”](#).
- 3. Vendor Cost Proposal** – The Total Cost for the Vendor service. see [Section IV Cost Proposal](#)
- 4. Vendor Demonstrations – Conceptual Design (ONLY Finalists) to demonstrate capabilities and Ease of Use** – The Vendor, if invited, shall meet the NCDPI evaluation team in Raleigh, NC, at their own expense, to provide a Conceptual Design demonstration of their proposed solution capabilities and help validate their written responses. The exact location, date(s) and time(s) shall be determined later. To the extent possible, Vendor's scheduling constraints shall be taken into consideration.
- 5. Vendor Experience and Reference Checks** (Strength of references relevant or material to technology area(s) or specifications) - See [Section III. Technical Specifications, paragraph 10\) Technical Specifications, subsection m. References](#)
- 6. Vendor Financial Stability** See [Section V Other Requirements and Special Terms, paragraph 3\) Financial Statements](#)
- 7. Vendor Customer Product Interfaces:** (strength of product interfaces relevant to other modules) see [Section III. Technical Specifications, paragraph 10\) Technical Specifications, subsection n. Product Interfaces](#)

- 5) Vendor may be disqualified from any evaluation or award if Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 6) **Evaluation Method.** All responsive proposals will be evaluated and adjectively ranked based on the strengths and weaknesses in how the vendor meets the state’s requirements as determined by the evaluation team.
- 7) The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue of RFP	NCDPI	11/16/15
Deadline to Submit Questions	Vendor(s)	12/10/15
Submission of Offer	Vendor(s)	1/11/16
Offer Evaluation	Evaluation Committee	TBD
Oral Presentation and/or Product Demonstrations by Finalists (optional)	Vendors	TBD

Action	Responsibility	Date
Best and Final Offers (BAFO) and Negotiations with Vendor(s) (at sole discretion of the State)	Selected Vendor(s)	TBD
Contract Award	IT Procurement Office	4/8/16
Protest Deadline	Vendors	15 days after award

- 8) The State has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve offer award information electronically from our Internet web site: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-offer number (40-IT00114-15), and then search. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 9) **Protest Procedures:** Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within fifteen (15) calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. **All protests will be governed by Title 9, Department of Information Technology (formerly Office of Information Technology Services), Subchapter 06B Sections .1101 - .1121.**

Section III. Technical Specifications

- 1) **Enterprise Architecture Standards:** The North Carolina Statewide Technical Architecture is located at the following website: <https://it.nc.gov/services/it-architecture/statewide-architecture-framework>. This provides a series of domain documents describing objectives, principles and best practices for the development, implementation, and integration of business systems. The Technical Architecture System Design template is one of these documents and is located at <https://ncit.s3.amazonaws.com/s3fs-public/documents/files/Technical%20Architecture%20System%20Design%20Template.doc>. Agencies and Vendors should refer to these architecture documents when implementing enterprise applications and/or infrastructure.
- 2) **Enterprise Licensing:** In offering the best value to the State, Vendors are encouraged to leverage the State's existing resources and license agreements. The agreements may be viewed at: <https://it.nc.gov/services/license-and-agreements>
- a. Identify components or products that are needed for your solution that may not be available with the State's existing license agreement.
 - b. Identify and explain any components that are missing from the State's existing license agreement.
 - c. If the Vendor can provide a more cost effective licensing agreement, please explain in detail the agreement and how it would benefit the State.
 - d. Explain the transportability and transferability of the proposed license agreements. Any licenses or warranties purchased on behalf of the State for this project must be transferable at the time the vendor is paid under contract for said component

- 3) Virtualization: Reserved.
- 4) NCEdCloud Identity and Access Management (IAM) Service: This IAM Service is now in deployment and will provide every PK-13 student, teacher, and staff member in North Carolina an account, with a single unique_ID username and password that will enable access to cloud-based learning resources. Target Applications are the cloud-based applications, resources, and services that IAM PK-13 Community Users will be accessing for their education needs. Target Applications will be using the IAM Service to authenticate and authorize these users. A description of “Integration Methodologies for Target Applications Using the NCEdCloud IAM Service” can be found at: <http://ncedcloud.mcnc.org/resources/>. In order for NCEdCloud IAM Service to support an external authentication realm, such as NCID, the NCEdCloud IAM infrastructure must have direct access to those external systems. IAM will support either the use of SAML or LDAP protocol.
- 5) Equivalent Items: Whenever a material, article or piece of equipment is identified in the specification(s) by reference to a manufacturer’s or Vendor’s name, trade name, catalog number or similar identifier, it is intended to establish a standard, unless otherwise specifically stated as a brand specific requirement (no substitute items will be allowed). Any material, article or piece of equipment of other manufacturers or Vendors shall perform to the standard of the item named. Equivalent offers must be accompanied by sufficient descriptive literature and/or specifications to provide for detailed comparison. Samples of items, if required, shall be furnished at no expense to the State and if not destroyed in the evaluation process, may be returned to the Vendor at the Vendor’s expense.
- 6) All offers shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the offer. Offer responses without sufficient technical documentation may be rejected.
- 7) The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
- 8) Specifications: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled “Exceptions to Specification”; otherwise, it will be considered that items offered are in strict compliance with these specifications, and Vendor will be held responsible. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or equivalent goods may be rejected; and if offered, must be supported by independent documentary verification of equivalence to the specified goods.**
- 9) Objectives:
 - a. Special Education Objectives
 - i. The Special Education Module must integrate with the Medicaid and MTSS modules allowing for a single user ECATS interface system. The Special Education Module shall be a case management and data analysis module that offers NCDPI and PK-13 Educational Institutions a means to manage and analyze Exceptional Children data. The Special Education Module components include but are not limited to:
 1. A case management/workflow-oriented application for Exceptional Children professionals that eliminates redundant data collection, reduces paperwork, and allows the efficient capture of statewide Exceptional Children data, and focuses on ease of use of the Exceptional Children process for the user while still maintaining compliance to federal and state mandates.
 2. A process to perform child counts including the validation, verification, and reporting of

the counts per federal and state mandates.

3. A Behavior Support Services (BSS) component to collect and report data pertaining to students who have been identified as having a behavioral or emotional disability and other exceptional children who have discipline problems and severe behaviors.
4. A Record Review component allowing users to report on items being monitored and the corrective actions for the student record to meet compliance.
5. A Mediation, Due Process, Complaint and Facilitation component, which tracks and reports on events that occur with disputes pertaining to a student's free and appropriate public education and any corrective actions and/or resolutions to the issues.
6. A Funding Source component which allows for entry designations and reporting of students that are receiving special funding such as, but not limited to, PRC29, Deaf-Blind Census, Group Home, and Risk Pool.
7. A Business Intelligence (BI) tool for the automatic generation, routing and approval of reports required by the NCDPI, State and Federal Government (Office of Special Education Programs).
8. The functionality must interface with other systems including, but not limited to, the state Student Information System (SIS) and the ECATS Operational Data Store (ODS).
9. The functionality must integrate with the Medicaid module and the MTSS module so a single user interface is presented.
10. The development and maintenance of the ECATS ODS (a combined set of data or Operational Data Store (ODS) from the Special Education module, Multi-Tiered Systems of Support module, and Medicaid module). Reports produced from the ECATS ODS may contain any combination of data, based on user access, from the Special Education, MTSS, and Medicaid modules.
11. Responsible for a single user interface providing access, based on user security, to all three modules: Special Education module, MTSS module, and Medicaid module.

b. Multi-Tiered Systems of Support (MTSS) Objectives

- i. The Multi-Tiered System of Support (MTSS) Module solution must integrate with the Medicaid and Special Education modules allowing for a single user ECATS interface system. The MTSS Module solution must offer NCDPI and PK-13 Educational Institutions a means to collect and report on the instruction and interventions a school uses to support students including the outcomes of those supports.

c. Medicaid Objectives

- i. The Medicaid Module Solution will integrate and use the data available from the Special Education and MTSS modules to process Medicaid claims for exceptional children allowing for a single user ECATS interface system. The system will guide the personnel through the maze of Medicaid regulations, minimizing the possibility of violating laws and regulations, but maximizing legitimate reimbursements. The Medicaid Module must be efficient and constantly kept up to date with changing Medicaid laws. The claims must be processed without users having to use the services of a third party and without adding additional staff.

- d. **Special Education, MTSS, and Medicaid Objectives:** the following objectives apply to all three modules.

- i. The Module solution must be made available to NCDPI and the PK-13 Educational Institutions in the state. The Vendor will be solely responsible for system infrastructure, system functionality, performance, reliability, data and system security, internet connectivity, incremental and full system backups, disaster recovery, and all required software licenses of the system and infrastructure. The vendor will be solely responsible for the provision and housing of the Module computer hardware within a designated physical facility including provisioned computer rack space, conditioned electrical power and multiple access paths to the internet; provision of secure access via the Internet, using a web browser and web services, to the Module by users; installation, configuration, system administration, and maintenance services for the facilities, equipment, and software required to operate and ensure access to the solution in a manner consistent with this RFP. The Module will reside in a private cloud. The Vendor or its approved subcontractor will also perform standard database administration functions to maintain efficient and secure operation of the hosted databases. The Vendor shall provision and support a minimum of three system instances – production, training and a testable (QA) non-production instance.
- ii. The Vendor will be responsible for delivery of all products and services which comprise the Module solution and assist NCDPI with the implementation, configuration, training, and on-going support of these products and services as necessary. It is the Vendor's responsibility to make certain that all hardware, software, services, and support are included in their proposal to guarantee a fully functional Module solution.
- iii. The Vendor must have a comprehensive and well documented implementation methodology available to PK-13 Educational Institutions and NCDPI to facilitate the implementation of the Module solution. The implementation documentation must be available on-line. Professional services must be available to complement the on-line documentation.
- iv. The Vendor training resources should include on-line documentation, a knowledgebase, on-demand webinars, and instructor lead training. The Vendor should maintain a video library of instructional videos accessible on-demand by users and NCDPI. The Vendor(s) should provide In-Person Training Sessions for approximately one hundred (100) in-house NCDPI staff. The Vendor(s) should provide training for two (2) staff for each of the one hundred nineteen (119) LEAs and two (2) staff for each of the one hundred twenty three (123) Charter School personnel, approximately four hundred eighty four (484) total for PK-13 Educational Institutions. The training should provide a detailed review of commonly used features of the Module solution. The Vendor should provide and allow NCDPI to duplicate and use the Vendor Training Materials for training.
- v. The Vendor must maintain a support center providing service levels of support which operates from 8:00 AM – 5:00 PM EST Monday through Friday. NCDPI is responsible for first level support. NCDPI support will also include access to a support portal and knowledgebase. The Vendor must maintain an incident response plan which includes incident severity classifications and definitions, target response times and resolution times, and escalations.
- vi. The Vendor will conduct regular third-party security audits of the Module application and share the results with NCDPI. The Vendor must maintain a calendar of planned maintenance activities. The Vendor must provide proactive communications regarding all planned and emergency maintenance events.
- vii. The Vendor must generate and distribute to NCDPI monthly status reports, including a

summary of customer support incidents reported by NCDPI, the total and incremental number of NCDPI service descriptions for the month, and availability and performance data. The Vendor must conduct monthly conference calls with NCDPI to review and discuss the performance of Vendor in meeting their responsibilities for delivering the Module solution, notable outages and incidents, efforts to improve on identified problems, and other issues affecting NCDPI and PK-13 Educational Institutions.

- viii. The Vendor must conduct an annual NCDPI and PK-13 Educational Institution satisfaction survey, the content of such survey shall be shared with NCDPI in advance with NCDPI input solicited prior to the distribution of the survey. The final results of the NCDPI and PK-13 Educational Institution customer satisfaction survey shall be shared NCDPI.
- ix. Conversion of Data. Conversion of data from existing systems is a critical aspect of the success of the project. Data must be converted from existing systems as new functionality is brought into the ECATS production environment. The Vendor will be responsible for ensuring that the data conversion effort is given high priority and that data validation and data cleansing are key components of the acceptance of the system. Conversion of the data must be done with a high degree of confidence so that future processing does not experience problems or failure associated with inaccurate data. Phased milestones for conversion deliverables shall be included in the Vendor's Project Schedule

The Vendor will be responsible for:

- developing a detailed Data Migration Plan. This plan must include details on data cleansing and migration of essential data from existing systems.
- developing specifications for the extraction and cleansing of data from existing systems;
- developing and testing the software necessary to load the extracted data; and
- executing and validating the conversion process.

10) Technical Specifications: Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Compliance with technical specifications is mandatory.

- a. The Vendor must complete [Appendix: A – “Module Service Specification”](#) and submit it with their response to this RFP. Any deviation from specifications must be clearly identified as an exception in Vendor's completed “Appendix A – “Module Service Specification”. Each module has a corresponding worksheet in Appendix A – “Module Service Specification”. ALL worksheets must be completed.
 - i. Fill out the ‘Special Ed’ worksheet for the Special Education module.
 - ii. Fill out the ‘MTSS’ worksheet for the Multi-Tiered Systems of Support (MTSS) module.
 - iii. Fill out the ‘Medicaid’ worksheet for the Medicaid module.

The Vendor must detail the features and functionality available with their proposed solution. The Vendor must describe additional features and functionality not included in Appendix A – “Module Service Specification” which they believe will significantly benefit NCDPI and PK-13

Educational Institution users.

- b. The Vendor must complete "[Appendix B, "Module Technical Specifications"](#)" and submit it with their response to this RFP. Any deviation from specifications must be clearly identified as an exception in Vendor's completed Appendix B – "Module Technical Specification". All technical requirements contained within Appendix B – "Module Technical Specification" apply to all three (3) modules: Special Education, Medicaid, and MTSS. ALL worksheets must be completed (Performance, Web Function, Technical Integration, Platform, Fault Tolerance Failover, Operational Limits and Scalability, Security, Admin-Monitoring & Reporting, Training Needs, and Testing).

The Vendor must detail the features and functionality available with their ECATS Service solution. The Vendor must describe additional features and functionality not included in Appendix B – "Module Technical Specifications" which they believe will significantly benefit users.

- c. ECATS Service Solution Deployment Method: The Vendor must describe the ECATS Service solution deployment method proposed.
 - 1. The Vendor must describe whether their solution utilizes a single-tenant (multi-instance) or multi-tenant architecture. A multi-tenant architecture is defined as an architecture where a single software instance supports multiple entities.
 - ii. The Vendor must describe how their proposed deployment method will scale to support 275 PK-13 Educational Institution entities. There are 119 LEAs (school districts) with approximately 2650 schools, 123 Charter schools, and approximately 5 SOPs. There are approximately 1.5 million students and approximately 250,000 teachers and staff statewide. The following URL is a link which contains a wealth of statistics on NC schools, students, teachers and staff: <http://www.localschooldirectory.com/state-schools/NC>
 - iii. The Vendor must describe how they calculate application availability and include in their proposal their monthly availability figures for the past twelve months at a minimum. The Vendor shall describe their use of third-party security audits and indicate any security standards that direct the security audits.
- d. Management Tools: The Vendor must describe what management tools will be provided to NCDPI to manage a multi-instance or multi-tenant environment.
- e. IAM: The Vendor must describe how the ECATS Service will integrate with the Identity Access Management (IAM) service.
- f. Implementation Methodology: The Vendor must describe their implementation methodology and processes for activating or enabling the ECATS Service for a new PK-13 Educational Institution. The Vendor must describe the roles and responsibilities for the Vendor, NCDPI and the PK-13 Educational Institutions during implementation.
- g. Training: The Vendor must describe the training, services and resources available to PK-13 Educational Institutions and NCDPI.
 - 1. The Vendor must describe what specific training is required and/or recommended for PK-13 Educational Institution technical personnel designated to administer the ECATS Service solution.
 - 2. The Vendor must describe training included with the purchase of the ECATS Service solution. This may include training vouchers or other training credits.
 - 3. The Vendor must describe the types of training they provide, including any instructor-led

(customer site and Vendor site) and on-line.

4. The Vendor must describe the on-line training resources that are available to PK-13 Educational Institutions and NCDPI.
- h. Post-Implementation Support and Maintenance: The Vendor must describe the post-implementation support and maintenance services and resources available to PK-13 Educational Institutions and NCDPI.
1. The Vendor must describe the on-going operational roles and responsibilities for the Vendor, PK-13 Educational Institutions, and NCDPI.
 2. The Vendor must describe what support contact methods are provided (phone, email, and web) by the Vendor for requests that involve contact/response, and provide expected turnaround and hours of operation.
 3. The Vendor must describe their procedures for communicating planned and emergency maintenance activities NCDPI.
 4. The Vendor must describe their online knowledgebase and portal available to PK-13 Educational Institutions and NCDPI.
 5. The Vendor should describe any additional professional services which the Vendor may provide with this service.
- i. Physical Facilities: The Vendor must describe the physical facilities where the ECATS Service will be hosted as well as the facility configuration including Internet connectivity, power management and site security. Describe any industry certifications that these facilities have achieved (e.g. Tier III/IV, SSAE 16, SOC1, SOC2, etc.) If vendor's application is hosted by a third party, please provide details of that hosting agreement.
- j. The Vendor Professional Background and Experience working with PK-13:
1. The Vendor must describe their understanding of, and experience with the unique needs of the PK-13 community.
 2. The Vendor must provide a summary of key elements that differentiate their proposed solution, company, customers, etc., from their competition to make it the best choice for NCDPI.
 3. The Vendor must demonstrate and describe its experience with similar implementations in both size and scope to those proposed for this project.
- k. Service Market: The Vendor must describe how they believe the Service market will change over the next two (2) to three (3) years and how their products and services will evolve to meet those changing needs.
- l. Solution Roadmap: The Vendor must describe their solution roadmap over the next two (2) to three (3) years and key capabilities that will likely be introduced.
- m. References: The Vendor must provide three (3) references of customers utilizing the proposed ECATS Service solution fully implemented, preferably in an education setting. The Vendor must have implemented the respective system within the last three (3) years. Customer references whose business processes and data needs are similar to those performed by NCDPI in terms of functionality, complexity, and transaction volume are encouraged. Please do not provide references for customers using a product other than the one the Vendor is proposing.

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

1. Customer name

2. Customer address
 3. Current telephone number of a customer employee most familiar with the project
 4. Time period over which each project was completed
 5. Brief summary of project
 6. List of products installed and operational
 7. Number of technical staff support, maintaining and managing product
 8. Number of students in school district or state supported by project (if appropriate)
 9. Number of school sites supported by project (if appropriate)
- n. Product Interfaces: The Vendor must provide a list of all Customers and their products that the ECATS Service they are proposing currently interfaces and is operational, or interfaced with and was operational within the last 3 years.
For each product interface, the Vendor shall provide the following information:
1. Customer name
 2. Customer address
 3. Current telephone number of a customer employee most familiar with the interface
 4. List of product(s) installed and operational
 5. Time period over which the ECATS Service has or was previously interfaced with the product
 6. Brief summary of the interface

Section IV. Cost Proposal

- A. The vendor must list and describe any applicable proposal costs which may include the following:
1. Future customization for customer requested enhancements
 2. Training including training materials
 3. Updates to supplemental files
 4. New functionality
 5. Other costs (*provide details of each proposed cost*)
 6. The consulting and other value added service hourly rates or costs shall be listed separately by type of service. Travel and lodging expenses, if any, must be thoroughly described; and are limited by the State's SAAS Terms and Conditions.

ECATS Cost Template					
Item #	Cost Description	Special Ed Module Cost	MTSS Module Cost	Medicaid Module Cost	ECATS Service Total Cost

1	<p>The Firm Fixed Price Subscription Fee for the module's <u>Statewide Implementation</u> of the Vendor proposed solution:</p> <p>*This is the year one (1) and year two (2) subscription fee which is to be inclusive of all Deployment, Integration, Implementation, Data Migration, Maintenance and Technical Support for the module's ECATS Service solution.</p>				
2	<p>The optional year three (3) Firm Fixed Price Subscription Fee for the module's Implementation of the Vendor proposed solution:</p> <p>*This is the subscription fee inclusive of any additional Integration, Implementation, Data Migration, Maintenance and Technical Support for the modules ECATS Service solution.</p>				
3	Any other proposed fee for the module's ECATS Service.				
Additional Comments					

- B. Payment Plan Proposal - If the Vendor has a specific payment schedule or installment payment plan or percentage payment plan, etc. it must be detailed here.
- C. Vendors who propose an Alternative cost response must submit a separate document labeled "ALTERNATIVE COST RESPONSE".
- D. **Optional.** A Cost Response Form may be used to summarize the Vendors' pricing responses to specifications.

Section V. Other Requirements and Special Terms

- 1) VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.: In accordance with N.C.G.S. §143B-1334(b), the Vendor must detail the manner in which it intends to utilize resources or workers in the RFP response. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:
 - a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States
 - b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
 - c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States
 - d) Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided

Will any work under this contract be performed outside the United States?

Where will Services be performed:

YES _____

NO _____

2) Special Terms and Conditions

a) Paragraph #15 of the State's Terms and Conditions is supplemented as follows: The Agency reserves the right to perform post-delivery and post-training acceptance testing for a period beginning at delivery of and access to a fully-functioning ECATS System and lasting three (3) weeks. The Agency also reserves the right to have an independent Vendor conduct assurance testing pertaining to the functions, auditability, and related matters. At any time before the end of the test and assurance period the Agency may require any or all of the following:

- i) Have the Vendor modify the installed software to eliminate the deficiency to the Agency's satisfaction.
- ii) Have the Vendor re-install a new copy of the software product(s).
- iii) Extend the acceptance testing period for a period of twenty (20) days to allow time for Vendor to remedy the problems.
- iv) Remove the application software, cancel this Agreement, and recover payments extended from Agency funds.

3) Financial Statements, *If requested by the State*, the Vendor shall provide evidence of financial stability with its response to this RFP as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements.

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

4) Disclosure of Litigation – The Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of this Contract.

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

- b) Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any awarded to Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
- c) All notices under subsection A and B herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the ITS General Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

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

6) Security and Background Checks – The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.

7) Assurances – In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:

- a) the ability of the Vendor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
- b) whether the Vendor or its subcontractor in performing Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of law, regulation or public policy, then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing Services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

8) Confidentiality of Data and Information – All RFP responses, information marked as confidential or proprietary, financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Vendor in order to carry out this Contract, or which become available to the Vendor in carrying out this Contract, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written

consent of the State, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

Furthermore, the Vendor must comply with the following laws, policies and standards as it may relate to Personal and/or Confidential data, which is defined as follows:

- a) NC Personal Identifying Information Compliant in accordance with the Identity Theft Protection Act, N.C.G.S., Chapter 75, Article 2A. N.C.G.S. § 75-61(10) defines personal information, in part, as “[a] person’s first name or first initial and last name in combination with identifying information as defined in G.S. 14-113.20(b).” As of July 2007, “identifying information” is defined by N.C.G.S. § 14-113.20(b) to include Social Security Number or employer taxpayer identification numbers, Driver’s License, State Identification Card, or Passport Numbers, Checking Account Numbers, Savings Account Numbers, Credit Card Numbers, Debit Card Numbers, Personal Identification (PIN) Code as defined in N.C.G.S. § 14-113.8(6), Electronic identification numbers, electronic mail names or addresses, internet account numbers, or Internet identification names, Digital Signatures, any other numbers or information that can be used to access a person’s financial resources, Biometric Data, Fingerprints, Passwords and Parent’s legal surname prior to marriage.
- b) Family Educational Rights & Privacy Act: Student educational records are subject to 20 U.S.C. 1232g and 34 CFR Part 99, Family Rights and Privacy Act (FERPA). The Vendor shall ensure that the proposed solution fully complies with FERPA and every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The Vendor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information shall be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this Contract.

Health Insurance Portability and Accountability Act: Student medical records are subject to P.L. 104-191 and 45 CFR Parts 160, 162 and 164, the Health Insurance Portability and Accountability Act (HIPAA). The Vendor shall ensure that the proposed solution fully complies with HIPAA and every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The Vendor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information, including medical and other health information, shall be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this Contract.

9) Software terms - *Reserved.*

10) Project Management – All project management and coordination on behalf of the Agency shall be through a single point of contact designated as the Agency Project Manager. Vendor shall designate a Vendor Project Manager who will provide a single point of contact for management and coordination of Vendor’s work. All work performed pursuant to this Contract shall be coordinated between the Agency Project Manager and the Vendor Project Manager.

11) Meetings – The Vendor is required to meet with Agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Contract. Meetings will occur

as problems arise and will be coordinated by Agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at the Vendor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Contract.

12) Transition Assistance - If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Vendor must provide for up to six (6) months after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance. If the State cancels this Contract for cause, then the State will be entitled to off set the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

13) Term Extensions – Reserved.

14) Quality Assurance, Performance and Reliability - Vendor shall provide a complete response to Section III. Quality Assurance, Performance, and Reliability measures are specifically addressed in Section III, paragraph 9 subparts d(v), d(vi), d(vii) and d(viii). In addition, Vendor shall comply with the acceptance testing requirements in Section V, Paragraph (2), subpart a). Vendor shall provide a copy of their standard Service Level Agreement (SLA) in accordance with Section V paragraph 18. Further, Vendor shall comply with the Software Escrow requirements in Section V paragraph 19. The State reserves the right to negotiate additional quality assurance, performance, and reliability measures as applicable relevant to the Vendor's submitted response to this RFP.

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

a) It is understood and agreed by both parties that all of the terms and conditions of this Contract shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from this Contract, nor in any manner amend or supersede any of the other terms or provisions of this Contract or any amendment hereto.

b) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to Vendor's personnel, an estimated time schedule for the provision of the Services by Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.

c) All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by Vendor and the State prior to beginning work.

d) The State has the right to require Vendor to stop or suspend performance under the "Stop Work" provision of the North Carolina Department of Information Technology Procurement Office General Terms and Conditions for Goods and Related Services.

- e) Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under this Contract cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:
 - i.) Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
 - ii.) Terminate the work authorization, or
 - iii.) Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
 - iv.) The State will notify Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

16) Due Diligence – Reserved.

17) Debarment – If any of the ECATS Services rendered under this contract are to be paid with federal funds, the Vendor hereby certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.

18) The Vendor shall provide a copy of their standard Service Level Agreement (SLA) or support agreement and include notation of optional levels of service. The agreements should include, but not be limited to, 99.99% uptime on a quarterly basis; maintenance windows as specified with downtime for maintenance/updates coordinated in advance; availability objectives (including disaster recovery); procedures for reporting incidents to the Vendor (including Vendor support contact information); incident severity classifications and definitions, response times and resolution times, and escalations. The agreements shall include provisions establishing the remedies, such as refunds or service credits, that NCDPI shall be entitled to in the event that Vendor fails to meet the performance metrics established in the agreement.

19) Software Escrow: Vendor must deliver an Escrow Source Code Package to an Escrow Agent as part of the licensing agreement.

a) Definition. “Escrow Source Code Package” is defined as:

- i) A complete copy in machine-readable form of the source code and executable code of the Licensed Software, including any updates or new releases of the product;
- ii) A complete copy of any existing design documentation and user documentation, including any updates or revisions; and/or
- iii) Complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. Such instructions shall include precise identification of all compilers, library packages, and linkers used to generate executable code.

b) The Vendor must provide the following information:

- i) Name and address of third party acting as escrow agent
- ii) Source code escrow procedures
- iii) Name and address of party who audits the escrow account
- iv) Frequency of updates and maintenance of source code at escrow agent

c) Delivery of Source Code into Escrow. Vendor shall deliver an Escrow Source Code Package to the Escrow Agent within thirty (30) days of the release of code to Production.

d) Delivery of New Source Code into Escrow. If at anytime during the term of this Contract, the Vendor provides a maintenance release or upgrade version of the Licensed Software, Vendor shall within ten (10) days deposit with the Escrow Agent an Escrow Source Code Package for the maintenance release or upgrade version, and provide NCDPI with notice of the delivery.

e) Verification. NCDPI reserves the right at any time, but not more than once a year, either itself or through a third party contractor, upon thirty (30) days written notice, to seek verification of the Escrow Source Code Package.

f) Escrow Fees. All fees and expenses charged by the Escrow Agent will be paid by the Vendor.

i) Release Events. The Escrow Source Code Package may be released from escrow to NCDPI, upon the occurrence of one or more of the following:

(1) The Contractor becomes insolvent, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under bankruptcy or insolvency law, whether domestic or foreign;

(2) The Contractor has liquidated its business voluntarily or otherwise and the NCDPI has reason to believe that such events will cause the Contractor to fail to meet its warranties and maintenance obligations in the foreseeable future;

(3) The Contractor voluntarily or otherwise discontinues support of the provided products or fails to support the products in accordance with its maintenance obligations and warranties.

ii) License. Upon release from the Escrow Agent pursuant to an event described in **Section (f)** above, the Contractor automatically grants NCDPI a non-exclusive, irrevocable license to use, reproduce, modify, maintain, support, update, have made, and create Derivative Works. Further, NCDPI shall have the right to use the Escrow Source Code Package in order to maintain and support the Licensed Software so that it can be used by NCDPI as set forth in this Contract.

iii) Derivative Works. Any Derivative Works to the source code released from escrow which are made by or on behalf of NCDPI shall be the sole property of NCDPI. NCDPI acknowledges that its ownership rights are limited solely to the Derivative Works and do not include any ownership rights in the underlying source code

Section VI. Proposal Content and Organization

1) This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Offers will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.

2) Information and Descriptive Literature. Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with their offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.

3) Proposal Content. Demonstrate compliance with all mandatory conditions, requirements and terms of performance.

a) Clearly state your understanding of the problem(s) presented by this RFP.

i) Response to mandatory and desired technical specifications

ii) Cost offer

b) Detailed description of Vendor's firm should include all of the following:

- i) Full name, address, and telephone number of the organization;
 - ii) Date established;
 - iii) Background of firm;
 - iv) Ownership (public company, partnership, subsidiary, etc.);
 - v) If incorporated, state of incorporation must be included.
 - vi) Number of full-time employees on January 1st for the last three years or for the duration that the Vendor's firm has been in business, whichever is less.
- 4) Any deviation from specifications must be stated on a separate page, labeled "Exceptions to Specification" with references to the corresponding terms or provisions of the Solicitation.
- 5) Offer Format. The offers should be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. **The Execution page of this RFP must be placed at the front of the Proposal.** Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the Vendor's offer. All offers should be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.
- 6) Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the offer and subsequent evaluation process:
- a) Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
 - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 7) RFP Response Organization: The offer should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.
- a) Letter of Transmittal - Each offer must be accompanied by a letter of transmittal that provides the following information: ([see Attachment B: "Letter of Transmittal"](#))
 - i) Identify the submitting organization;
 - ii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized by the organization to contractually obligate the organization;
 - iii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the contract on behalf of the organization;
 - iv) Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;
 - v) Acknowledge receipt of any and all amendments to this RFP.
 - b) Table of Contents
 - c) Offer Summary. An offer summary may be included by Vendors to provide the Evaluation Committee with an overview of the technical and business features of the offer; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Vendor's offer
 - d) Response to Technical Specifications
 - i) Module Service Requirements (see [Section III Technical Specifications 10\) subsection a., Appendix A – "Module Service Specifications"](#))
 - ii) Module Technical Specifications (see [Section III Technical Specifications 10\) subsection b., Appendix B – "Module Technical Specifications"](#))
 - (a) The Vendor shall describe the proposed ECATS system architecture
 - (b) The Vendor shall describe and diagram the proposed ECATS system physical architecture and hardware infrastructure
 - iii) Service Solution Deployment Method: (see [Section III Technical Specification 10\) subsection c. Service Solution Deployment Method](#))
 - iv) Management Tools: ([see Section III Technical Specifications 10\) subsection d. Management Tools.](#))
 - v) Identify Access Management: ([see Section III Technical Specifications 10\) subsection e. IAM](#))

- vi) Implementation Methodology: ([see Section III Technical Specifications 10\) subsection f. Implementation Methodology](#))
 - vii) Training: ([see Section III Technical Specifications 10\) subsection g. Training](#))
 - viii) Post-Implementation Support and Maintenance: ([see Section III Technical Specifications 10\) subsection h. Post-Implementation Support and Maintenance](#))
 - ix) Physical Facilities: ([see Section III Technical Specifications 10\) subsection i. Physical Facilities](#))
 - x) Vendor Experience: This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the ECATS Services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. ([see Section III Technical Specifications 10\) subsection J.](#))
 - xi) Service Market: ([see Section III Technical Specifications 10\) subsection k. Service Market](#))
 - xii) Solution Roadmap ([see Section III Technical Specifications 10\) subsection l. Solution Roadmap](#))
 - xiii) Reference Checks ([see Section III. Technical Specifications, paragraph 10\) Technical Requirements/Specifications, subsection m. References](#))
 - xix) Product Interfaces ([see Section III. Technical Specifications, paragraph 10\) Technical Requirements/Specifications, subsection n. Product Interfaces](#))
- e) Completed Cost Offer ([see Section IV Cost Proposal](#))
 - f) Financial Statement ([see Section V Other Requirements and Special Terms, paragraph 3\) Financial Statements](#))
 - g) Conflict of Interest:
 - i. Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP;
 - ii. State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
 - iii. State the employing State Agency, individual's title at that State Agency, and termination date.
 - h) Vendor's Additional Terms and Conditions
 - i) Exceptions to Specifications, if any. Bids conditioned upon acceptance of Vendor Exceptions may be determined to be non-responsive by the State.
 - j) Copy of Vendor's License and Maintenance Agreements
 - k) Copy of Vendor's Service Level Agreement ([see Section V paragraph 18](#))
 - l) Information on Vendor's Software Escrow ([see Section V paragraph 19b](#))
 - m) Other Supporting Material Including Technical System Documentation
 - n) Training and Other Materials, Samples or Examples
 - o) Within each section of their offer, Vendors should address the items in the order in which they appear in this RFP. Forms, if any provided in the RFP, must be completed and included in the appropriate section of the offer. All discussion of proposed costs, rates, or expenses must be presented with the cost response.
- 8) Any offer that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.
 - 9) Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

VII. Department of Information Technology SAAS Terms and Conditions

1) DEFINITIONS:

- a) "Agency" means the Agency purchasing the ECATS Services, together with PK-13 Educational Institutions.
- b) "Data" means recorded information, regardless of form or method of recording.
- c) "End User" means user(s) from the Agency.
- d) "PK-13 Educational Institution" means all current and future North Carolina Local Education Agencies (LEAs), Charter Schools, Regional Schools, Educational Services for the Deaf and Blind Schools (ESDB), and other public schools and entities under their purview as the need may arise (individually or collectively).
- e) "Services" shall mean the duties and tasks undertaken to fulfill the requirements and specifications of this solicitation or any extension term.
- f) "Software" or "Software Application" shall mean the Web-based Software Application provided by the Vendor as Software as a Service ("SaaS") under this solicitation.
- g) "Support" includes Software updates, maintenance and support Services conducted by the Vendor on its own Web-based Software, and consulting, training and other support Services provided by or through Vendor for the State,.
- h) "Use," in the context of Computer Software execution and operation in Section 1 and 2 hereinbelow, means storing, loading, installing, executing or displaying Software or its Data on a Computer, processor or controller.
- i) Software as a Service shall mean the Vendor Software applications residing or provided on the Vendor's system and accessed by authorized users through a web browser and shall include Vendor-hosted storage, databases, related documentation, and other functionalities or services provided with the Software to facilitate the use of the Software.

2) USE OF SAAS SERVICES:

a) Vendor grants the State, the Agency, and PK-13 Educational Institutions a personal non-transferable and non-exclusive right to use and access, during the term(s) of this Contract and paid subscription, for the number of State users agreed or as may be agreed, all Web-Based Software Applications and related storage, databases, documentation, and other functionalities or Services provided with the Software to facilitate the use of the Software furnished or accessible under this Agreement. The Agency is authorized to access Agency Data and Vendor provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the Agency Data and shall include the right to, and access to, any upgrades, updates, releases or other enhancements or modifications made generally available to Vendor's customers or tenants of the same or similar Web-Based Software Applications and Services provided herein without the Vendor requiring a separate maintenance or support agreement. The Agency may use the Web-based Software Applications with any computer, computer system, server, or desktop workstation owned or utilized by the Agency. User access to the Web-Based Software Applications Services shall be routinely provided by the Vendor. The Agency shall notify the Vendor immediately of any unauthorized use of any password or account, or any other known or suspected breach of security access. The Agency also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Web-Based Software Applications or any portion thereof. Use of the Web-Based Software Applications to perform Services for commercial third parties (so-called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its usual and governmental functions. If the Web-based Software Application fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval.

a) The Agency's license for the Web-based Software Application and its associated Services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Web-based Software Application unless otherwise agreed to by the parties. The provisions of this section will not be construed as a sale of any ownership rights in the Web-Based Software

Application unless, and only to the extent, Custom Software is being developed as a Work for Hire in response to the Agency's solicitation documents. Any Web-based Software Applications or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the Agency shall be and remain the property of the Vendor or other party, respectively.

c) The Web-Based Software Applications shall be in good working order and operating in conformance with Vendor's standard specifications and functions. The State shall notify the Vendor if the Web-Based Software Applications are not in good working order or inaccessible during the term of the Contract. Vendor shall, at its option, either repair or replace any Web-Based Software Applications reported or discovered as not being in good working order during the applicable contract term without cost to the State. The Web-Based Software Applications shall be available 24 x 7, with the exception of scheduled outages for maintenance, except as may be mutually agreed in any SLA or other document by the parties.

d) Support. Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Software or Services procured hereunder during the State's normal business hours. Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards.

e) Acceptance. Successful access by the Agency's users to the Vendor's Web-Based Software Applications is required. The Agency shall notify the Vendor in writing within ten days that the Agency's Users cannot successfully access the implemented Web-Based Software Applications. Final acceptance is expressly conditioned upon such successful access and other requirements as specified herein.

f) Software or Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Software. All terms and conditions of any clickwrap agreement provided with any Software or Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Software and/or Services.

g) The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS licensees. Vendor's right to a new use agreement for new version releases of the Software shall not be abridged by the foregoing.

3) USE OF SOFTWARE AND INFORMATION:

a) The State agrees that any SaaS Software or technical and business information owned by Vendor ("Information") or its suppliers or licensors, the use of which is furnished to the State under this Agreement, shall be and remain the property of the Vendor, or other party, respectively.

b) All Software Modifications and information furnished to the State under this Agreement

i) Shall be used by the State only to install, operate or maintain the Product for which they were originally furnished;

ii) Shall not be reproduced or copied, in whole or in part, except as necessary for use as authorized under this agreement; and

iii) Shall, together with any copies except copies for the Agency's and State's archival purposes containing the State's business records, be returned or destroyed when no longer needed or permitted for use with the Product for which they were initially furnished; and

c) All Software and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: NCGS §132-1, et seq.

4) ACCESS AVAILABILITY AND WARRANTY:

a) SAAS ACCESS AVAILABILITY STANDARDS. Vendor agrees that the SaaS will be available 24/7 (except for scheduled maintenance windows) and in accordance with the highest standards of the Vendor's industry and more specifically in accordance with any specific Service Level Agreement (SLA) or service level standards negotiated and agreed between the parties.

b) MINIMUM WARRANTIES FOR ANY REQUIRED AGENCY SOFTWARE MODIFICATIONS or other Software implemented or provided by the Vendor shall include:

i) The Software will be in good working order (operating in conformance with Vendor's standard

specifications and functions and the agreed Software Performance Guarantees herein) and the SaaS Services shall remain accessible 24/7 or as specified herein.

ii) The warranty shall be as provided or specified in the State's solicitation documents and shall begin upon successful production use and acceptance by Agency. If no warranty period is specified, the warranty period shall be Vendor's standard warranty period for the Software, commencing the day of successful use.

iii) If the State requires warranty service other than under this Agreement, it shall be agreed to in writing by the parties at rates and terms set forth in such writing.

iv) In addition to the warranty exclusions stated in Paragraph 4, Vendor does not warrant that the operation of the Software will be uninterrupted or error free, or that the Software functions will meet the State's requirements unless developed as Customized or Modified Software. The State assumes the risk of any damage or loss from its misuse or inability to use the Software.

v) For any Configurations, Customized or Modified Software, if any, provided pursuant to this Agreement, Vendor warrants that for a period of one (1) year after the State accepts said Software, it will operate and perform in accordance with the functions and specifications set forth in the solicitation and error free as the solution for the Agency. This express warranty applies only if the State implements the Customized or Modified Software.

vi) Unless otherwise required by the State: Vendor warrants that its support and customer service and assistance will be performed in accordance with generally accepted industry standards. This warranty shall be valid for ninety (90) days from the date support is provided or performance of the service.

vii) Vendor warrants to the best of its knowledge that:

- (1) The licensed Software or Modifications, if any, and associated materials do not infringe any intellectual property rights of any third party;
- (2) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- (3) The Services will be provided consistent with and under the Software Performance guarantees herein.

5) WARRANTY EXCLUSIONS:

a) Except as stated in Section 3 above, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to Software Modifications, and specifically disclaim warranties of merchantability or fitness for a particular purpose as provided by N.C.G.S. §§25-2-316, 25-2-313 and 25-2-315; and as may be amended.

b) The warranty provided in Section 3 above does not cover repair for damages, malfunctions or service failures caused by:

- i) Actions of non-Vendor personnel;
- ii) Failure to follow Vendor's operation or maintenance instructions and/or Services provided to the State;
- iii) Attachment to the Products or non-Vendor products or failure of Products not maintained by Vendor unless such installation or use procedures are provided in documentation or approved in writing by the Vendor; or
- iv) Force Majeure conditions set forth hereinbelow.

6) INDEMNITY:

a) Vendor shall indemnify and hold harmless the State/Agency from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney's fees, that are caused by or arise from, the negligent or wrongful acts or omissions of the Vendor under this Agreement and that cause death or injury or damage to property or that arise out of a failure to comply with any State or federal statute, law, regulation or act.

b) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Software or Products or Services supplied by the Vendor, their use or operation infringes on a patent, copyright, trademark or violates a trade secret in the United States. The

Vendor shall pay those costs and damages finally awarded or agreed in settlement against the State in any such action. Such defense and payment shall be conditioned on the following:

- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.

7) EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY:

a) For purposes of the exclusive remedies and limitations of liability set forth in this Paragraph, Vendor shall be deemed to include the Vendor and its employees, agents, representatives, subcontractors, and suppliers and damages shall be deemed to refer collectively to all injuries, damages, losses, liabilities, expenses or costs incurred.

b) Vendor's entire liability and the State's exclusive remedies against Vendor for any damages caused by any Product defect or failure or arising from the performance or non-performance of any work, regardless of the form of action, whether in contract, tort, including negligence, strict liability, or otherwise, shall be:

- i) For infringement, the remedies set forth in Paragraph 5(b) above;
- ii) For warranty claims based upon failure of purchased or leased Products or Software, the remedies stated in Paragraph 3 herein. If Vendor is unable, despite reasonable efforts, to repair or replace the Product(s) or reperform the Services, the State shall have the right during the warranty period to return the Products for a refund of the purchase price and/or Services fees; and
- iii) For delays in the delivery of successful Product, Software installation or first provision of Services, whichever is applicable, Vendor shall have no liability unless the delivery, successful installation of first provision of Services date is delayed by more than thirty (30) days from the agreed delivery or provision date by causes not attributable either to the State or to Force Majeure conditions, in which case the State shall have the right, as its remedies:

(1) To recover direct costs including replacement Products, if any, or reperformance of Services, attributable to Vendor's delay; but specifically excluding incidental or consequential damages, and

(2) To cancel the order without incurring cancellation charges: and

- iv) For proven damages to real or tangible personal property, excluding the State's other Software, data and data files, or for bodily injury or death to any person negligently caused by Vendor, and
- v) For claims other than set forth in Paragraph 6b (i-iv), Vendor's liability shall be limited to direct damages, and such sums shall not exceed two (2) times the Agreement value.

c) Should any Services, Product or Software 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 to procure for the State the right to continue using the Services, Product or Software, or to replace or modify the same to become noninfringing. If neither of these options can reasonably be taken in Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease use of any affected Services, Products or Software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Services, Products or Software. If, in the sole opinion of the State, the cessation of use of any such Services, Products or Software due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the State shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and Vendor agrees to refund any sums the State paid.

d) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation results from the State's alteration of any Vendor-branded Services, Product or Software, or from the continued use of the good(s) or Services, Products or Software after receiving notice they infringe on a trade secret of a third party.

e) Except to the extent provided in subsection 6 b) above, and with the further exceptions of intellectual property rights infringement actions, the state's constitutional rights as a sovereign, and penalties imposed upon the state by any federal entity or expenditures of public funds required or resulting from an operational

failure of the Products or Software provided hereunder, but notwithstanding any other term to the contrary contained in the Agreement, neither party shall, under any circumstances, be liable to the other party or its affiliates for:

- i) any claim based upon any third party claim,
- ii) any consequential, incidental or indirect damages of any nature whatsoever, including, without limitation, lost profits, lost savings or other consequential damages, whether resulting from delays, loss of data, interruption of service or otherwise, even if a party or its affiliates have been advised of the possibility of such damages, or
- iii) any punitive or exemplary damages of any nature whatsoever.

8) SAAS AND OTHER SUPPORT AND MAINTENANCE:

Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Software Services as provided to other similarly situated users of the Software Services, but minimally as provided for and specified herein.

Support will also be provided for any other (e.g., third-party) Software needed to implement the solution that may be located as an application on State client computers.

9) SOFTWARE VERSION RETIREMENT:

a) Unless otherwise provided in the Vendor's standard agreement, Vendor retains the right to retire a version of the Web-based Software and stop providing subscription support or annual Maintenance, Updates or Services, upon providing one-hundred and eighty (180) days written notice to the State of its intent to do so. The decision to stop maintaining a version of the Software is the sole business discretion of Vendor and shall not be deemed a breach of contract. If Vendor substantially retires the version of the Web-based Software Services Software provided to the State and if the State has paid all applicable annual Subscription Fees (or other annual maintenance fees) subsequent to executing this Agreement, the State shall be entitled to receive, at no additional charge, access to a newer version of the Web-based Software Services that supports substantially the same functionality as the then accessible version of the Web-based Software Services. Newer versions of the Software containing substantially increased functionality may be made available to the State for an additional subscription fee.

b) Vendor may, at no additional charge, modify Web-based Software Services to improve operation and reliability or to meet legal requirements.

10) STATE DATA: The State is responsible for the security of its proprietary or confidential information, for its data, and for maintaining a procedure and process to reconstruct lost or altered files, data or programs hosted onsite at the State. However, the Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality and will promptly provide the State Data back to the State in the event of termination of this contract or cessation of business by the Vendor or other major event preventing Vendor from continuing to provide the Services.

11) TRANSPORTATION: Transportation charges for any Deliverable sent to the State other than electronically or by download, shall be FOB Destination unless delivered by internet or file-transfer as agreed by the State, or otherwise specified in the solicitation document or purchase order.

TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.

In the event that the Vendor may be eligible to be reimbursed for travel expenses specifically agreed to in writing and arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under this Agreement.

12) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES: Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding Agreements. Violations of this provision may result in debarment of the Vendor(s) or Vendor(s) as permitted by 9 NCAC 06B.1030, or other provision of law.

13) AVAILABILITY OF FUNDS: Any and all payments by the State are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Agreement. If this Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of this Agreement extends into fiscal years subsequent to that in which it is approved such continuation of the Agreement *is expressly contingent upon* the appropriation, allocation, and availability of funds by the N.C. Legislature for the purposes set forth in the Agreement. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Products and Software not yet delivered under this Agreement, terminate any Services supplied to the Agency under this Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Products and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

14) PAYMENT TERMS: No payment shall be made by the State in advance of or in anticipation of Services actually performed and/or supplies furnished under the Contract. Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later. Payments are subject to retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.

a) Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- (1) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- (2) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- (3) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

b) For any third party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor shall be provided to the State before any related license fees or costs may be billed to the State.

c) Equitable Adjustment. The Agency may, in its sole discretion, make an equitable adjustment in the Agreement terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Vendor's control, (2) the volatility affects the marketplace or industry, not just the particular Agreement source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Vendor that continued performance of the Agreement would result in a substantial loss.

d) An undisputed invoice shall be limited to the following: an undisputed invoice is an invoice for which the State and/or the Purchasing Agency has not disputed the invoice in writing sent to the Vendor on the grounds of an invoice error within thirty (30) days from the invoice date. That is, in order for the State or the applicable Purchasing Agency to dispute any invoice under this Agreement, such dispute must be made in writing to

Vendor within thirty (30) days of the invoice date. Upon Vendor's receipt of such disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing Entity from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing Agency is not required to pay the Vendor for any goods and/or services provided without a written purchase order from the appropriate Purchasing Agency. In addition, all goods and/or services provided must meet all terms, conditions, and specifications of the Contract and purchase order and be accepted as satisfactory by the Purchasing Agency before payment will be issued.

15) ACCEPTANCE CRITERIA: Acceptance testing is required for all Vendor supplied Software and Services unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications and Vendor's technical representations. Acceptance of Software and Services may be controlled by amendment hereto, or additional terms as agreed by the parties. In the event acceptance of Software and Services is not described in additional contract documents, the State shall have the obligation to notify Vendor, in writing and within ten (10) days following provision of any Deliverable described in the contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a Deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Software or Services.

16) CONFIDENTIALITY AND DATA SECURITY: The State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 et seq. Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate information, Products, Software or appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL.**" By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

a) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.

b) Protection of Personal Identifying Information. Vendor acknowledges its responsibility for securing personal identifying information collected by the State and stored in any Vendor site or other Vendor housing systems, including but not limited to computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the Services. Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain security of personal identifying information; provide reasonable care and efforts to detect fraudulent activity involving personal identifying information; and promptly notify the Agency of any breaches of security involving personal identifying information.

c) All materials, including Software, Data, information and documentation provided by the State to the

Vendor during the performance or provision of Services hereunder is the property of the State of North Carolina and must be kept returned to the State. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance or provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

d) Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason (including the State's actual or alleged breach of the Contract) to promptly return to the State the State Data and any other State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Contract. As a part of Vendor's obligation to provide the State Data pursuant to this Section, Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data and any other State confidential information for use by the State or any third party.

17) SECURITY BREACH; DELIVERABLES: "Security Breach" means (1) any circumstance pursuant to which applicable Law (as defined in Section 26) (Compliance with Laws) requires notification of such breach to be given to affected parties or other activity in response to such circumstance; or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the ECATS Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the ECATS Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether or not by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing or destroying.

i) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Contract, Vendor shall, at its own expense, (1) immediately notify the State's Contract Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the general public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.

ii) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Contract resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of

legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. In the event that Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Contract, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.

DELIVERABLES: Deliverables, as used herein, shall comprise all Vendor Services, professional services, modifications to the web-based software and access portal, and incidental materials, including any goods, software access license, data, reports and documentation created during the performance or provision of Services hereunder. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. 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. "Deliverable," in context may only mean "Services."

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

19) ASSIGNMENT: Vendor may not assign this Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

20) NOTICES: Any notices required under this Agreement 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, facsimile or by hand.

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

22) AMENDMENT: This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor.

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

24) GOVERNING LAWS, JURISDICTION, AND VENUE: This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

25) DEFAULT: In the event any Deliverable furnished by the Vendor fails to conform to any material requirement of the specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the State's acceptance requirements, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 6) and the obligation to informally resolve disputes as provided in Paragraph 28) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1207 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

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

b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor'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 State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

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

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

a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 24), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following

i) Termination for Cause: In the event any goods, Software, or service furnished by the Vendor during performance fails to conform to any material specification or requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraph 6). The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by

Vendor shall be cause for termination.

ii) Termination for Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

29) DISPUTE RESOLUTION: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the State shall be submitted in writing to the Vendor's 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.

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

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

32) E-VERIFY: Pursuant to N.C.G.S. §143B-1323(k), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor shall submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

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

34) ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract. *Subparagraphs a) and b) may apply only to any goods procured herein, but not to Services.*

a) **Reserved.**

b) **Reserved.**

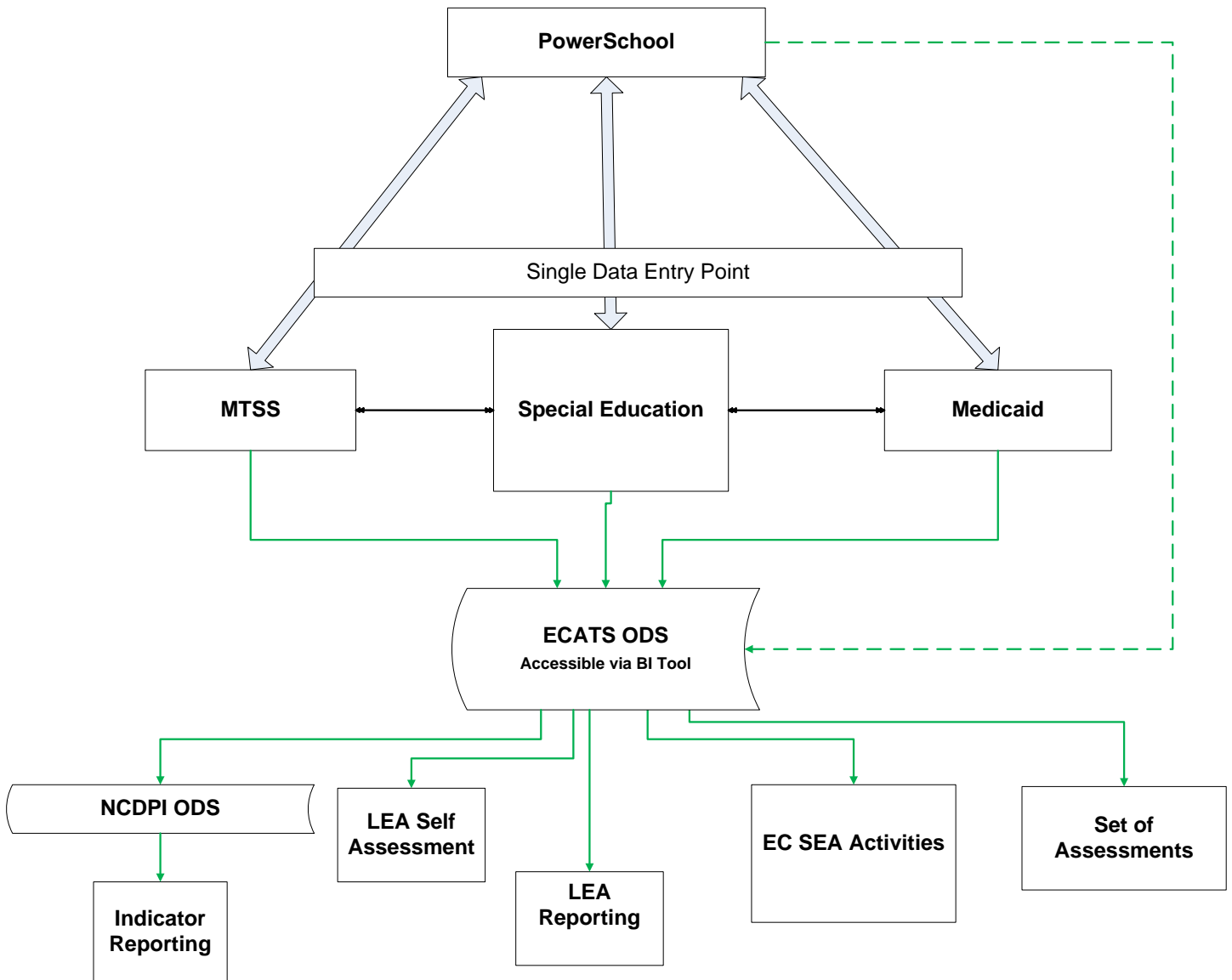
c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State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

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

Section VIII. Attachments or Exhibits

Attachment A – ECATS Data Flow (listed on the following page)

*Note: - - - lines indicate questionable data flow



Attachment B – Letter of Transmittal

ECATS Letter of Transmittal

1) Submitting Organization: _____

2) Person authorized to contractually obligate the organization:

Name: _____ Title: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

3) Person authorized to negotiate the contract on behalf of the organization:

Name: _____ Title: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

4) Person to be contacted for clarification:

Name: _____ Title: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

5) Is this submission an alternate offer? YES NO

If YES, list the offer number here: _____

6) Acknowledge receipt of any and all amendments to this RFP? YES NO

Name: _____ Title: _____

Signature: _____ Date: _____

Appendix: A, “Module Service Specifications”

This Appendix A is a Microsoft Excel Spreadsheet with 4 tabs, and is located at this url:

<http://newdev.www.ncpublicschools.org/publicnotices/notices/2015-16/20151117-01>. You will see the DPI “Public Notices” page. Right under the title “ECATS – RFP # 40-IT00114-15”, you will see a spreadsheet link ‘Appendix A: Module Service Specifications’. Click on this link to access the 4-tab spreadsheet. Tab 1 provides the instructions for completing Tabs 2 thru 4. Tab 2 represents the ECATS Special Educations Module Service Features and Functionality Requirements. Tab 3 represents the ECATS MTSS Module Service Features and Functionality Requirements. Tab 4 represents the ECATS Medicaid Module Service Features and Functionality Requirements. The Vendor shall provide a response to each requirement as specified in the instructions tab.

Appendix: B, “Module Technical Specifications”

This Appendix B is a Microsoft Excel Spreadsheet with 11 tabs, and is located at this url:

<http://newdev.www.ncpublicschools.org/publicnotices/notices/2015-16/20151117-01>. You will see the DPI “Public Notices” page. Right under the title “ECATS – RFP # 40-IT00114-15”, you will see a spreadsheet link ‘Appendix B: Module Technical Specifications’. Click on this link to access the 11-tab spreadsheet. All technical requirements contained within the Excel Spreadsheet apply to all three modules: Special Education, Medicaid, and MTSS. Tab 1 provides the instructions for completing Tabs 2 thru 11. Tab 2 represents the ECATS technical requirements relating to Performance. Tab 3 represents the ECATS technical requirements relating to Web Function. Tab 4 represents the ECATS technical requirements relating to Technical Integration. Tab 5 represents the ECATS technical requirements relating to Platform. Tab 6 represents the ECATS technical requirements relating to Fault Tolerance Failover. Tab 7 represents the ECATS technical requirements relating to Operational Limits and Scalability. Tab 8 represents the ECATS technical requirements relating to Security. Tab 9 represents the ECATS technical requirements relating to Admin-Monitoring & Reporting. Tab 10 represents the ECATS technical requirements relating to Training Needs. Tab 11 represents the ECATS technical requirements relating to Testing.