



**Request for Proposal #2022-WAN**

**Multi-year Contract for**

**E-rate Eligible**

**Wide Area Network (WAN) Services**



**Randolph County School System**

**Media & Technology Department**

**2222 Suite C, S. Fayetteville Street**

**Asheboro, NC 27205**

Randolph County School  
System 1/25/2022

2222 - C South Fayetteville Street - Asheboro, NC 27205 - Tel 336.633.5100 - Fax 336.633.5155  
[www.randolph.k12.nc.us](http://www.randolph.k12.nc.us)



Request for Proposals (RFP)  
Specifications and Terms and Conditions  
for the Randolph County School System

**Information Technology Goods and Services**

The Randolph County School System (“Requestor”) is seeking qualified Responder(s) to supply the following Goods and/or Services: Wide Area Network (WAN) connectivity is sought by Requestor to provide high-speed connectivity between schools and the Central Office location. Details of the services are provided herein, but the buyer will accept equivalent proposals.

This document provides the general and specific information for use by Responder(s) in submitting a proposal to supply Randolph County School System (herein “Requestor”) with the Information Technology goods and services as listed above in accordance with N.C.G.S. 143-129.8.

The Requestor intends to award an indefinite quantity contract for a three year (3) term, with the option of two individual one year extensions at the requestor’s selection, as a result of this RFP.

The Requestor will select a qualified Responder(s) to develop a mutually beneficial contractual relationship. The decision to award will be based on the Requestor’s sole determination of the proposal that offers the best overall value and/or benefit, taking into account pricing, maintenance and support, any value added services, and other factors as specified herein. The Requestor reserves the right to reject any or all proposals. Responses to this request must be delivered to Shenna Creech, Director of Digital Teaching & Learning, Randolph County School System, 2222-C S Fayetteville St Asheboro, NC 27205. All proposals and responses received shall be treated as offers to contract.

Requestor is soliciting Proposals from qualified Responders to enter into an Agreement for the products and value added services, as described below:

**Scope**

The Requestor intends to award an indefinite quantity contract for a three-year term, with the option of two, one-year extensions. It is the intent of this RFP to select a qualified Responder with whom a mutually beneficial contractual relationship will be developed. The decision to award will be based on the Requestor’s determination of the proposal that offers the best overall benefit to the Requestor taking into account price, maintenance, support, value added services, and other factors specified herein. The Requestor reserves the right to reject any or all proposals.

The descriptions provided below are not intended to limit the products or services offered by a Responder. However, the Requestor reserves the right, at its sole discretion, to exclude or remove any products deemed beyond the intended scope of this RFP.

## Description of need

Randolph County School System is soliciting this RFP from service providers participating in the Universal Service Administrative Company E-rate program to secure pricing for the items contained within this proposal for a Metro Ethernet Wide Area Network (WAN) at various District locations. The prices for the items contained herein shall remain firm (except for any necessary Lowest Corresponding Price rule reductions) for the period to be stated in the agreement. This proposal must allow future additional sites to be added at the proposed cost structure or current locations to be disconnected without change to that cost structure. The service being requested is planned to begin on July 1, 2022 which represents the expiration of the current WAN service. RCSS is requesting two (2) quote options from each provider as follows:

1. A quote for a 3-year contract option, with two (2) one-year optional extensions, to be considered with pricing for 10Gbps for each location and for 10Gbps at the central office hub location.
2. A quote for a 3-year contract option, with two (2) one-year optional extensions, to be considered with pricing for 1 Gbps for each elementary and middle school, Uwharrie Ridge 6-12 and Randolph Early College High School; 5Gbps at traditional high schools; and 10Gbps at the central office hub location.

## Technical Requirements

The general purpose of this RFP is to obtain proposals from service providers capable of providing Wide-Area-Network Ethernet services to the schools, and administrative buildings identified below. The requestor reserves the right to make contract awards to one or more vendors for single or multiple locations. If multiple vendors are chosen, any necessary inter-provider connectivity must be well documented and explicitly accounted for in the proposal.

1. High Speed WAN Circuits – All WAN circuits must connect to the Randolph County School System Central Office using fiber optics and shall support full-duplex Ethernet service. Equipment to be installed at the High Schools, Middle Schools, Primary/Elementary Schools, and ancillary locations must be able to support bandwidth requirements of up to 10Gbps or greater and allow for future scalability. All WAN Metro Ethernet circuits should collapse onto a backbone at Randolph County School System Central Office or service provider CO with an appropriate throughput, and allow for future scalability.
2. The network demarcation shall be based upon the requirement of each individual sites' connection speed.
3. The Ethernet solution should have the ability to aggregate traffic from multiple VLANs across a common interface to a central location.
4. WAN circuits must be offered both as a package and as separate services.
5. The Requestor may need to expand the bandwidth at existing locations to accommodate growth in the use of broadband applications. Such an increase may occur at any of the participating locations. Therefore, the Requestor is seeking scalable service with incremental options in the pricing to include speeds ranging from 1Gbps up to 2Gbps fixed/burstable or greater at individual elementary and middle school sites, 5Gbps up to 10Gbps fixed/burstable or greater at individual high school sites and 10Gbps fixed/burstable or greater at the aggregation site. (Note: If WAN connections feedback to service provider a 5Gbps burstable to 10Gbps is required.) Please explain/list what increments are offered.
6. The Requestor desires the ability to leverage QOS to support current and future VOIP implementations. The vendor should allow the ability to activate QOS on a per circuit, or group of circuits based on the school region, or vendor originating service facilities. Provide details of how QOS will be provided for VOIP and video streaming services.
7. The system shall be monitored 7x24x365 by a Network Operations Center. The Responder shall provide a 2222 - C South Fayetteville Street - Asheboro, NC 27205 - Tel 336.633.5100 - Fax 336.633.5155  
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web site accessible by Randolph County School System personnel for monitoring network performance and bandwidth utilization.

8. Notification of any planned service outages shall occur at least 3 business days in advance.
9. Service Level Agreements (SLA's) must be included that clearly define the level of network availability and Quality of Service (QOS) that will support Virtual LANS (VLANS) and Voice Over Internet Protocol Telephony (VoIP) throughout the district. Agreements should include, but are not limited to, the following:
  - a. Percentage of lost packages allowed
  - b. Up time
  - c. Latency, chatter, etc.
  - d. Adjustments or credits to billing that would be applied should be clearly identified in the cost proposal if the SLA/QOS cannot be met.
10. The Responder shall provide a list of all installed circuits with circuit ID's and all other pertinent information about the circuit. (Committed Information Rates, Burst Rates, QOS, etc.) The Responder shall update and provide a current list to the Randolph County School System annually during the month of July for the duration of the contract.
11. The Responder shall provide a network diagram (s) of the proposed network design. Clearly label the bandwidth proposed for each link to the hub central services site and on the backbone and the location of all relevant network equipment. Describe how the network will function, and how the design will provide the guaranteed bandwidth throughout. Please clearly identify the transport medium for all locations.
12. The Responder shall provide all fiber cabling, pathways and spaces to accommodate the fiber (i.e. conduit) and Ethernet equipment necessary to connect the Requestor sites with switched 10/100/1000/and/or 10,000 Mbps or greater Ethernet connectivity as applicable. The Responder should be able to provide the Requestor E-Rate discounts on their bill or through reimbursement. All E-Rate eligible monthly recurring charges for the service and any one-time costs for installation shall be included in the Responder's proposal as separate line items. The costs of any ineligible E-Rate components that may be required shall be broken out separately. All installation of cabling, pathways, etc. shall be to BICSI specification and the design specifications of the Requestor.
13. Responder will assume costs to transfer service, perform work necessary to onboard the location, and work with the Requestor on a mutually agreeable implementation or transition plan.
14. Requestor desires a minimum downtime during the transition from any exiting Wide Area Network to a new system. The Requestor requires that the network be built out and ready for service by the beginning of the contract date. The Responder shall provide a project plan to cut over from existing Wide Network to the proposed Wide Area Network and an estimate of Wide Area Network downtime incurred by this process.
15. Requestor reserves the right to split proposals by school and negotiate multiple contracts to ensure services are provided across all schools at the best possible contracted rates and speeds
16. The current and minimum level of service per building are as follows:

School	Address	Bandwidth
Archdale Elementary	207 Trindale Road Archdale, NC 27263	1Gbps
Coleridge Elementary	4528 NC HWY 22 South Ramseur, NC 27316	1Gbps
Eastern Randolph High School	390 Eastern Randolph Rd Ramseur, NC 27316	5Gbps

Farmer Elementary	3557 Grange Hall Road Asheboro, NC 27205	1 Gbps
Franklinville Elementary	162 Pine Street Franklinville, NC 27248	1 Gbps
Grays Chapel Elementary	5322 NC Highway 22 North Franklinville, NC 27248	1 Gbps
Hopewell Elementary	6294 Welborn Road Trinity, NC 27370	1 Gbps
John Lawrence Elementary	6068 Suits Rd Archdale, NC 27263	1 Gbps
Level Cross Elementary	5417 Old Greensboro Road Randleman, NC 27317	1 Gbps
Liberty Elementary	206 N Fayetteville Street Liberty, NC 27298	1 Gbps
New Market Elementary	6096 US HWY 311 Sophia, NC 27350	1 Gbps
Northeastern Randolph Middle	3493 Ramseur-Julian Rd Liberty, NC 27298	1 Gbps
Providence Grove High School	5555 Mack Lineberry Road Climax, NC 27233	5 Gbps
Ramseur Elementary	6755 Jordan Road Ramseur, NC 27316	1 Gbps
Randleman Elementary	100 Swaim Street Randleman, NC 27317	1 Gbps
Randleman High School	4396 Tigers Den Rd Randleman, NC 27317	5 Gbps
Randleman Middle School	800 High Point St Randleman, NC 27317	1 Gbps
Randolph Early College High School	629 Industrial Park Avenue Asheboro, NC 27205	1 Gbps
Seagrove Elementary	528 Old Plank Rd Seagrove, NC 27341	1 Gbps
Southeastern Randolph Middle School	5302 Foushee Road Ramseur, NC 27316	1 Gbps
Southmont Elementary School	2497 Southmont School Road Asheboro, NC 27205	1 Gbps

Southwestern Randolph High School	1641 Hopewell Friends Rd Asheboro, NC 27205	5Gbps
Southwestern Randolph Middle School	1509 Hopewell Friends Rd Asheboro, NC 27205	1Gbps
Tabernacle Elementary School	4901 Tabernacle School Rd Asheboro, NC 27205	1Gbps
Trindale Elementary School	400 Balfour Dr. Archdale, NC 27263	1Gbps
Trinity Elementary School	5457 Braxton Craven Rd Trinity, NC 27370	1Gbps
Trinity High School	5746 Trinity High Drive Trinity, NC 27370	5Gbps
Trinity Middle School	5271 Surret Drive Archdale, NC 27263	1Gbps
Uwharrie Ridge Six-Twelve	1463 Pleasant Union Road Trinity, NC 27370	1Gbps
Wheatmore High School	3678 Finch Farm Road Trinity, NC 27370	5Gbps
Wheatmore Middle School	5105 Archdale Road Trinity, NC 27370	1Gbps
Randolph County Central Office	2222 South Fayetteville Street Suite C Asheboro, NC 27205	10Gbps

17. Provide an escalation list for the account team, with names, telephone numbers, and email addresses.
18. Provide your method for prioritizing escalating incidents, trouble tickets, and service calls
19. Provide at least three references to other customers comparable to the Randolph County School System for whom your company has provided Metro-Ethernet, or comparable, service, along with a brief description of the services provided.
20. The submission of deliverables is due as of the project's installation completion date.

### **Additional Specifications**

- The submission should also include details with regards to help desk staffing by the respondent.
- The submission should detail work hours for technicians.
- The submission should detail procedures related to disposal or replacement of retired equipment and security procedures for all items provided as a part of the service delivery.

## Schedule

Every effort will be made to adhere to the following schedule:

Event	Date	Time (Eastern)
Issuance of RFP	1-25-2022	3:00 pm EDT
Deadline for Responder's Technical Questions	2-4-2022	3:00 pm EDT
Deadline for Requestor's Responses	2-9-2022	3:00 pm EDT
Deadline for Proposal Submission	2-25-2022	3:00 pm EDT
Bid Opening	2-28-2022	10:00 am EDT

Late proposals, regardless of cause, will not be accepted and will be automatically disqualified from further consideration. Late proposals will not be opened.

If necessary, Requestor may ask clarifying questions of Responder's proposal. The Responder must provide clarification in an expedient manner and may not provide changes to their submission. Failure to provide the requested information in the time allowed may result in the rejection of the proposal.

## Evaluation Process

Responses will be evaluated on the following 100 point scale in relation to all qualified responses.

Area	Maximum Points
Price [of E-Rate Eligible Goods and Services]	25
Prior Experience	20
Technical Response	20
Personnel Qualifications	15
Other Cost Factors	10
Responder References	5
Responder Financials	5
Total Points Available	100

To be eligible for consideration, a Responder must meet the intent of all mandatory requirements.

## Information for Responders

### Purpose

All proposals and responses received shall be treated as offers to contract. In an effort to expedite the procurement process, Appendix A contains the Requestor's Contractual Terms and Conditions.

### Communications

All communications between Responder and Requestor shall be through the Requestor's RFP contact (as listed on the cover of this RFP) and no other of Requestor's employees or consultants.

No negotiations, decision, or actions shall be executed by any Responder as a result of any oral discussions with any Requestor's employees or consultants.

Written questions will be received until February 4, 2022 at 3:00 pm. Questions must be sent via email to [wan2022@randolph.k12.nc.us](mailto:wan2022@randolph.k12.nc.us) . All answers to vendor questions will be publicly posted via <https://bit.ly/rcsswan> .

Requestor provides all potential Respondents a period of face-to-face time of no greater than 1 hour prior to the review of the submitted proposal for the discussion of the requirements or process.

### Scope of Response

Responder should include all hardware and software necessary to meet the requirements. ALL PRODUCTS AND SERVICES OFFERED SHOULD BE UPDATED, OF RECENT DESIGN AND TECHNOLOGY, AND OFFER THE MOST CURRENT SERVICE CAPABILITIES. All hardware, switches and other devices offered must be new. Used and/or refurbished items are not acceptable replacements for new purchases.

## Required Content and Format of Response

Elaborate proposals in the form of brochures or other presentation materials beyond that necessary to present a complete, concise and effective proposal are not desired. The response shall include the following sections:

### Letter of Transmittal

- The response must be accompanied by a Letter of Transmittal and shall include, at a minimum, the following information:
  - Identification of the submitting organization;
  - The name, title, telephone and fax number, and e-mail address of the person authorized by the organization to contractually obligate the organization;
  - The name, title, telephone and fax number, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
  - The name, title, telephone and fax number, and e-mail address of the person to be contacted for clarification; and Acknowledgement of receipt of any and all amendments to this RFP. This person shall be identified as Responder's Contract Administrator.



- The Letter of Transmittal and response, including the Execution of Proposal in Appendix D, must be signed by either:
  - A current corporate officer, partnership member, or other individuals specifically authorized to submit a response as reflected in the appropriate records on file with the North Carolina Secretary of State; or
  - An individual authorized to legally bind the Respondent as reflected by a corporate resolution, certificate or affidavit; or
  - An individual with other documents indicating authority, which are acceptable to the Requestor.

### **Section 1 – Technical Response**

- Provide the narrative of the proposed solution. The narrative should clearly state an understanding of the business problem presented by this RFP and the response to mandatory and desired technical specifications in the exact order in which the performance criteria is presented in the RFP.
- The Responder should offer a complete listing of all Manufacturer Maintenance Plans available, by product category, to include but not necessarily be limited to: drop shipped advanced replacements of parts, software patches and revisions issued to resolve known defects or vulnerabilities, access to online and live body technical assistance, advanced replacement of parts which requires installation/software configuration support to facilitate replacement. The Responder may offer different discounts for manufacturer maintenance plans by product categories offered.

### **Section 2 – Proposal Cost**

- Provide, in table format, costs for all services specified by location in Appendix C, and any optional services you propose. Costs should include tariffs, taxes, surcharges, set-up or installation fees, materials and services, discounts, one-time costs or hourly rate, annual recurring costs, final cost. All response costs must be itemized.
- Provide a copy of the current warranty for each type of hardware, software, and or service proposed.
- Provide an hourly rate schedule for any consultative, installation, configuration, or support services.

### **Section 3 –Background and Financials**

- Provide a detailed description of Responder's firm, including all of the following:
  - Full name, Federal Tax Identification number, address, and telephone number of the organization.
  - Date established, state of incorporation (if applicable), and ownership.
  - Background of the organization.
- Number of full-time employees as of January 1<sup>st</sup> for the last three years, or for the duration firm has been in business, whichever is less.
- Provide evidence of financial stability, excluding tax returns and compiled statements. The Responder should provide a Comprehensive Report from Dun and Bradstreet, stating the financial condition and credit rating of the company. If unable to provide a Dun and Bradstreet report, the following may be substituted:
- For a publicly traded company, Financial Statements for the past three (3) fiscal years must be submitted, 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 three (3) years of statements are not available, Responder must explain the reasons why they are not available.
- 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 must be submitted. Alternatively, Responders may submit opinions of Certified Public Accountants, together

with opinions of counsel for the past three (3) fiscal years.

## **Section 4 – References**

This section shall include information on the Responder's organization, experience, and skills regarding the Responder's track record, reputation, and past performance that indicates the capabilities for the successful completion of this work. Responder must provide three (3) references of similar projects that are similar in scope indicating the Responder's capabilities to do this work with project descriptions, cost and other pertinent information, including contact information telephone numbers and email addresses. The Responder should provide links to the work described in the references.

## **Section 5 – Miscellaneous Documents**

### **Letter of Authorization**

A Letter of Authorization from the manufacturer, on letterhead and signed by appropriate representative of the manufacturer, certifying the Respondent is an authorized manufacturer's representative and that an agreement exists between the Responder and manufacturer to supply the products specified in the response. This letter must reference this specific RFP by title.

### **Conflict of Interest Statement**

- Provide a statement verifying that no assistance in preparing the response was received from any current or former employee of the Requestor whose duties relate(d) to this RFP, unless such assistance was provided by the employee in his or her official 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; and
- State if any employee of the Responder is related by blood or marriage to a Requestor employee or resides with a Requestor employee. If there are such relationships, list the names and relationships, positions and responsibilities of said parties.

### **Errata and Exceptions**

Any errata or exceptions must be stated, with references to the corresponding terms or provisions of the RFP.

## **Alternative Responses**

Responders are welcome to submit Alternative Responses that may provide a substantially different solution to the stated business need or offer alternative options. Alternative Responses must accompany an original response and be clearly marked as "Alternative Response."

## **Changes, Addenda, Withdrawals**

Responders shall submit all changes or addenda to submitted proposals in writing, signed by an official representative of the Responder, with clear cross-referencing of relevant section(s), prior to the RFP deadline.



## **Delivery Instructions**

- Five paper copies of the proposal and 2 USB flash drives with electronic copies of the proposal to be considered for acceptance shall be sealed and clearly labeled with RCSS RFP WAN 2022, 470# 220015715. Proposal due date, and name of the firm, and delivered to the Randolph County School System, 2222-C S Fayetteville St. Asheboro, NC 27205, attn.: Shenna Creech, Director of Digital Teaching and Learning on or before, Friday, February 25, 2022 at 3:00 pm.

## **Public Bid Opening**

February 28, 2022 at 10:00am  
Randolph County School System Central Services  
Board Room B  
ATTN: Shenna Creech, Director of Digital Teaching & Learning  
2222-C South Fayetteville St  
Asheboro, NC 27205

## Appendix A: Contractual Terms and Conditions

1. **BEST VALUE.** Any contract resulting from this Request for Proposals shall be awarded to the Responder that submits the best overall proposal as determined by the Requestor in accordance with N.C.G.S. 143-129.8. The Requestor may negotiate with any Responder(s) in order to obtain a final contract that best meets the needs of the Requestor.
2. **VOLUNTARY.** All submissions by Responder is voluntary and becomes the property of the Requestor who is under no obligation to return or pay for the creation, development, or delivery of any of the material submitted by the Responder as a result of this RFP.
3. **RIGHTS RESERVED.** The Requester reserves the right to waive any formality; amend the solicitation; cancel or terminate this RFP; to reject any or all of the proposals submitted, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the requirements or intent of this solicitation; waive any undesirable, inconsequential, or inconsistent provisions of this document which would not have significant impact on any proposal; if the response to this solicitation demonstrates a lack of competition, negotiate directly with one or more Responders; not award, or if awarded, terminate any contract if the Requestor determines adequate funds are not available; or any other determination that rejection would be in the best interest of the Requestor.
4. **NON-EXCLUSIVE CONTRACT.** This contract is non-exclusive and shall not in any way preclude the Requestor from entering into any similar contracts and/or arrangements with other Responders or from acquiring similar equal or like goods and/or service from other entities or sources
5. **ASSIGNMENT.** The Responder shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this RFP or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without the previous written consent of the Requestor. The Requestor reserves the right to declare the Responder in default and terminate the contract for cause. Responder shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Responder shall affirm that the assignee is fully capable of performing all obligations of Responder under this Contract. An assignment may be made, if at all, in writing by the Responder and Assignee setting forth the foregoing obligation of Responder and Assignee.
6. **INSURANCE COVERAGE.** Providing and maintaining adequate insurance coverage as described herein is a material obligation of the Responder and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Responder shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract.

The limits of coverage under each insurance policy maintained by the Responder shall not be interpreted as limiting the Responder's liability and obligations under the Contract.

The Responder(s) shall obtain and maintain in force at all times during the term of the contract derived from this RFP, insurance coverage pertaining to Comprehensive General Liability, Comprehensive Automobile Liability, and Workers Compensation in the following amounts and types:

- a. Comprehensive General Liability – Responder(s) to supply the Requestor with original certificates of General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and

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- b. Comprehensive Automobile Liability – Responder(s) to supply the Requestor original certificates of insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
  - c. Workers' Compensation/Employers Liability Insurance - The Responder(s) shall furnish the Requestor with original certificates showing that all its employees who are engaged in any work under this Contract are protected under Worker's Compensation insurance policies with a limit no less than the minimum required by North Carolina state statutes. If any work is sublet, the Responder shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract.
7. GENERAL INDEMNITY. The Responder shall hold and save the Requestor, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Responder shall be conditioned upon the following:
- a. The Requestor shall give Responder written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and
  - b. The Responder shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Requestor shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.
8. INVOICE. Orders will be shipped at the established Contract prices in effect on dates orders are placed. Invoicing at variance with this provision may subject the Contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item. Invoices will be submitted by the Responder upon presentation of properly executed invoice after goods have been received, inspected and accepted. Invoices will be paid within 60 days or receipt of properly executed invoice, or receipt of goods, whichever is later.
- PAYMENTS WILL BE PAID TO RESPONDER(S) AT ADDRESS AS SHOWN ON THE PURCHASE ORDER. ADVANCED PAYMENTS WILL NOT BE ALLOWED.
9. FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT. Student educational records are subject to 20 U.S.C. 1232g, Family Rights and Privacy Act (FERPA) and may not be disclosed except in very limited circumstances. The Responder shall ensure that every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The Responder 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 will be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this contract.
10. DEBARMENT. If any of the services rendered under this contract are to be paid with federal funds, the Responder hereby certifies that the organization and its principals are not suspended or debarred from doing business with the federal government.
11. WARRANTIES: Responder shall assign all applicable third party warranties for Deliverables, as defined herein, to the Requestor.
12. PERSONNEL: Responder shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Requestor's Contract Administrator. Any desired substitution shall be

noticed to the Requestor's Contract Administrator accompanied by the names and references of Responder's recommended substitute personnel. The Requestor will approve or disapprove the requested substitution in a timely manner. The Requestor may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Requestor may request acceptable substitute personnel or terminate the contract services provided by such personnel.

13. **SUBCONTRACTING:** The Responder may subcontract the performance of required services with other Responders or third parties, or change subcontractors, only with the prior written consent of the contracting authority.

Responder shall provide the Requestor with complete copies of any agreements made by and between Responder and all subcontractors. The selected Responder remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Responder. Any contracts made by the Responder with a subcontractor shall include an affirmative statement that the Requestor is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the Requestor; and that the Requestor shall be indemnified by the Responder for any claim presented by the subcontractor. Notwithstanding any other term herein, Responder shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

14. **RESPONDER'S REPRESENTATION:** Responder warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Responder agrees that it will not enter any agreement with a third party that might abridge any rights of the Requestor under this Contract. Responder will serve as the prime Responder under this Contract. Names of any third party Responders or subcontractors of Responder should appear in Contract documents; such listings shall not, however, limit Responder's obligations hereunder or under any contract entered into between Responder and Requestor. Requestor will have the right to specify that any third party Responders or subcontractors not participate in the provision of services to Requestor. Should the Requestor approve any subcontractor(s), the Responder shall be legally responsible for the performance and payment of the subcontractor(s). Third party subcontractors, if approved, may serve as subcontractors to Responder. Responder will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

15. **REGISTERED SEX OFFENDERS:** Responder acknowledges that Requestor's "Registered Sex Offenders" policy prohibits anyone registered or required to register as a sex offender from being present on any Requestor property for any reason, whether before, during or after school hours, or on or off of Requestor's property. Responder expressly agrees that it, and any of its employees, will comply with this policy and acknowledges that any individuals that violate this policy are subject to removal from Requestor's property by Requestor and/or law enforcement officials and may also be subject to criminal prosecution. If Responder, any of Responder's employees, or any of Responder's subcontractors or employees of subcontractors will have any direct interaction with students, then Responder or the subcontractor must (i) on an annual basis conduct a check of the N.C. Sex Offender and Public Protection Registration Program, the N.C. Sexually Violent Predator Registration Program and the National Sex Offender Registry for all such employees; and (ii) prohibit individuals listed on such registries from being on Requestor property.

16. **TRAVEL EXPENSES:** If expressly authorized in the contract Responder may be reimbursed for travel expenses arising under the performance of this Contract at the rates set forth in GS §138-6; as amended from time to time. Responder agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Responder incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the Requestor within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the Requestor. The Requestor will reimburse travel allowances only for days on which the Responder is required to be in North Carolina performing services under this Contract.

17. **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements

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

18. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Responder warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Requestor for the purpose of obtaining any contract or award issued by the Requestor. Responder further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the Requestor, except as shall have been expressly communicated to the Requestor's Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Responder and their authorized signatory further warrant that no officer or employee of the Requestor has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the Requestor of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Responder(s) as permitted by 9 NCAC 06B.1030, or other provision of law.
19. **AVAILABILITY OF FUNDS:** Any and all payments to Responder are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Requestor for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Requestor's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years, subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds from which payment can be made for the purposes set forth in the Contract. If funds to effect payment are not available, the Requestor will provide written notification to Responder. If the Contract is terminated under this paragraph, Responder agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Requestor under this Contract, and relieve the Requestor of any further obligation thereof. The Requestor shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
20. **PAYMENT TERMS:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Requestor. The Requestor is responsible for all payments under the Contract.
21. **ACCEPTANCE CRITERIA:** In the event acceptance of Deliverables is not described in additional Contract documents, the Requestor shall have the obligation to notify Responder, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the Requestor shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the Requestor may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Responder fails to promptly cure the defect or replace the Deliverables, the Requestor reserves the right to cancel the Purchase Order, contract with a different Responder, and to invoice the original Responder for any

differential in price over the original Contract price. When Deliverables are rejected, the Responder must remove the rejected Deliverables from the premises of the Requestor within seven (7) calendar days of notification, unless otherwise agreed by the Requestor. Rejected items may be regarded as abandoned if not removed by Responder as provided herein.

22. **EQUAL EMPLOYMENT OPPORTUNITY:** Responder shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.
23. **INSPECTION AT RESPONDER'S SITE:** The Requestor reserves the right to inspect, during Responder's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Responder prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.
24. **ADVERTISING / PRESS RELEASE:** The Responder absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the Requestor.
25. **CONFIDENTIALITY:** All responses to this RFP become a matter of public record at the time of award. In accordance with 9 NCAC 06B.1001 and to promote maximum competition in the competitive bidding process, the Requestor may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Responder may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Responder warrants that it has formed a good faith opinion that, having received such necessary or proper review by counsel and other knowledgeable advisors, the portions marked confidential meet the requirements of the Rules and Statutes set forth above. However, under no circumstances shall price information be designated as confidential. The Requestor may serve as custodian of Responder's confidential information and not as an arbiter of claims against Responder's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the Requestor to disclose information marked confidential, the Responder agrees that it will intervene in the action through its counsel and participate in defending the Requestor, including any public official(s) or public employee(s). The Responder agrees that it shall hold the Requestor and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the Requestor in the action. The Requestor agrees to promptly notify the Responder in writing of any action seeking to compel the disclosure of Responder's confidential information. The Requestor shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Requestor shall have no liability to Responder with respect to the disclosure of Responder's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law. If an entire response is marked confidential or trade secret, it will be disqualified from consideration.
26. **CARE OF INFORMATION:** Responder agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the Requestor during performance of any contractual obligation from loss, destruction or erasure. Responder warrants that all its employees and any approved third party Responders or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Responder will, upon request of the Requestor, verify and produce true copies of any such agreements. Production of such agreements by Responder may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Responder produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C. Gen. Stat. §132-1 et. seq. The Requestor may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the Requestor for Responder's execution. The Requestor may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any



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

27. **NONDISCLOSURE:** Responder agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the Requestor.
28. **DELIVERABLES:** Deliverables, as used herein, shall comprise all project materials, including goods, software licenses, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the Requestor. Proprietary Responder materials licensed to the Requestor shall be identified to the Requestor by Responder prior to use or provision of services hereunder and shall remain the property of the Responder. Embedded software or firmware shall not be a severable Deliverable. Deliverables include "Work Product" and means any expression of Responder's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Responder and is licensed nonexclusively to the Requestor, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.
29. **LATE DELIVERY, BACK ORDER:** Responder shall advise the Requestor's contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Responder shall state the projected delivery time and date. In the event the delay projected by Responder is unsatisfactory, the Requestor shall so advise Responder and may proceed to procure substitute Deliverables or services.
30. **PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**
  - a. Responder has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the Requestor, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Responder Technology"). To the extent that any Responder Technology is contained in any of the Deliverables including any derivative works, the Responder hereby grants the Requestor a royalty free, fully paid, worldwide, perpetual, non-exclusive license to use such Responder Technology in connection with the Deliverables for the Requestor's purposes.
  - b. Responder shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the Requestor to Responder. The Requestor hereby grants Responder a royalty free, fully paid, worldwide, perpetual, non-exclusive license for Responder's internal use to non-confidential Deliverables first originated and prepared by the Responder for delivery to the Requestor.
  - c. The Responder, at its own expense, shall defend any action brought against the Requestor to the extent that such action is based upon a claim that the services or Deliverables supplied by the Responder, or the operation of such Deliverables pursuant to a current version of Responder supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Responder shall pay those costs and damages finally awarded against the Requestor in any such action. Such defense and payment shall be conditioned on the following:
    - i. That the Responder shall be notified within a reasonable time in writing by the Requestor of any such claim; and,
    - ii. That the Responder shall have the sole control of the defense of any action on such claim and

all negotiations for its settlement or compromise provided, however, that the Requestor shall have the option to participate in such action at its own expense.

- d. Should any services or software supplied by Responder, or the operation thereof become, or in the Responder's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the Requestor shall permit the Responder, at its option and expense, either to procure for the Requestor the right to continue using the goods/hardware or software, or to replace or modify the same to become non-infringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the Requestor shall be prevented by injunction, the Responder agrees to take back such goods/hardware or software, and refund any sums the Requestor has paid Responder less any reasonable amount for use or damage and make every reasonable effort to assist the Requestor in procuring substitute Deliverables. If, in the sole opinion of the Requestor, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Responder under this Contract impractical, the Requestor shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Responder agrees to take back such Deliverables and refund any sums the Requestor has paid Responder less any reasonable amount for use or damage.
  - e. Responder will not be required to defend or indemnify the Requestor if any claim by a third party against the Requestor for infringement or misappropriation (i) results from the Requestor's alteration of any Responder branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
  - f. Nothing stated herein, however, shall affect Responder's ownership in or rights to its preexisting intellectual property and proprietary rights.
31. **ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C. Gen. Stat. § 147-64.7, the Requestor, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Responder insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency or political subdivision of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Responder shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency or political subdivision, if in the Agency's or political subdivision's opinion, such requirement is imposed by federal or state law or regulation (e.g. "E-Rate" is five (5) years after the completion of the contract).
32. **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Responder shall be submitted in writing to the Requestor's Contract Administrator for decision. A claim by the Requestor shall be submitted in writing to the Responder's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
33. **DEFAULT:** In the event any Deliverable furnished by the Responder during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the Requestor and if the failure is not cured within ten (10) days, or Responder fails to meet the requirements of ACCEPTANCE CRITERIA herein, the Requestor may cancel and procure the articles or services from other sources; holding Responder liable for any excess costs occasioned thereby, subject only to the limitations provided in "LIMITATION OF RESPONDER'S LIABILITY" and "RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY" and the obligation to informally resolve disputes as provided in "DISPUTE RESOLUTION" of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The Requestor reserves the right to require performance guaranties pursuant

to 09 NCAC 06B.1031 from the Responder without expense to the Requestor. The rights and remedies of the Requestor provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

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

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

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

34. **WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Requestor and the Responder, and made as an amendment to this Contract pursuant to Paragraph "CHANGES" herein below.
35. **TERMINATION:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

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

The Requestor may terminate this Contract, in whole or in part, pursuant to Paragraph 33 titled "DEFAULT" or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:

- a. **TERMINATION FOR CAUSE:** In the event any goods, software, or service furnished by the Responder during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Responder, the Requestor may cancel and procure the articles or services from other sources; holding Responder liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs "LIMITATION OF RESPONDER'S LIABILITY" and "RESPONDER'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY" herein. The rights and remedies of the Requestor provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Responder shall not be relieved of liability to the Requestor for damages sustained by the Requestor arising from Responder's breach of this Contract; and the Requestor may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Responder shall be cause for termination.
  - b. **TERMINATION FOR CONVIENCE WITHOUT CAUSE:** The Requestor may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Responder. Responder shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the Requestor, the Requestor will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.
36. **LIMITATION OF RESPONDER'S LIABILITY:**

- a. Where Deliverables are under the Requestor's exclusive management and control, the Responder shall not be liable for direct damages caused by the Requestor's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the Requestor's intended use of the Deliverables.
- b. The Responder's liability for damages to the Requestor for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract.
- c. The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in Paragraph 30 entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Responder's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

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

- a. The Responder shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the Requestor, employees of the Requestor, persons designated by the Requestor for training, or person(s) other than agents or employees of the Responder, designated by the Requestor for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Responder's site or at the Requestor's place of business, provided that the injury or damage was caused by the fault or negligence of the Responder.
- b. The Responder agrees to indemnify, defend and hold the Requestor and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Responder, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c. Responder shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Responder, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Responder's goods.

**38. CHANGES:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Responder are hereby rejected unless accepted in writing by the Requestor. The Requestor shall not be responsible for Deliverables or services delivered without a purchase order from the Requestor.

**39. TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Contract.

**40. INDEPENDENT CONTRACTORS:** Responder and its employees, officers and executives, and subcontractors, if any, shall be independent contractors and not employees or agents of the Requestor. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

**41. TRANSPORTATION:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Requestor. In cases where parties, other than the Responder ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must

accompany each shipment.

42. **NOTICES:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
43. **TITLES AND HEADINGS:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
44. **AMENDMENT:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Requestor and Responder.
45. **TAXES:** The Requestor is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Responder or for any taxes levied on employee wages. Agencies or political subdivisions of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Responder by Agencies or political subdivision, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.
46. **GOVERNING LAWS, JURISDICTION, AND VENUE:**
  - a. This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Randolph County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Responder agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Randolph County shall be the proper venue for all matters.
  - b. Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.
47. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, health pandemic or epidemic, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
48. **COMPLIANCE WITH LAWS:** The Responder shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
49. **SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, 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.
50. **FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Requestor shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.



## **Appendix B: UNIVERSAL SERVICE (E-RATE) REQUIREMENTS**

Responder must understand and agree to the following E-Rate terms and conditions:

1. Responder must be a current participant and continue to participate in the E-Rate program, and to fully cooperate with the Requestor to ensure that the Requestor receives all of the E-Rate funding for which it applies and to which it is entitled in connection with the Responder's products.
2. It is anticipated that some or all of the costs associated with this proposal shall be eligible for the E-Rate discount under the Federal Communications Commission (FCC) Universal Service Provision (FCC 97-157). Accordingly, if so, and contingent upon Requestor's receipt of a funding commitment from SLD/USAC, Responder will be required to institute a two-tiered billing system and will be required to recover up to ninety percent (90%) of its compensation for such eligible Services directly from the Schools and Libraries Division (SLD) of the Universal Service Administration Company (USAC) in accordance with procedures established by the FCC and SLD/USAC. Responder understands that, due to circumstances beyond the Requestor's control, the Requestor may not receive an E-Rate funding commitment by the beginning of the E-Rate funding year, July 1, for the services it intends to purchase from Responder during that funding year. When E-rate funding is approved, Responder shall invoice USAC for the discounted amount the Requestor is owed retroactive to July 1st of the funding year or to whenever approved service to the Requestor began, whichever date is later.
3. The Requestor reserves the right to extend or abbreviate the contract period if such extension or abbreviation is necessary to make the Contract term coincide with an E-rate "program year" (i.e., change the Contract End Date (CED)), and/or an extended service end date for an E-rate program year pursuant to a "service delivery deadline extension," as those terms are defined by the FCC and/or SLD/USAC.
4. Final authorization by Requestor for the purchase of any or all goods or services, hereafter described in this document, is contingent upon the award of funding (a funding commitment decision letter) from the Schools and Libraries Division of USAC.
5. Requestor may, at its discretion, choose to cancel its offer for the purchase of any and all goods or services requested in this bid if E-Rate funding is not approved by USAC, there is a reduction in funding, there are changes in the physical structure of a school (i.e., renovations, demolitions), or for any reason.
6. Responder shall have proof of current E-Rate Service Provider Certifications (SPAC). Responder shall have proof of an E-Rate Service Provider Identification Number (SPIN). Responder shall have proof of an FCC Registration Number (FRN).
7. Responder must not be on "Red Light" status with the E-Rate program administrator. Responder shall continue to discount service if placed on "Red Light" status after award.
8. Responder shall itemize the cost of E-Rate eligible and ineligible items. Requestor may request service substitutions following the SLD guidelines.
9. Responder shall maintain all bids, quotes, records, correspondence, receipts, vouchers, delivery information, memoranda and other data relating to Responder's services to the Requestor. All such records shall be retained for ten (10) years following completion of services and shall be subject to inspection and audit by the Requestor.
10. Responder shall include in all subcontractor agreements for services, provisions requiring subcontractors to maintain the same records and allowing the Requestor the same right to inspect and audit those records as set forth herein.
11. Responder will create, implement and enforce an internal E-rate audit process that ensures compliance with all

E-rate program rules and regulations.

12. Responder must state compliance with the Lowest Corresponding Price rule per FCC policy: 47 CFR § 54.500(f): Lowest corresponding price is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. 47 CFR § 54.511(b): Providers of eligible services shall not charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the FCC Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory.



## Appendix C: Proposal Costs

Please use the following format for submitting Proposal Costs

3 year contract option, with two (2) one-year voluntary extensions to be considered with pricing for 10 Gbps for all sites.							
School	Gbps	Premium Metro Ethernet Service	E-rate Eligible Monthly Rate	E-rate Ineligible Monthly Rate	E-rate Eligible Non-recurring Charge	E-rate Ineligible Non-recurring Charge	Estimated Taxes and Fees
Archdale Elementary	10						
Coleridge Elementary	10						
Eastern Randolph High School	10						
Farmer Elementary	10						
Franklinville Elementary	10						
Grays Chapel Elementary	10						
Hopewell Elementary	10						
John Lawrence Elementary	10						
Level Cross Elementary	10						
Liberty Elementary	10						
New Market Elementary	10						
Northeastern	10						

Randolph Middle							
Providence Grove High School	10						
Ramseur Elementary	10						
Randleman Elementary	10						
Randleman High School	10						
Randleman Middle School	10						
Randolph Early College High School	10						
Seagrove Elementary	10						
Southeastern Randolph Middle School	10						
Southmont Elementary School	10						
Southwestern Randolph	10						

High School							
Southwestern Randolph Middle School	10						
Tabernacle Elementary School	10						
Trindale Elementary School	10						
Trinity Elementary School	10						
Trinity High School	10						
Trinity Middle School	10						
Uwharrie Ridge Six-Twelve	10						
Wheatmore High School	10						
Wheatmore Middle School	10						
Randolph County Central Office	10						

3 year contract option, with two (2) one-year voluntary extensions to be considered with pricing for 1 Gbps at elementary and middle schools, Uwharrie Ridge 6-12, and Randolph Early College High School; 5 Gbps at traditional high schools; and 10 Gbps at the central office hub location.							
School	Gbps	Premium Metro Ethernet Service	E-rate Eligible Monthly Rate	E-rate Ineligible Monthly Rate	E-rate Eligible Non-recurring Charge	E-rate Ineligible Non-recurring Charge	Estimated Taxes and Fees
Archdale Elementary	1						
Coleridge Elementary	1						
Eastern Randolph High School	5						
Farmer Elementary	1						
Franklinville Elementary	1						
Grays Chapel Elementary	1						
Hopewell Elementary	1						
John Lawrence Elementary	1						
Level Cross Elementary	1						
Liberty Elementary	1						
New Market Elementary	1						
Northeastern Randolph Middle	1						

Providence Grove High School	5						
Ramseur Elementary	1						
Randleman Elementary	1						
Randleman High School	5						
Randleman Middle School	1						
Randolph Early College High School	1						
Seagrove Elementary	1						
Southeastern Randolph Middle School	1						
Southmont Elementary School	1						
Southwestern Randolph High School	5						
Southwestern	1						

Randolph Middle School							
Tabernacle Elementary School	1						
Trindale Elementary School	1						
Trinity Elementary School	1						
Trinity High School	5						
Trinity Middle School	1						
Uwharrie Ridge Six-Twelve	1						
Wheatmore High School	5						
Wheatmore Middle School	1						
Randolph County Central Office	10						



## Appendix D: EXECUTION OF PROPOSAL

(RFP Name/#)

Agreement

By signing this proposal, the Responder agrees to the following items. Initial each line item below for acceptance.

#	Item	Initials
1	This proposal is signed by an authorized representative of the firm.	
2	Responder has read and understands the conditions set forth in this RFP and agrees to them with no exceptions.	
3	The Responder understands the scope and requirements of this RFP and has included all labor costs, direct and indirect, in the proposed cost.	
4	The cost and availability of all equipment, materials, and supplies, if needed, associated with performing the services described herein have been determined and included in the proposed cost.	
5	Responder will be responsible for all warranty issues related to goods and services provided during the factory warranty period if applicable.	

### Authorization

In compliance with this RFP, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 90 days from the date of the opening, to furnish the goods or services as stated in this RFP.

Company Name:	
Street Address:	
City, State, Zip:	
Federal ID #:	
Contact Name:	
Telephone Number:	
Email Address:	



**THIS PAGE MUST BE SIGNED AND INCLUDED IN THE PROPOSAL.**

*Unsigned proposals will not be considered.*

**RESPONDER ATTESTATION**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_ TITLE: \_\_\_\_\_

COMPANY \_\_\_\_\_ DATE \_\_\_\_\_

**ACCEPTANCE OF PROPOSAL (to be completed upon award)**

Randolph County School System

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
(Signature)

Printed Name: \_\_\_\_\_ TITLE: \_\_\_\_\_