

CONTRACT TERMS AND CONDITIONS

1. **Contract Residency.** It is agreed between the parties hereto that the place of this contract, its situs and forum, will be Wake County, North Carolina, and in said county and state will all matters, whether sounding in contract or tort relating to the validity, construction, interpretation and enforcement of this contract, be determined. North Carolina law will govern the interpretation and construction of this contract.
2. **Project Coordinator.** The Project Coordinator shall be responsible for ensuring Contractor conformance with the terms, conditions, performance specifications as set forth in this contract, and an evaluation of the Contractor's performance. NCSBE has complete discretion in replacing the Project Coordinator with another person of its own choosing.
3. **Right of Termination.** NCSBE may terminate this agreement at any time at its complete discretion by thirty days written notice from NCSBE to the Contractor. In that event, all finished or unfinished documents and other materials shall, at the option of NCSBE, become its property. If the contract is terminated by NCSBE, as provided herein, the Contractor will be paid in an amount which bears the same ratio to the total compensation as does the service actually performed to the total service set forth in this agreement.
4. **Method of Payment.** The Contractor will submit an invoice or invoices according to the payment schedule set forth in this agreement. Invoices should be billed to the Payables Section, North Carolina Department of Public Instruction, but directed to the Project Coordinator, as identified herein, for approval of payment. Payment will be made within fifteen days upon receipt by the Payables Section of a requisition for payment from the Project Coordinator confirming that the Contractor has satisfactorily completed the work required under this contract and evidenced by said invoices.
5. **Contract Funding.** It is understood and agreed between the Contractor and NCSBE that the payment of compensation specified in this agreement, its continuation or any renewal or extension thereof, is dependent upon and subject to the appropriation of funds to, and allocation by, NCSBE for the purpose set forth in this contract. Should such funds not be appropriated or allocated, this contract shall immediately be terminated. NCSBE shall not be liable to Contractor for damages of any kind (general, special or consequential) as a result of such termination.
6. **Contract Transfer.** The Contractor shall not transfer any interest in this agreement without prior written agreement from NCSBE.
7. **Contract Personnel.** The Contractor agrees that it has, or will secure at its own expense, all personnel required to perform the services set forth in this agreement. The Contractor shall not hire, employ or contract with any person currently employed by NCSBE to furnish any material or perform any service on this contract without first assuring compliance with applicable laws of the State of North Carolina and regulations of the State Personnel Commission relating to dual or secondary employment by State employees. In the event the Contractor hires, employs or contracts with any employee of the NCSBE, that fact will be immediately reported in writing, referencing the contract number, to the Purchasing Section, Department of Public Instruction.
8. **Key Personnel.** The Contractor shall not substitute for key personnel assigned to the performance of this contract without prior written approval from the NCSBE Project Coordinator. Key personnel are defined as those individuals named, either by title or by individual name, in the Contractor's offer.
9. **Subcontractor Approval.** None of the work to be performed under this contract by the Contractor or its employees shall be subcontracted without the prior written approval of NCSBE Project Coordinator, unless such arrangement was specified in its offer.
10. **Contract Audit.** The Contractor agrees that NCSBE has the right to audit the records of the Contractor pertaining to this contract both during the period of this contract and for three years after completion hereof. Contractor agrees to maintain all pertinent documents and records relating to this contract for said period of time following completion of the contract period.
11. **Contract Modifications.** This contract may be amended only by written amendments duly executed by and between NCSBE and the Contractor. However, to take advantage of unforeseen opportunities the NCSBE Project Coordinator may make minor modifications that (a) do not change the intent of the contract or the scope of the Contractor's performance; (b) do not increase the Contractor's total compensation or method of payment; and (c) either improve the overall quality of the product or service to the State without increasing the cost, or reduce the total cost of the product or service without reducing the quantity or quality. All such minor modifications to the contract must be recorded in writing and signed by the Contractor, Project Coordinator, and placed on file with the Purchasing Section, NCSBE.
12. **Performance and Default:** If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this agreement, NCSBE shall thereupon have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Contractor shall, at the option of NCSBE, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding, the Contractor shall not be relieved of liability to NCSBE for damages sustained by NCSBE by virtue of any breach of this agreement, and the NCSBE may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined. In case of default by the Contractor, the State may procure the services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The State reserves the right to require performance bond or other acceptable alternative guarantees from successful offer or without expense to the State. In addition, in the event of default by the Contractor under this contract, the State may immediately cease doing business with the Contractor, immediately terminate for cause all existing contracts the State has with the Contractor, and de-bar the Contractor from doing future business with the State. Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the State may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the State, and debar the Contractor from doing future business with the State. 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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
13. **Contractor Bankruptcy.** The filing of a petition of bankruptcy or insolvency by or against the Contractor will terminate this contract.
14. **Ownership of Contract Products.** The Contractor agrees that all products, records and data tapes produced under this contract become the property of NCSBE.
15. **Indemnification. Non-State Agency -** The Contractor agrees to indemnify, save and hold harmless the NC State Board of Education, their officers, employees, successors and assigns, from any and all claims of any nature, including claims for attorney fees and costs, arising out of or relating to the performance of this contract.
16. **Contractor Project Coordinator.** The Contractor must designate one person employed at the executive level, preferably a vice-president or the president, who has the authority to expedite work or make adjustments in scheduling. This person will be contacted by NCSBE Project Coordinator to make such adjustments only in the case of an emergency.
17. **Severability.** No condition in this document shall be construed to limit the enforceability of any other condition herein. In the event any term or condition contained in, or made a part of this document by reference, is negated or vacated for any reason whatsoever all other provisions shall remain fully valid and enforceable.
18. **Employment Taxes.** The contractor agrees to make all employment tax payments to the federal and state governments on the full contract amount as required by law. THE CONTRACTOR FURTHER AGREES to reimburse the NC State Board of Education or its employees for any penalty due to the contractor's failure to make such payments.
19. **Family Educational Rights & Privacy Act:** Student educational records are subject to 20 U.S.C. 1232g, Family Rights and Privacy Act (FERPA) and are not disclosable except in very limited circumstances. The contractor will ensure that every employee responsible for carrying out the terms of this contract is aware of the confidentiality requirements of federal law. In addition, every such employee must sign a confidentiality acknowledgement that indicates that he or she understands the legal requirements for confidentiality. The contractor is responsible for the actions of its employee and must take all precautions necessary to ensure that no violations occur. Finally, access to personally identifiable student education information will be limited to those employees who must have access to it in order to perform their responsibilities pursuant to this contract.
20. **Certification:** By executing this contract, the signer certifies that these services are submitted competitively and without collusion (G.S. 143-54), that none of our officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that we are not an ineligible vendor as set forth in G.S. 143-59.1. False certification is a Class I felony.
21. **Outsourcing:** 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. If, after award of a contract, the contractor wishes to outsource any portion of the work to a location outside the United States, prior written approval must be obtained from the NCSBE responsible for the contract. Vendor must give notice to the NCSBE of any 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.