

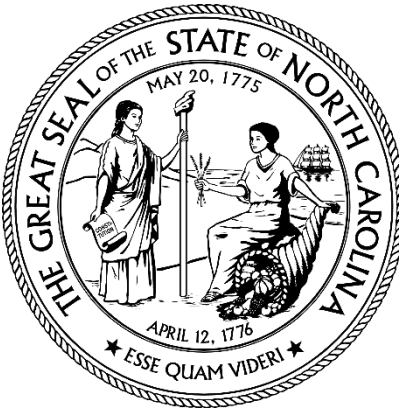
STATE OF NORTH CAROLINA

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF HEALTH BENEFITS

MINIMUM DATA SET (MDS)

REQUEST FOR PROPOSAL #30-2025-013-DHB



STATE OF NORTH CAROLINA

Request for Proposal

#30-2025-013-DHB

For internal State agency processing, please provide your company's Federal Employer Identification Number or alternate identification number (e.g., Social Security Number). Pursuant to NCGS 132-1.10(b) this identification number shall not be released to the public. **This page will be redacted** before the procurement file is made available for public inspection.

This page is to be filled out and returned with your Proposal.

ID Number:

Federal ID Number or Social Security Number

Offeror Name



STATE OF NORTH CAROLINA
Department of Health and Human Services

Refer **ALL** Inquiries regarding this RFP to:

Theodore Fort
Senior Contract Development Specialist
Medicaid.Procurement@dhs.nc.gov

Request for Proposal: 30-2025-013-DHB

Date RFP Issued/Posted: February 28, 2025

Date RFP Submissions due to the Department: April 16, 2025, by 5:00 p.m. EST

Proposals will be opened: April 17, 2025, at 1:00 p.m. EST

Contract Type: Open Market

Commodity Number: 811615

Description: MINIMUM DATA SET (MDS)

Using Agency: Department of Health and Human Services, Division of Health Benefits

Requisition No.: N/A

EXECUTION

In compliance with this Request for Proposal (RFP), and subject to all the conditions herein, the undersigned Offeror offers and agrees to furnish and deliver any or all services proposed, at the cost proposed and within the time specified herein. By executing this proposal, the Offeror confirms it has read, understands, and will comply with all specifications and requirements in the RFP and any addenda in the event of contract award. By executing this proposal, the undersigned Offeror certifies that this proposal is submitted competitively and without collusion (NCGS § 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (NCGS § 143-59.2), and that it is not an ineligible Contractor as set forth in NCGS § 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Offeror's knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by NCGS § 143-48.5, the undersigned Offeror certifies that it, and each of its subcontractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the Federal E-Verify system. NCGS § 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By executing this proposal, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization. **Failure to execute/sign proposal prior to submission shall render proposal invalid and it WILL BE REJECTED. Late proposals will not be accepted.**

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF OFFEROR:	FAX NUMBER:	
OFFEROR'S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

Offer valid for at least **240** Calendar Days from date of proposal opening unless extended by the State in writing. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

ACCEPTANCE OF RESPONSE

If any or all parts of this proposal are accepted by the State of North Carolina, an authorized representative of the Department of Health and Human Services shall affix their signature hereto and this document and all provisions of this Request for Proposal along with the Offeror's proposal, and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Offeror.

FOR STATE USE ONLY: Offer accepted and Contract awarded this _____ day of _____, 20_____, by

(Authorized Representative of NC Department of Health and Human Services)

Table of Contents

EXECUTION	3
I. INTRODUCTION	6
A. Intent	6
B. Background and Program Information	6
II. GENERAL PROCUREMENT INFORMATION AND NOTICE TO OFFERORS	6
A. Important Notices	6
B. General Procurement Information and Instructions	7
C. Request for Proposal Functionality and Related Notices	8
D. Schedule and Important Events	11
E. Submission of Proposal and Offeror's Response	13
F. Confidentiality and Prohibited Communications During Evaluation	18
G. Evaluation Process and Contract Award	20
III. DEFINITIONS, CONTRACT TERM, GENERAL TERMS AND CONDITIONS, OTHER PROVISIONS & PROTECTIONS	25
A. Definitions	25
B. Acronyms and Abbreviations	27
C. Contract Term	28
D. General Terms and Conditions	28
E. Confidentiality, Privacy and Security Protections	46
F. Public Records and Trade Secrets Protections	51
IV. MINIMUM QUALIFICATIONS	53
A. Acceptance of Terms and Conditions	53
B. Eligibility to Contract	53
C. Financial Stability and Legal Disclosure	53
D. Experience Requirements	54
V. SCOPE OF SERVICES AND PERFORMANCE REQUIREMENTS	55
A. MDS Validation Services Objectives	55
B. General Requirements	55
C. Core Functions	56
D. Qualifications and Program Administration Requirements	58
E. Implementation	59
F. Staffing	61
G. Reports	65

H. Quality Assurance.....	66
I. Business Continuity Plan	67
VI. CONTRACT PERFORMANCE	68
A. Contract Violations and Noncompliance	68
B. Notice of Deficiency	68
C. Remedial Actions and Corrective Action Plans	68
D. Liquidated Damages	69
E. Process to Appeal a Contract Performance Action and Dispute Resolution	70
F. Performance Standards and Liquidated Damages	71
VII. Attachments to the RFP	75
Attachment A: Minimum Qualifications Response.....	76
Attachment B: Offeror’s Response to Technical Evaluation Questions	79
Attachment C: Cost Proposal.....	94
Attachment D: Contract Administrators.....	96
Attachment E: Certification of Financial Condition and Legal Action Summary	98
Attachment F: State Certifications	100
Attachment G: Federal Certifications and Disclosures	101
Attachment H: Disclosure of Litigation and Criminal Convictions	107
Attachment I: Location of Workers Utilized by Contractor	109
Attachment J: Offeror Request for Proposed Modifications to the Terms and Conditions.....	110
Attachment K: Business Associate Agreement	111
Attachment L: Subcontractor Identification Form.....	115
Attachment M: Legal Grounds for Marking Information Confidential	117
Attachment N: Evaluation Methodology.....	118

I. INTRODUCTION

A. Intent

The North Carolina Department of Health and Human Services (“DHHS” or “Department”), Division of Health Benefits (“DHB”) solicits proposals for the continued management of the Minimum Data Set (MDS) validation program for North Carolina’s nursing facilities. Currently, there are four-hundred and twenty-one (421) Medicare/Medicaid certified skilled nursing facilities throughout the state of North Carolina. A complete listing of skilled nursing facilities can be obtained at the Medicare.gov, Nursing Home Compare website. The Contractor will verify the MDS evaluations as completed by nursing facilities and train nursing facility staff on the accurate completion of MDS assessments, appropriate supporting documentation, and use of the thirty-four (34) Resource Utilization Grouper-III (RUG-III) system or a subsequent reimbursement system. The RUG-III reimbursement system is a part of the skilled nursing facility Prospective Payment System; of which a key component is the Case Mix reimbursement methodology which is used to determine resident care needs. In addition, the Contractor shall be required to develop Case Mix Indices (CMI) to be used by the Department for nursing facility rate setting.

B. Background and Program Information

The Department utilizes a Case Mix reimbursement system for nursing facilities which has been in place since February 1, 2004. This Case Mix reimbursement system uses an adjusted RUG-III system of categorizing the level of acuity of nursing facility patients. As part of the reimbursement methodology, the Department incorporates a program for verifying the MDS assessments and Supporting Documentation Guidelines approved by the Department.

II. GENERAL PROCUREMENT INFORMATION AND NOTICE TO OFFERORS

A. Important Notices

Offerors are Cautioned to Read Carefully

1. **Read, Review, and Comply:** It is the Offeror’s responsibility to read this document in its entirety, review all attachments, tables, charts, exhibits, diagrams, and appendices, and comply with all instructions.
2. **Execution of Proposal:** Failure to sign the **Execution Page** in the indicated space and return all attachments, tables, charts, exhibits, diagrams, and appendices completed and signed where required, may render the proposal non-responsive, and the proposal may be rejected.
3. **Resulting Contract:** Under the State’s procurement process, any contract resulting from this RFP will consist of the RFP and the Offeror’s response, along with any addenda to the RFP, written clarifications, Best and Final Offers (BAFO), and negotiation documents. The Contractor will be obligated to perform services as proposed in its offer, unless otherwise modified by clarification, BAFO, negotiation, or Contract amendment, or superseded by a document with higher order of precedence. See Contract *Section III.D.22. ENTIRE*

AGREEMENT AND ORDER OF PRECEDENCE for more information and the order of precedence of the contract documents. See *Section II.C. Request for Proposal Functionality and Related Notices* for more information on the RFP, changes in specifications, and instructions regarding modifications to the terms and conditions.

4. **Potential Negotiations:** The Department reserves the right to enter into negotiations with one or more Offerors to establish a contract that is in the best interest of the Department. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain the most advantageous offer based on the evaluation factors set forth in the RFP. Such negotiations are at the Department's sole discretion and may result in modifications to the RFP and/or Offeror's proposal/ response to the RFP.
5. **Events and Deadlines:**
 - a. Pre-proposal Conference will be hosted by the Department on **March 6, 2025, at 1:00 p.m. EST**. See *Section II.D.2 Pre-Proposal Conference* for details and instructions.
 - b. **Questions** concerning this RFP must be submitted in writing by **March 13, 2025, at 5:00 p.m. EST**. See *Section II.D.3. Questions Concerning this Request for Proposal* for details and instructions.
 - c. **Submission of Proposals** will be accepted until **April 16, 2025, at 5:00 p.m. EST**. See *Section II.E. Submission of Proposal and Offeror's Response* for details and instructions.

B. General Procurement Information and Instructions

1. **INFORMATION AND DESCRIPTIVE LITERATURE:** The Offeror shall furnish all information requested as part of this RFP. Each Offeror shall submit detailed information with their proposal (e.g., narratives, diagrams, exhibits, examples, sketches, descriptive literature, complete specifications) to support the services and products offered.
2. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the 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. The State also encourages and promotes using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The Offeror remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Offerors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
3. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all proposals meet the following:
 - a. All copies of the proposal are printed double-sided;
 - b. All submittals and copies are printed on recycled paper with a minimum post-consumer content of thirty percent (30%);

- c. Unless necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable; and
 - d. Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
- 4. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to NCGS § 143-48 and Executive Order 150 (1999), the Department invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises, and nonprofit work centers for the blind and severely disabled.
- 5. **MISCELLANEOUS:** Pronouns, whether masculine, feminine, or gender-non-specific, shall be read to be inclusive of all genders and shall be read to include the plural and vice versa.
- 6. **INFORMAL COMMENTS:** The Department shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the Department prior to or during the competitive process or after award, including but not limited to policy papers or any written or verbal statements whatsoever made outside of this RFP and any formal Addenda issued herewith. The Department is bound only by information provided in this RFP and in formal Addenda issued.
- 7. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by an Offeror in preparing or submitting proposals are the Offeror's sole responsibility. The Department will not reimburse any Offeror for any costs related to proposal preparation and submission, or protest of award.
- 8. **OFFEROR'S REPRESENTATIVE:** Each Offeror shall submit with its proposal the name, title, email address, physical address, and telephone number of the person(s) with authority to bind the Offeror and answer questions or provide clarification concerning the Offeror's proposal. This information must be included in the Offeror's proposal/ response.
- 9. **INSPECTION AT OFFEROR'S SITE:** The Department reserves the right to inspect, at a reasonable time, the equipment/item, plant, or other facilities of a prospective Offeror prior to Contract Award, and during the Contract Term as necessary for the Department to determine that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

C. Request for Proposal Functionality and Related Notices

- 1. **RFP Functionality**
 - a. This RFP serves two functions:
 - i. Define the specifications of the services sought by the Department; and
 - ii. Provide the requirements and terms and conditions of any contract resulting from this procurement.
 - b. All Terms and Conditions in this RFP shall be enforceable. The use of phrases such as "*shall*", "*will*", "*must*", "*required*", and "*requirements*" are intended to create enforceable

Contract conditions. In determining whether proposals should be evaluated or rejected, the Department will take into consideration the degree to which the Offeror has proposed or failed to propose solutions that are responsive to the Department's needs as described in this RFP.

2. Notices Regarding RFP and Terms and Conditions

- a. It is the Offeror's responsibility to read all instructions, terms and conditions, specifications, requirements, attachments and appendices, and any other components made a part of this RFP and comply with all instructions and directives. The Offeror is responsible for obtaining and complying with all addenda and other changes that may be issued relating to this RFP.
- b. All questions and issues regarding any term, condition, instruction, or other component within this RFP must be submitted in accordance with *Section II.D.3. Questions Concerning this Request for Proposal*. If the Department determines that any changes will be made because of the questions asked, then such decisions will be communicated in the form of an Addendum posted on the North Carolina electronic Vendor Portal (NC eVP). The Department may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been raised during the question and answer period. Other than through this process, and except as provided in RFP *Section II.C.3. Proposed Modifications to Terms and Conditions*, the Department rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Offeror's proposal. This applies to any language appearing in or attached to the RFP document as part of the Offeror's proposal that purports to vary any terms and conditions, or Offeror's Instructions therein to render the proposal non-binding or subject to further negotiation.
- c. The Offeror's proposal to this RFP shall constitute a firm offer. **By execution and delivery of a proposal to this RFP, the Offeror agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, or any purported condition to the offer, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject the Offeror's proposal.**

3. Proposed Modifications to Terms and Conditions

- a. Offerors are urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether specific language proposed as a modification is acceptable to or will be considered by the Department.
- b. Identification of objections or exceptions to the terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.
- c. If the Offeror wishes to suggest changes to any of the terms and conditions included in *Sections III.D.-F.* of this RFP, those must be submitted in *Section VII. Attachment J: Offeror Request for Proposed Modifications to the Terms and Conditions*. The Department, in its sole discretion, may consider any proposed modifications identified by the Offeror. Where necessary, any modification(s) to the terms and conditions agreed upon by the Department may be incorporated as part of an Addendum to the RFP, BAFO, negotiation

document, Execution of Contract, or Contract Amendment after award. Other than through this process, the Department rejects and shall not be required to evaluate or consider any additional or modified terms, conditions, or instructions included in the Offeror's proposal.

4. Changes in Requirements and Specifications

- a. The Offeror is cautioned that the requirements of this RFP can only be altered by written Addendum or other document issued by the Department as described in this RFP, and that oral or emailed communications from whatever source(s) are of no effect.
- b. The Department reserves the right to modify any requirement or specification contained herein without modifying the timelines in this RFP. Any modification will be specified in an Addendum which shall be posted on the North Carolina electronic Vendor Portal (eVP) prior to the opening of proposals or through Negotiation after the opening of proposals.

5. Rights Reserved

- a. The Offeror is made aware, pursuant to 01 NCAC 05B .0501, that in soliciting offers, any or all offers received may be rejected. The basis for rejection may include, but is not limited to the following:
 - i. The offer is deemed unsatisfactory as to quantity, quality, delivery, price or service offered;
 - ii. The offer fails to comply with conditions of the solicitation document or with the intent of the proposed contract;
 - iii. The Department determines there is a lack of competition;
 - iv. Error(s) in specifications or indication that revision(s) would be to the State's advantage;
 - v. Cancellation of or changes in the intended project or other determination that the proposed requirement is no longer needed;
 - vi. Limitation or lack of available funds;
 - vii. Circumstances which prevent determination of the most advantageous offer and selection in accordance with NCGS § 143-135.9; or
 - viii. Any determination that rejection would be to the best interest of the State.
- b. If all offers are rejected, the solicitation may be cancelled in its entirety, or the Department may negotiate with one or more sources of supply that may be capable of satisfying the requirements.
- c. The Offeror is cautioned that this is a Request for Proposal, not a request to contract, and the Department reserves the unqualified right to reject all offers deemed failing to meet minimum qualifications, not responsive, incomplete, or non-compliant with the requirements described herein; or when such rejection is deemed to be in the best interest of the Department or the State of North Carolina.
- d. The Department may also:
 - i. Modify provisions of this RFP in response to changes in law or as required by CMS;
 - ii. Waive any formality or informality;
 - iii. Waive a specification or requirement of the RFP if it is in the best interest of the Department;

- iv. Waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
 - v. Negotiate directly with one or more Offerors, to achieve a contract that is in the best interest of the Department, if the responses to this solicitation demonstrate a lack of competition, or offers are found non-responsive; and/or
 - vi. Cancel this RFP at any time. Notice of Cancellation will be posted on the North Carolina electronic Vendor Portal (eVP) website.
- e. In the event all proposals are rejected, and the Department enters into negotiation, pursuant to 01 NCAC 05B .0503, the Department reserves the right to award a contract to the Offeror or Offerors, which, in its opinion, has (have) made the best proposal through the negotiation process.

D. Schedule and Important Events

1. The Department will make every effort to adhere to the schedule detailed below *in Section II. Table 1: RFP Schedule*. The Department reserves the right to adjust the schedule and will post an Addendum on the North Carolina electronic Vendor Portal (eVP) for any schedule changes occurring prior to the opening of proposals.

Section II. Table 1: RFP Schedule

Activity	Responsible Party	Due Date
Issue Request for Proposal	Department	February 28, 2025
Pre-proposal Conference	Department	March 6, 2025 at 1:00 p.m. EST
Deadline to Submit Written Questions	Offeror	March 13, 2025 at 5:00 p.m. EST
Issue Addendum with Responses to Questions	Department	March 28, 2025
Deadline to Submit Proposals	Offeror	April 16, 2025 at 5:00 p.m. EST
Opening of Proposals	Department	April 17, 2025, at 1:00 p.m. EST
Conduct Evaluation of Proposals	Department	April 17, 2025 – June 5, 2025
Contract Award	Department	June 6, 2025

2. Pre-proposal Conference

- a. The Department will hold a Pre-proposal Video Conference on **March 6, 2025, from 1:00 p.m. to 2:00 p.m. EST via Microsoft (MS) Teams. No purchase is required to use the MS Teams app.**

- b. The purpose of the conference is to allow the Department to review key priorities and objectives of the RFP and to review the submission requirements and instructions.
- c. While attendees may ask questions at the Pre-proposal Conference, the Department is not required to respond during the conference. The Department will respond to written questions per the process described in this RFP.
- d. Potential Offerors are not required to attend the Pre-proposal Conference in order to submit responses to this RFP; however, they are **urged** and **cautioned** to attend the Pre-proposal Conference to apprise themselves of the conditions and requirements of the submission.
- e. To ensure receipt of the video conference invite and instructions for participation, interested parties are required to pre-register for the conference by sending an email to Medicaid.Procurement@dhhs.nc.gov stating the name of the potential Offeror, the names and email addresses of representatives who will attend, the current title or role of each representative, and requests for a sign language interpreter or other accommodations. Interested parties must pre-register at this email address no later than **10:00 a.m. EST on March 4, 2025**.
- f. The Department reserves the right to limit the number of representatives attending on behalf of each vendor or organization to ensure adherence to videoconference capacity limits.
- g. Audio and video recording will not be permitted. Statements and materials discussed at the conference are informational only, are not binding upon the Department and do not replace reading, reviewing and complying with this RFP.
- h. Attendees will be required to announce their name or otherwise confirm their presence via a roll call during the video conference.

3. Questions Concerning this Request for Proposal

- a. Written questions concerning this RFP will be received until **March 13, 2025 at 5:00 p.m. EST**.
- b. Questions must be sent via email to Medicaid.Procurement@dhhs.nc.gov and include ***“Questions Minimum Data Set (MDS) RFP #30-2025-013-DHB”*** as the subject of the email. The questions should be submitted in the format below.

RFP Section	RFP Page Number	Offeror Question
Example: V.B.1.a.		

- c. The Department will prepare responses to all written questions submitted by the stated deadline and post an addendum to North Carolina electronic Vendor Portal (eVP). The Offeror is cautioned that contacting anyone other than the individual noted on the Execution Page of this RFP may be grounds for rejection of said Offeror’s response.

4. Opening of Proposals

- a. The opening of proposals will be conducted by the Department on **April 17, 2025 at 1:00 p.m. EST**. The opening will be a virtual event conducted on Microsoft Teams. This is a one-step process.

- b. Offerors are not required to attend the Proposal Opening.
- c. To facilitate the virtual opening, any Offeror or individual wishing to attend the Proposal Opening must pre-register by sending an email to Medicaid.Procurement@dhhs.nc.gov stating the name of the Offeror, if applicable, the names and email addresses of each person to attend, the current role or title of each person, and any requests for a sign language interpreter or other accommodations. Offerors or individuals should pre-register at this email address no later than **April 15, 2025, at 5:00 p.m. EST**, to ensure availability of sign language interpreter or other accommodations and timely receipt of the Microsoft Teams link.
- d. Audio and video recording will not be permitted. Statements and materials made at Proposal Opening are not binding upon the Department and do not replace compliance with this RFP.
- e. During the Proposal Opening, the Department will:
 - i. Confirm attendance, request introductions and document information for attendees and their represented entity;
 - ii. Open each proposal submission and document the offeror's name, the number of boxes/ packets opened; and
 - iii. Announce the name of each Offeror.
- f. The Department will post a tabulation on North Carolina electronic Vendor Portal (eVP) following the Proposal Opening. The Tabulation will include the name of each Offeror for which a proposal was opened. The Department will not post information regarding Offerors' cost proposals.

E. Submission of Proposal and Offeror's Response

1. Consideration

- a. The Offeror must meet all the minimum qualifications of this RFP, as provided in *Section IV. Minimum Qualifications*, for its proposal to be evaluated.
- b. Offeror's proposal must clearly demonstrate compliance with all the requirements stated within this RFP. The Department reserves the right to reject proposals deemed incomplete, non-responsive, or non-compliant with the RFP requirements; or when such rejection is deemed to be in the best interest of the Department or the State of North Carolina.
- c. The Offeror must demonstrate it will comply with the scope of services and all of the requirements in this RFP and must provide a detailed description to demonstrate its ability to completely fulfill each requirement and service.
- d. The Department will accept digital electronic signatures.

2. Responses to RFP Requirements and Scope of Services

- a. The Offeror must complete and return all documents and attachments required in this RFP. Failure to complete and return all documents and attachments as indicated may result in disqualification.

- b. The proposal must clearly articulate and address all requirements of this RFP. The Offeror must provide detailed narrative descriptions with supporting information that may include diagrams, exhibits, examples, samples, sketches, descriptive literature, etc.
- c. For some requirements, the Offeror may need to provide an affirmative statement to the question or requirement by, at a minimum, checking a box to confirm adherence/agreement or inserting the word CONFIRM adherence/agreement in its proposal.
- d. The Offeror must describe any limitations, qualifications or contingences impacting its ability to perform as required by the RFP.
- e. The Offeror must not include any assumptions in its proposal. The Offeror should seek clarity on any questions or concerns during the defined question period.
- f. The Offeror should exercise due diligence to ensure their response is consistent with all instructions, clearly written and addresses all requirements and questions of the RFP.
- g. By submitting its response to this solicitation, Offeror represents and warrants that it has carefully reviewed, understands, and intentionally submits each section of Offeror's response. In the event Offeror had assistance developing and drafting its response to this RFP, including but not limited to, assistance from outside resources, computer programs, RFP automation technology or artificial intelligence (AI), Offeror warrants and represents that it has carefully reviewed, understands, and intentionally submits all portions of its response drafted by or with such assistance. The Department is not responsible for, nor is it required to excuse or consider for relief to the Offeror, any omissions or errors in Offeror's response that result for any reason.

3. Required Proposal Documents

To demonstrate the Offeror is qualified to meet the ongoing demands of the Department and comply with federal and state requirements, the Offeror is required to return **all** the following documents, completed and signed where indicated and **in the order listed**, with their RFP response, the entirety of which shall be called the ***Minimum Data Set (MDS) Proposal***.

- a. Offeror's **MDS Technical Proposal Response** must include the following:
 - i. RFP Cover Page with Title and RFP Number;
 - ii. **Completed** Offeror Name and Tax ID Number page;
 - iii. **Completed** and **signed** Execution Page;
 - iv. The entire body of this RFP, excluding attachments;
 - v. Each addendum released in conjunction with the RFP, including all pages of the addendum and the **signed** execution of the addendum page;
 - vi. **Completed** and **signed** *Attachment A: Minimum Qualifications Response*; to address minimum qualifications within this RFP;
 - vii. **Completed** *Attachment B: Offeror's Response to Technical Evaluation Questions* to address technical requirements and specifications identified within this RFP;
 - viii. **Completed** *Attachment D: Contract Administrators*;

- ix. **Completed** and **signed** Attachment E: Certification of Financial Condition and Legal Action Summary;
 - x. **Completed** and **signed** Attachment F: State Certifications;
 - xi. **Completed** and **signed** Attachment G: Federal Certifications and Disclosures;
 - xii. **Completed** Attachment H: Disclosure of Litigation and Criminal Convictions;
 - xiii. **Completed** and **signed** Attachment I: Location of Workers Utilized by Contractor;
 - xiv. **Completed** Attachment J: Offeror Request for Proposed Modifications to the Terms and Conditions;
 - xv. **Completed** and **signed** Attachment K: Business Associate Agreement;
 - xvi. **Completed** Attachment L: Subcontractor Identification Form;
 - xvii. **Completed** Attachment M: Legal Grounds for Marking Information Confidential;
 - xviii. Attachment N: Evaluation Methodology;
- b. Offeror's **Cost Proposal Response** must include **Completed** and **signed** Section VII. Attachment C: Cost Proposal
 - c. Except for Addenda issued in conjunction with this RFP, **Offerors must request MS Word and Excel versions of documents, templates (e.g. System Security Plan template) and attachments required to be completed for proposal submission from Medicaid.Procurement@dhhs.nc.gov**. Offerors should obtain any addenda from the North Carolina electronic Vendor Portal (eVP) website.
4. **Proposal Submission and Number of Copies**
- a. The Offeror **must** deliver the following contemporaneously to the address identified above in Sections II.E.4.b.i. and II.E.4.b.ii. by the deadline to submit proposals in *Section II.D.1. Table 1: RFP Schedule*:
 - i. **Hard Copies:**
 - 1) **Original and Extra Copies.** Offeror shall submit the following number of original responses and complete copies of the original response:
 - a) One (1) signed, original executed response of Offeror's **MDS Technical Proposal Response** outlined in *Section II.E.3.*;
 - b) Five (5) copies of the signed, originally executed response of Offeror's **MDS Technical Proposal Response**;
 - c) One (1) signed, original executed response of Offeror's **MDS Cost Proposal Response** outlined in *Section II.E.3.*; and
 - d) Five (5) copies of the signed, originally executed Offeror's **MDS Cost Proposal Response**.
 - 2) **Marked Originals.** Offeror shall mark the original versions of the signed, originally executed **Technical Proposal Response** and the **Cost Proposal Response**, so the

Department can easily identify and differentiate the originals from the extra copies.

- 3) **Separate Submission of Technical and Cost Proposals.** Offeror shall submit the Technical Proposal Response and the Cost Proposal Response separately, meaning the Technical and Cost proposals should not be included in the same notebook or boxes. Although the Technical and Cost proposals are to be submitted separately, there will be a one-step process for the opening of proposals.

ii. Electronic/Soft Copies:

- 1) One (1) copy of the signed, originally executed Offeror's **MDS Technical Proposal Response** outlined in *Section II.E.3. on a separate flash drive marked RFP #30-2025-013-DHB – Offeror's Name – MDS Technical Proposal.*

Each document, or group of documents, specified in *Section II.E.3., items i.-xix.* should be provided as separate PDF files and named accordingly.

- 2) One (1) copy of the signed, originally executed Offeror's **MDS Cost Proposal Response** outlined in *Section II.E.3. on a separate flash drive marked RFP #30-2025-013-DHB – Offeror's Name – MDS Cost Proposal.*

Offeror should provide both a separate PDF file and Microsoft Excel file of its Cost Proposal.

- 3) One (1) copy of the signed, originally executed Offeror's **MDS Technical Proposal Response** redacted in accordance with NCGS § 132, the Public Records Act, *on a separate flash drive marked RFP #30-2025-013-DHB – Offeror's Name – MDS Technical Proposal-REDACTED.*

- 4) One (1) copy of the signed, originally executed Offeror's **MDS Cost Proposal Response** redacted in accordance with NCGS § 132, the Public Records Act, *on a separate flash drive marked RFP #30-2025-013-DHB – Offeror's Name – MDS Cost Proposal-REDACTED.*

- 5) For the purposes of this RFP, redaction means to edit a document by obscuring or removing information that is considered confidential and proprietary by the Offeror and that meets the definition of Confidential Information set forth in NCGS § 132-1.2. Any information removed by the Offeror should be replaced with the word "Redacted". If the response does not contain Confidential Information, Offeror should submit a signed statement to that effect on the flash drive(s) that would otherwise contain the redacted copy of the proposal.

- 6) For clarity, there should be a total of four (4) flash drives submitted to be compliant with this section.

- 7) The electronic copies of the response must not be password protected.

- 8) **Each document, or group of documents, specified in Section II.E.3. a. and b. should be provided as separate PDF files and named accordingly.**

b. **Delivery of Responses**

i. **Hand Delivery**

Offeror or Offeror's representative may hand deliver responses to this RFP to **1010 Smithwick Drive, McBryde Building, Raleigh, NC 27603** as follows:

- 1) The Department will accept hand delivery of Proposals by appointment only.
- 2) Appointments must be scheduled by emailing the Department at Medicaid.Procurement@dhhs.nc.gov no sooner than seven (7) State Business Days prior to the scheduled opening. The email subject line should read, ***"Schedule Delivery of RFP #30-2025-013-DHB Minimum Data Set (MDS) RFP."*** In the body of the email, indicate a first, second and third preference for the appointment date and time. The Department will make every effort to accommodate Offeror's preference.
- 3) The Department will notify the Offeror of the date and time scheduled, and email an appointment invite with additional directions for locating the correct building entrance and contact information for the day of the delivery.
- 4) The Offeror should limit the number of persons to only those necessary to support delivery of its proposal and copies. The Offeror is required to adhere to safety protocols in place at the time of delivery. The Department will provide Offeror the requirements of any protocols in advance and other instructions in the delivery appointment and directions email.

ii. **Delivery by Any Manner Other Than Hand Delivery**

- 1) If Offeror is planning to deliver its response in any manner other than making an appointment for hand delivery (i.e., US postal service or commercial carrier), the Offeror should coordinate the date of delivery with Contract Management and Procurement Unit at Medicaid.Procurement@dhhs.nc.gov and plan accordingly to ensure timely receipt prior to the Proposal Opening.
- 2) Offeror's sealed response should be addressed and delivered as provided below:

OFFICE ADDRESS FOR DELIVERY BY UNITED STATES POSTAL SERVICE (USPS)
DHB Contract Management and Procurement Unit 2501 Mail Service Center Raleigh, NC 27699-2501 Attn: Theodore Fort, Senior Contract Development Specialist PROPOSAL NUMBER: 30-2025-013-DHB

OFFICE ADDRESS FOR DELIVERY BY ANY SPECIAL DELIVERY, OVERNIGHT DELIVERY, OR OTHER CARRIER
PROPOSAL NUMBER: 30-2025-013-DHB

Attn: Theodore Fort, Senior Contract Development Specialist
DHB/ Contract Management and Procurement Unit
1010 Middleton Drive
McBryde Building, Room 106
Raleigh, NC 27603

- 3) **IMPORTANT NOTE: This is an absolute requirement.** Late proposals, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. Offerors shall bear the sole risk of late submission due to unintended or unanticipated delay. **It is the Offeror's sole responsibility to ensure its proposal has been received as described in this RFP by the specified time and date of opening.** Failure to submit a proposal in strict accordance with the instructions provided shall constitute sufficient cause to reject an Offeror's proposal(s). Solicitation responses are subject to Sealed Bidding requirements.
- 4) All risk of late arrival due to unanticipated delay, whether delivered by hand, U.S. Postal Service, courier or other delivery service or method, is entirely on the Offeror. Note that the U.S. Postal Service generally does not deliver mail to the street address above, but to the State's Mail Service Center stated above. The Offeror is cautioned that proposals sent via U.S. Mail, including Express Mail, may not be delivered by the Mail Service Center to the Contract Specialist named in *Section II.E.4.b.ii.2)* of this RFP by the due date and time to meet the proposal submission deadline. The Offeror is urged to take the possibility of delay into account when submitting a proposal.

5. Falsified Information

The Department may initiate proceedings to debar an Offeror from participation in the offer process and from Contract Award as authorized by North Carolina law if it is determined that the Offeror has withheld relevant or provided false information.

F. Confidentiality and Prohibited Communications During Evaluation

1. As provided for in the North Carolina Administrative Code (NCAC), including but not limited to 01 NCAC 05B .0103, 09 NCAC 06B .0103 and 09 NCAC 06B .0302, all information and documentation whether electronic, written or verbal relative to the development of a contractual document for a proposed procurement or contract shall be deemed confidential in nature. In accordance with these and other applicable rules and statutes, such materials shall remain confidential until the award of a contract or until the need for the procurement no longer exists. **Any proprietary or confidential information, which conforms to exclusions from public records as provided by NCGS § 132, must be clearly marked as such with each page containing the trade secret or confidential information identified in boldface as "CONFIDENTIAL." If only a portion of each page marked "CONFIDENTIAL" contains trade secret information, the trade secret information shall be designated with a contrasting color or by a box around such information. In addition to marking confidential information as required by NCAC 05B.0103, confidential pages or portions of the proposal shall be reflected**

in the redacted copy submitted as instructed in Section II.E.4 as applicable. By submitting a redacted copy, the Offeror 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** and **Redacted** meet the requirements of NCGS § 132. **The Offeror must identify the legal grounds for asserting that the information is confidential, including the citation to state law,** by completing *Section VII. Attachment M: Legal Grounds for Marking Information Confidential* to this RFP. **However, under no circumstances shall price information be designated confidential.**

2. Except as otherwise provided above, pursuant to NCGS § 132-1, et seq., information or documents provided to the Department in response to this RFP are Public Record and subject to inspection, copy and release to the public unless exempt from disclosure by statute, including, but not limited to, NCGS § 132-1.2. Redacted copies provided by the Offeror to the Department may be released in response to public record requests without notification to the Offeror.
3. During the period spanning the issuance of the RFP to Contract Award, possession of proposals, accompanying information, and subsequent negotiations are limited to personnel of the Department and any third parties involved in this procurement process.
4. Each Offeror submitting a proposal (including its representatives, subcontractors, and suppliers or other pilot partners or affiliates) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named above, department secretary, agency head, members of the General Assembly and Governor's office), or private entity, if the communication refers to the content of Offeror's proposal or qualifications, the content of another Offeror's proposal, another Offeror's qualifications or ability to perform the contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposal and/or the award of the contract. An Offeror not in compliance with this provision shall be disqualified from Contract Award, unless it is determined in the Department's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the Department would not be served by the disqualification. An Offeror's proposal may be disqualified if its subcontractor and supplier engage in any of the foregoing communications during the time that the procurement is active (*i.e.*, the issuance date of the procurement until the date of the Contract award). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFP or general inquiries directed to the purchaser regarding requirements of the RFP (prior to proposal submission) or the status of the Contract Award (after submission) are excepted from this provision.
5. The Department may serve as custodian of Offeror's confidential information and not as an arbiter of claims against Offeror's assertion of confidentiality. If an action is brought pursuant to NCGS § 132-9 to compel the Department to disclose information marked confidential, the Offeror agrees that it will intervene in the action through its counsel and participate in defending the Department, including any public official(s) or public employee(s). The Offeror agrees that it shall hold the Department, State of North Carolina, and any official(s) and

individual(s) harmless from all damages, costs, and attorneys' fees awarded against the Department in the action. The Department will provide reasonable notice to the Offeror in writing of any action seeking to compel the disclosure of Offeror's confidential information. The Department shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The Department shall have no liability to Offeror with respect to the disclosure of Offeror's confidential information ordered by a court of competent authority pursuant to NCGS § 132-9 or other applicable law.

G. Evaluation Process and Contract Award

The Evaluation process will commence soon after responses are unsealed as defined in this RFP. The Department will evaluate each Offeror's proposal in accordance with the method, process, and scoring/weighting criteria stated herein as further described in *Section VII. Attachment N: Evaluation Methodology*.

1. Evaluation Committee and Method

- a. An Evaluation Committee (Committee) will be established to review each Offeror's proposal and make award recommendations. The Department may designate other individuals or subject matter experts, including individuals from outside the Department, to assist in the evaluation process. The Department reserves the right to alter the composition of the Committee or designate other staff or vendors to assist in the process.
- b. The Committee will review and evaluate all responsive and qualified proposals received by the deadlines specified in this RFP. The Committee will be responsible for the entire evaluation process, including any clarifications, negotiations, and BAFOs.
- c. The Committee's evaluation determinations and recommendations will be by consensus.

2. Investigation, Validation, and Inspection

- a. The Department may make reasonable investigations or reviews to validate Offeror's proposal or determine the ability and readiness of the Offeror to perform the services under this RFP. The Offeror shall furnish to the Department all such information and data within requested timeframes to complete investigations, reviews, or validations under this section.
- b. The Department reserves the right to inspect Offeror's physical facilities, including any located outside of North Carolina prior to award and at any time during the Contract period to satisfy questions regarding the Offeror's capabilities or performance. Department's investigation or inspection of Offeror's ability and physical facilities includes any entity or site used in the performance of any obligation under the Contract.
- c. The Department further reserves the right to reject any offer if the evidence submitted by, or investigations, reviews or validations of, the Offeror and its proposal fail to satisfy the Department that the Offeror is properly qualified to carry out the obligations of the Contract and to provide the required services.
- d. The Department may request to review any policy, procedure, process, script, manual or other material used to fulfill a Scope of Services requirement and require changes as a condition of participation under the Contract.

- e. Nothing in this section is intended to limit or conflict with the **ACCESS TO PERSONS AND RECORDS** clause.
3. **Evaluation Process:** The following descriptions are to provide general information about the Department's evaluation process. The Department reserves the right to modify the evaluation process, including the order or content of the following evaluation process components:
- a. The Committee will review each Offeror's proposal to validate all required proposal documents are included and completed, and all Instructions to Offerors have been followed. Failure to adhere to these requirements may render the Offeror's response incomplete and may be grounds for rejection during any part of the evaluation process.
 - b. The Committee will determine if Minimum Qualifications are met as required in *Section IV. Minimum Qualifications*. If the Offeror does not provide the required information, or the Department determines that the Offeror does not meet the Minimum Qualifications, that Offeror's response may be excluded from further consideration and evaluation. Exclusion from further consideration may occur upon the Department's initial review or at any time during the evaluation process upon Department's determination that the Offeror fails to meet the Minimum Qualifications.
 - c. The Committee will review and evaluate the Offeror's *Minimum Data Set Proposal* relative to the evaluation criteria specified in the RFP and *Section VII. Attachment N: Evaluation Methodology*.
 - d. The Committee will make a recommendation to award to the Offeror meeting the RFP requirements and whose offer is determined to be most advantageous in accordance with NCGS § 143-135.9 to the Department, based on the criteria described in the RFP, and the Committee's ranking of proposals and the basis and reasons for the selection decision. Upon approval of the recommendation by the Department, the notice of award will be issued with the Department executing a Contract with the successful Offeror.
4. **Clarifications, Negotiations, and BAFOs**
- a. The Department reserves the right to request Clarifications at any time from any Offeror, and such Clarifications must be submitted in writing to the Offeror to respond. However, the Department *is not required* to request Clarifications from any Offeror, Clarifications are at the discretion of the Department, and Offerors should exercise due diligence to ensure its response is clear and addresses all the requirements and specifications of the RFP. Pursuant to 01 NCAC 05A .0112, Clarification means communications between the State and an Offeror that may occur after receipt of Offeror's proposal made for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an Offer. A Clarification may also be used in order for the State to interpret an Offer or Offers or to facilitate the State's evaluation of all Offers. A Clarification shall not be used to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate. The Department may refuse to accept or consider, in whole or in part, the response to a Clarification provided by an Offeror.
 - b. The Department reserves the right to enter into negotiations with one or more Offerors to establish a contract that is in the best interest of the Department. Such negotiations may result in modifications to the RFP and/or Offeror's proposal/response.

- c. The Department may issue a BAFO request to any Offeror(s), requesting one or more Offerors change its (their) initial offer(s).
5. **In-Person or Oral Presentations**
 The Department reserves the right to request in-person or oral presentations from any Offeror as part the Committee’s evaluation of proposals. In-person presentations shall be conducted in Raleigh, NC at a site chosen by the Department or held virtually by video conference. Oral presentations may be conducted by conference call. The presentations will address specific topics provided in advance to the Offeror. However, the Department *is not required* to request in-person or oral presentations from any or all Offerors and may limit any presentations only to those Offerors which are deemed competitive. Additional details regarding the scheduling of any in-person or oral presentations will be provided to selected Offerors by the Department upon determination that such presentation is needed. The Offeror is solely responsible for any costs associated with making in-person or oral presentations, including but not limited to travel and the preparation of additional materials.
6. **Quality Review**
 The Department reserves the right to conduct a quality review of the RFP evaluation. Any changes to evaluation documentation, ratings, determinations or recommendations or other records of the Evaluation Committee as a result of the quality review will be made by consensus of the Committee.
7. **Rescission**
 The Department may, at its discretion, allow an Offeror to rescind certain statements in the Offeror’s Proposal. Such rescissions will be handled and documented as Clarifications; however, the Department *is not required* to allow statement rescissions from any Offeror.
8. **Evaluation Criteria, Determination of Ratings and Award Recommendation**
 - a. The Department will evaluate the Offeror’s response for completeness and responsiveness to determine if it complies with the instructions specified in the RFP.
 - b. The Department will review the Offeror’s response to determine if it meets the Minimum Qualifications specified in the RFP.
 - c. The Department will evaluate the Offeror’s response based on the evaluation criteria specified below, and the corresponding ratings specified in *Section VII. Attachment N: Evaluation Methodology*.
 - d. The evaluation criteria are listed in *Section II. Table 3: Evaluation Criteria* in descending order of importance with no specific percentage or weight assigned:

Section II. Table 3: Evaluation Criteria

Criteria	Description
1. Minimum Data Set Validation Service Delivery	Ability to meet Contract requirements related to service delivery, including managing the MDS validation program for North Carolina’s nursing facilities, verifying MDS evaluations, using a reimbursement system, developing Case Mix Indices, providing customer and

	technical assistance to Department staff; hiring and retaining qualified staff; and developing and conducting training.
2. Program Administration	Ability to meet Contract requirements related to program administration, including implementation, performance standards and reporting; organizational, operational, technical, and administrative infrastructure; business continuity and disaster recovery; and maintaining confidentiality, privacy and security protections.
3. Qualifications and Experience	Ability to leverage prior experience and staffing necessary to meet Contract requirements and program objectives; and demonstrated successful past performance with similar services.
4. Cost Proposal	Total Cost of implementing and performing services.

- e. This is a Best Value procurement where the selection of a contractor will be based on a determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor in accordance with NCGS § 143-135.9. A trade-off/ranking method of source selection, taking into account the Evaluation Committee's ratings and determinations with respect to all the evaluation criteria, will be used to allow the State to award a contract to the Offeror providing the most advantageous offer to the Department. Under the trade-off/ranking method, selecting the most advantageous offer may result in award other than to the lowest priced Offeror or to the most technically qualified Offeror. By using this method, the overall ranking of an Offeror may be adjusted up or down when price is considered with or traded-off against non-price factors. The Department will use a narrative of relative strengths and weaknesses to support this ranking.
- f. An Offeror will be recommended for Contract award if the Evaluation Committee determines, based on its review of the proposal, evaluation criteria and consensus ratings, and final ranking that:
 - i. The Proposal is responsive to the Contract requirements;
 - ii. The Offeror can demonstrate responsibility and adherence to the requirements and specifications of the RFP and will be able to perform the functions under the Contract; and
 - iii. The Proposal is the most advantageous offer to the Department considering the evaluation criteria, including technical and cost factors, in accordance with NCGS § 143-135.9.

9. Contract Award

- a. Upon conducting a comprehensive, fair, and impartial evaluation of the proposals received in response to this RFP, the Department reserves the right to award a Contract. The Offeror whose proposal is determined most advantageous to the Department will be recommended for award. Upon award, the Department will sign the “Acceptance of Proposal” found at the bottom of the Execution of Proposal Section or require the signing of an Execution of Contract, thus resulting in the formation of the Contract(s). Within two (2) State Business Days after notification of award, the Offeror must register in North Carolina electronic Vendor Portal (eVP) at <https://evp.nc.gov>.
- b. Contract award notices are sent to the Offeror awarded the Contract and will be posted at <https://evp.nc.gov>.
- c. After Contract award, Public Records Requests regarding this RFP may be submitted to Medicaid.Procurement@dhhs.nc.gov.

10. Protest Procedures:

- a. If an Offeror wishes to protest any Contract awarded as a result of this solicitation, the Offeror shall submit a written request (protest letter) for a protest meeting to the Department head or designee to Medicaid.Procurement@dhhs.nc.gov and include **PROTEST RFP #30-2025-013-DHB Minimum Data Set (MDS) RFP** in the subject line. The protest letter must be emailed and received at the specified email address no later than **5:00 p.m. EST on the fifteenth (15th) Calendar Day following the Contract award**. The Department is not responsible for delays in the sending or receiving of emails containing a protest letter.
- b. Protest letters shall contain specific grounds and reasons for the protest and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the Department head or designee determines that a meeting would serve no purpose, then the Department head, within ten (10) Calendar Days from the date of receipt may respond in writing to the Offeror and refuse the protest meeting request. If the protest letter contains or points to anything deemed or marked confidential and/or proprietary, Offeror must include a redacted copy of the protest letter in accordance with *Section II.F. Confidentiality and Prohibited Communications During the Evaluation Process* of this RFP.
- c. If the protest meeting is granted, the Department head or designee shall schedule the meeting within thirty (30) Calendar Days after receipt of the letter, unless a later date is accepted by the protesting party and the Department. The Department shall provide written notice of the date and time of the protest meeting to any awarded Offeror, along with a copy of the protest documents submitted by the protester. The awarded Offeror may attend the protest meeting and provide a response to the protest allegations but is not required to do so. If the awarded Offeror submits a response in writing, it shall be provided to the protester by the Department before the protest meeting. Each party will be given a set period of time in which to present their side. The protester and winning Offeror (if attending) may be represented by legal counsel of their own choosing and at their own expense. Within ten (10) Calendar Days from the date of the protest meeting, the Department head shall respond to the protesting Offeror in writing with a final Department decision.

- d. If a protest is determined by the Department to be valid, the following outcomes may occur:
 - i. The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;
 - ii. The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid; or
 - iii. The award and issued purchase order shall be canceled, and the Contract shall be awarded to the next most advantageous and willing Offeror as ranked in Attachment N. paragraph 5.
- e. If the Offeror desires further administrative review after receiving a decision under paragraphs a-c, the protesting party may, within sixty (60) Calendar Days from the date such decision is received, file a contested case petition with the Office of Administrative Hearings (OAH) in accordance with NCGS §150B-23.

III. DEFINITIONS, CONTRACT TERM, GENERAL TERMS AND CONDITIONS, OTHER PROVISIONS & PROTECTIONS

A. Definitions

- 1. **Beneficiary:** An individual eligible to receive services from the North Carolina Department of Health and Human Services, Division of Health Benefits (NC Medicaid).
- 2. **Best and Final Offer (BAFO):** Best and Final Offer, submitted by an Offeror to alter its initial offer, made in response to a request by the issuing agency.
- 3. **Best Value:** Has the same meaning as defined in NCGS § 143-135.9.
- 4. **Business Associate:** A person or organization, other than a member of a covered entity's workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involves the use or disclosure of individually identifiable health information. Business associate functions or activities on behalf of a covered entity include claims processing, data analysis, utilization review, and billing (see 45 C.F.R. 160.103).
- 5. **Business Associate Agreement:** Under the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the written agreement between a HIPAA-covered entity and HIPAA Business Associate, as defined in 45 C.F.R. 160.103.
- 6. **Calendar Day:** Includes the time from midnight to midnight each day, and all days in a month, including weekends and holidays. Unless otherwise specified within the Contract, days are tracked as Calendar Days.
- 7. **Case Mix:** Payment system in which the amount of reimbursement is based on the resource intensity of the resident as measured by items on the MDS.
- 8. **Case Mix Index:** The direct care rate component. Numeric score assigned to each RUG-III group, which reflects the relative resources predicted to provide care to a resident. The higher the case mix index, the greater the resource requirements are for the resident and the higher the reimbursement.

9. **Contract Effective Date:** The date the Department accepts the Offeror's proposal by signing the RFP Execution Page, page 3 of this RFP.
10. **Contract Year:** The period beginning with the contract effective date when the Contractor begins covering services under this Contract and each subsequent twelve-month period thereafter.
11. **Contractor:** The Offeror awarded the Contract to perform the services and requirements defined therein.
12. **Corrective Action Plan (CAP):** A written document describing the deliberate set of actions to be taken by an entity, deficiency, or non-compliance.
13. **Department (NCDHHS):** State of North Carolina Department of Health and Human Services, which is responsible for managing the delivery of health and human related services for all North Carolinians, especially its most vulnerable citizens, which includes children, elderly, people with disabilities, and low-income families. Includes the Division of Health Benefits.
14. **Division of Health Benefits (DHB):** Division of Health Benefits. The Division within the Department of DHHS responsible for implementing the Medicaid program.
15. **Fair Rental Value:** A facility specific capital per diem rate based on data submitted on annual Capital Data Survey.
16. **Health Information Portability and Accountability Act (HIPAA):** Health Information Portability and Accountability Act: A 1996 Federal law, and any associated amendments, additions, or revisions thereto, that restricts access to individuals' private medical information.
17. **Implementation Plan:** Comprehensive schedule of events, tasks, deliverables and milestones developed and executed by the Contractor to ensure successful implementation of services in accordance with Department timelines and requirements.
18. **North Carolina Identity Management (NCID):** The standard identity management service that allows State, local, business and citizen users to achieve an elevated degree of security and real-time access control to the State's customer-based applications and information.
19. **Offeror:** A supplier, bidder, proposer, firm, company, corporation, partnership, individual or other entity submitting an offer in response to this RFP. Terms may be used interchangeably throughout this RFP.
20. **Patient Driven Payment Model (PDPM):** A case-mix classification system for classifying skilled nursing facility (SNF) patients in a Medicare Part A covered stay into payment groups under the SNF Prospective Payment System.
21. **Prospective Payment System:** A method of reimbursement in which Medicare payment is made based on a predetermined, fixed amount. Skilled nursing facilities that provide services to Medicare beneficiaries are paid under a Prospective Payment System through Part A of the Medicare benefit.
22. **Resident Assessment Coordinator-Certified (RAC-CT):** A nurse assessment coordinator who is accountable for coordinating and overseeing the full collaborative, interdisciplinary assessment, and care planning process in a skilled nursing facility, who has completed the

Resident Assessment Coordinator Certification offered by the American Association of Nurse Assessment Coordination (AANAC).

23. **Resource Utilization Group-III:** A resident classification model that identifies the relative resource use of providing care for different types of residents in nursing facilities based on various clinical need and physical functioning.
24. **Skilled Nursing Facility (SNF):** An in-patient rehabilitation and medical treatment center staffed with trained medical professionals.
25. **State:** The State of North Carolina, the Department as an agency or in its capacity as the using agency.
26. **State Business Day:** Business days are defined as traditional workdays, Monday – Friday and includes traditional work hours 8:00 a.m. – 5:00 p.m. EST. State holidays are excluded. A list of North Carolina State Holidays is located at <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>.
27. **Subcontractor:** An entity having an arrangement with the Contractor, where the Contractor uses the products and/or services of that entity to fulfill some of its obligations under the Contract. Use of a Subcontractor does not create a contractual relationship between the Subcontractor and the Department, only the Contractor.
28. **Supportive Documentation Guidelines (SDG):** Define the supporting documentation necessary to verify the transmitted value of an MDS RUG-III item(s) for the MDS Validation Reviews.
29. **Ten-Day-Letter:** A case mix review summary letter that is mailed to the SNF indicating any changes to the RUG category and Case Mix Index (CMI) that were made as a result of the review.
30. **Time-Weighted Case Mix Index Methodology:** A day weighted calculation that allows all MDS assessments during the quarter to be counted in the determination of the facility average CMI.
31. **Vendor:** A company, firm, entity or individual, other than the Contractor, with whom the Department has contracted to provide goods or services.

B. Acronyms and Abbreviations

1. **AANAC:** American Association of Nurse Assessment Coordination
2. **BAA:** Business Associate Agreement
3. **BAFO:** Best and Final Offer
4. **CAP:** Corrective Action Plan
5. **CDSS:** County Division(s) of Social Services
6. **CISO:** Chief Information Security Officer
7. **CMI:** Case Mix Index
8. **CMS:** Center for Medicare and Medicaid Services
9. **DHHS:** Department of Health and Human Services
10. **DHB:** Division of Health Benefits
11. **DIT:** Department of Information Technology
12. **HIPAA:** Health Insurance Portability and Accountability Act

13. **HITECH Act:** Health Information Technology for Economic and Clinical Health Act
14. **MDS:** Minimum Data Set
15. **NC:** North Carolina
16. **NCAC:** North Carolina Administrative Code
17. **NCDHSS:** North Carolina Department of Health and Human Services
18. **NCGS:** North Carolina General Statute
19. **NCID:** North Carolina Identity
20. **OAH:** Office of Administrative Hearings
21. **PDPM:** Patient Driven Payment Model
22. **PHI:** Protected Health Information
23. **PSO:** North Carolina Department of Health and Human Services Privacy and Security Office
24. **RAC-CT:** Resident Assessment Coordinator-Certified
25. **RN:** Registered Nurse
26. **RUG-III:** Resource Utilization Group-III
27. **RFP:** Request for Proposal
28. **SDG:** Supportive Documentation Guidelines
29. **SNF:** Skilled Nursing Facility

C. Contract Term

1. The Contract Term begins on the Contract Effective Date with an initial term of three (3) years ("Initial Term").
2. At the end of the Contract's Initial Term, the Department shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to two (2) additional one (1) year periods (each a "Renewal Term" and collectively the "Renewal Terms"). The Department will give the Contractor written notice of its intent whether to exercise each option no later than thirty (30) Calendar Days before the end of the Contract's then current term.
3. In addition, the Department reserves the right to extend the Contract Term using Renewal Terms in increments of less than one (1) year.
4. The Initial Term and any Renewal Terms together constitute the "Contract Term."
5. The Department reserves the option, at its sole discretion, to extend the Contract for one (1) additional Contract Year or a shorter period as required by the Department. The Department shall notify Contractor in writing if it is exercising its option to renew at least ninety (90) Calendar Days prior to the expected renewal date.
6. The Contractor shall notify the Department in writing at least nine (9) months prior to the renewal date if the Contractor does not wish to renew. The Contractor may be responsible for damages for failure to notify the Department of the intent not to renew within this timeframe.
7. Initial Term and any Renewal Terms together constitute the "Contract Term."

D. General Terms and Conditions

1. **ACCESS TO PERSONS AND RECORDS:**

- a. Pursuant to NCGS § 147-64.7 and NCGS § 143-49(9), the Department, the State Auditor, appropriate State or federal officials, and their respective authorized employees or agents shall have access to persons and premises, or such other locations where duties under the Contract are being performed, and are authorized to inspect, monitor, or otherwise evaluate all books, records, data, information, systems, and accounts of the Contractor, their Subcontractor(s), other persons directed by the Contractor, or Contractor's parent or affiliated companies as far as they relate to transactions under the Contract, performance of the Contract, or to costs charged to the Contract. The Contractor shall retain any such books, records, data, information, and accounts in accordance with Paragraph 39. **RECORD RETENTION** of this Section III.D. of the Contract. Changes or additional audit, retention or reporting requirements may be imposed by federal or state law and/or regulation, and the Contractor must adhere to such changes or additions.
 - b. The State Auditor shall have access to persons and records as a result of all contracts or grants entered by State agencies or political subdivisions in accordance with NCGS § 147-64.7.
 - c. The financial auditors of the Department shall also have full access to all financial records and other information determined by the Department to be necessary for the Department's substantiation of the monthly payment(s). These audit rights are in addition to any audit rights any federal agency may have regarding the use of federally allocated funds.
 - d. The following entities may audit the records of this Contract during and after the term of the Contract to verify accounts and data affecting fees or performance:
 - i. The State Auditor;
 - ii. The internal auditors of the affected department, agency or institution; and
 - iii. The Joint Legislative Commission on Governmental Operations (Commission) and Commission Staff, as defined in NCGS § 120-72(3), whose primary responsibility is to provide professional or administrative services to the Commission.
 - e. Nothing in this section is intended to limit or restrict the State Auditor's rights.
 - f. This provision shall survive termination or expiration of this Contract.
2. **ADVERTISING:** Contractor agrees not to use the existence of this Contract or the name of the Department or State of North Carolina as part of any commercial advertising or marketing of its products or services, excepted as permitted under this Contract. A Contractor may inquire whether the Department is willing to act as a reference by providing information directly to other prospective customers. The Department is under no obligation to serve as a reference.
 3. **AMENDMENTS:** This Contract may not be amended orally or by performance. The Contract may be amended only by written amendments executed by the Department and the Contractor.
 4. **ASSIGNMENT:** Except as otherwise required by law or upon written approval of the Department, no assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted.
 5. **AVAILABILITY OF FUNDS:** All payments to Contractor are expressly contingent upon and subject to the appropriation, allocation, and availability of funds to the Department for the

purposes set forth in the Contract. If the Contract or any purchase order issued hereunder is funded in whole or in part by federal funds, the Department'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 the Contract extends into fiscal years after that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation, and availability of funds by the N.C. General Assembly for the purposes set forth in this RFP and any resulting Contract. If funds to effect payment are not available, the Department will provide written notification to the Contractor and may terminate the Contract in accordance with Paragraph 48. **TERMINATION** of this *Section III. D.* of the Contract. If the Contract is terminated, the Contractor agrees to take back any affected deliverables and software not yet delivered under the Contract, terminate any Services supplied to the Department under the Contract, and relieve the Department of any further obligation thereof. The Department shall remit payment for deliverables and services accepted prior to the date of the previously mentioned notice in conformance with the payment terms.

6. **BACKGROUND CHECKS AND DISCLOSURE OF LITIGATION AND CRIMINAL CONVICTION OR**

ADVERSE FINANCIAL CONDITION: The Contractor's failure to fully and timely comply with the terms of this Section and *Section VII Attachment H: Disclosure Of Litigation and Criminal Convictions*, and *Section VII. Attachment E: Certification of Financial Condition and Legal Action Summary* including providing reasonable assurances satisfactory to the State, may constitute a material breach of the Contract and result in Termination for Cause.

- a. Upon execution of this Contract, the Contractor shall notify the State if it, or any of its Subcontractors, or their officers, directors, or their Key Personnel, who may provide services under this Contract, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation, or deception. The Contractor shall promptly notify the Department of any criminal litigation, investigations or proceeding involving the Contractor or any Subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Contract.
- b. The Contractor shall notify the State of any civil litigation, regulatory finding or penalty, arbitration, proceeding, or judgments against it or its Subcontractors during the three (3) years preceding the Effective Period Commencement Date of the Contract, or which may occur during the term of this Contract that involves (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 Contractor; and (2) a claim or written allegation of fraud by the Contractor or any Subcontractor hereunder, arising out of their business activities; and (3) a claim or written allegation that the Contractor or any Subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or its Subcontractors shall be disclosed to the Department to the extent they affect the financial solvency and integrity of the Contractor or Subcontractor.
- c. Contractor agrees not to use any personnel in the performance of this Contract who have been convicted of any of the crimes listed in subpart a. herein above. In addition, Contractor will not use or authorize any Subcontractor to use in the performance of this Contract any persons who have been convicted of any federal or state crime involving

- antitrust laws, anti-kickback laws, self-referral laws, improper influencing of public officials, or improper management or destruction of public records or financial records.
- d. The Contractor shall notify the State of any legal action that could adversely affect the Contractor's ability to meet the requirements of the Contract.
 - e. All notices under subsection a., b., c., and d. herein shall be provided in writing to the State within thirty (30) Calendar Days after the Contractor learns about any such criminal, regulatory, or civil matters or financial circumstances or material change to prior disclosures, unless such matters are governed by the other stated terms and conditions of the Contract. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Contractor 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.
 - f. The Department reserves the right to request a criminal background check on Contractor's employees or independent contractors or the employees of Contractor's approved Subcontractors.
 - g. Where requested by the Department, Contractor must obtain, at its own expense, and provide the Department, or its designee, a North Carolina State Bureau of Investigation (SBI) and/or Federal Bureau of Investigation (FBI) background check on all employees prior to assignment.
 - h. Contractor shall keep any records related to these verifications in accordance with Paragraph 39. **RECORD RETENTION** of this *Section III. D.* of the Contract.
7. **BENEFICIARIES:** The Contract shall inure to the benefit and be binding upon the Parties and their respective successors. It is expressly understood and agreed that the enforcement of the Terms and Conditions of the Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Department and Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the Department and Contractor that any such other person or entity receiving services or benefits under the Contract shall be deemed an incidental beneficiary only and not a contractual third-party beneficiary.
8. **CHANGE IN CORPORATE STRUCTURE:** In cases where Contractor(s) are involved in corporate consolidations, acquisition or mergers, the Parties may negotiate agreements for the transfer of contractual obligations and the continuance of contracts within the framework of the new corporate structure, subject to Department approval and the terms of this Contract.
9. **CHOICE OF LAW AND FORUM:** The validity of this Contract and any of its terms and conditions or provisions, as well as the rights and duties of the Parties, are governed by the laws of North Carolina without regard to its choice of law decisions or statutes. Forum shall be in the District or Superior Courts of Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined. This section shall survive the termination of the Contract for any reason.
10. **CMS APPROVAL:** This RFP and subsequent contracts and amendments are subject to approval by the Centers for Medicare and Medicaid Services pursuant to 42 C.F.R. § 438.806(a).
11. **COMPLIANCE WITH LAWS:**

- a. Contractor shall comply with all applicable federal and state laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and performance in accordance with this Contract.
- b. Contractor is responsible for ensuring its Subcontractors comply with all laws, rules, regulations, and licensing requirements applicable to Contractor's performance under this Contract, including but not limited to the applicable provisions of (a) Title XIX of the Social Security Act and Titles 42 and 45 of the Code of Federal Regulations,; and (b) those laws, rules, or regulations of federal and State agencies having jurisdiction over the subject matter of this Contract, whether in effect when this Contract is signed, or becoming effective during the term of this Contract.
- c. Clean Air Act
 - i. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - ii. Contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - iii. Contractor agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars (\$150,000) financed in whole or in part with Federal assistance.
- d. Federal Water Pollution Control Act
 - i. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - ii. Contractor agrees to report each violation to the Department and understands and agrees that the Department will, in turn, report each violation as required to assure notification to the federal agency providing funds hereunder, and the appropriate Environmental Protection Agency Regional Office.
 - iii. Contractor agrees that these requirements will be included in each subcontract exceeding one hundred fifty thousand dollars (\$150,000) financed in whole or in part with Federal assistance.
- e. Pandemic, Endemic and Other North Carolina State Emergencies
 - i. Contractor agrees to comply with all applicable standards, Executive Orders and Department issued guidance for pandemics, endemics, and other North Carolina State emergencies.
 - ii. Notice shall be provided by the Department of the standards, orders and Department issued guidance prior to the Effective Date of the requirements, where practical.
 - iii. In the event requirements are announced and made effective immediately, such as Executive Orders, the Contractor shall adhere to such requirements.
 - iv. Contractor agrees to communicate to Subcontractors for compliance with all applicable standards, orders, and Department-issued guidance.
- f. Certifications and Representations
 - i. Contractor shall certify annually pursuant to C.F.R. § 200.209 Certifications and Representations that it is in compliance with federal certification and

representation requirements regarding Nondiscrimination, Drug-Free Workplace Requirements, Environmental Tobacco Smoke, Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions and Lobbying.

- ii. Contractor shall certify annually that is in compliance with state certification requirements regarding Verification of Employee Work Authorization, Ineligibility, Prior Convictions and Prior Employment.

12. **CONTRACT ADMINISTRATORS:** Contract Administrators means the persons to whom notices provided for in this Contract shall be given, and to whom matters relating to the administration of this Contract shall be addressed. Contract Administrators for both Parties are included in *Section VII. Attachment D: Contract Administrators*. Either Party may change its administrator or their address and telephone number by written notice to the other Party in accordance with Paragraph 34. **NOTICES** of this *Section III. D.* of the Contract.
13. **CONTRACT DISCLOSURES:** Unless otherwise provided herein, Contractor shall complete any initial disclosures required under the Contract within thirty (30) Calendar Days of execution unless another timeframe is approved by the Department. Disclosures should be sent to the Department's Contract Administrator in accordance with Paragraph 34. **NOTICES** of this *Section III. D.* of the Contract.
14. **COOPERATION WITH OTHER STATE VENDORS:** Contractor shall cooperate with Department Vendors that are providing goods or services to or on behalf of the Department in relation to Medicaid including those Vendors providing services with respect to system integration, encounter processing, enrollment and eligibility, data analytics, and those engaged by the Department to monitor, validate, or verify Contractor's performance.
15. **COPYRIGHT:** North Carolina Public Records Laws identifies all documents created for public transactions/business as public records; therefore, no deliverable items produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of Contractor, except as otherwise provided herein. The State shall own all deliverables that Contractor is required to deliver to the Department pursuant to this Contract, except as provided herein.
 - a. Contractor shall not acquire any right, title, and interest in and to the copyrights for goods, all software, technical information, specifications, drawings, records, documentation, data, or derivative works thereof, or other work products provided by the State to Contractor.
 - b. The State shall, upon payment for the services in full in accordance with the payment terms of this Contract, shall own copyrighted works first originated and prepared by Contractor for delivery to the State.
 - c. The State hereby grants Contractor a royalty-free, fully paid worldwide, perpetual, nonexclusive, irrevocable license for Contractor's business use, to non-confidential deliverables first originated and prepared by Contractor for delivery to the State.
 - d. Contractor shall maintain ownership of all pre-existing intellectual property that it provides to the State as part of the deliverable(s), and the State shall have a royalty-free, fully paid, worldwide, perpetual, non-exclusive, irrevocable license to use such intellectual property solely for its operations.

- e. The intellectual property terms of this Contract do not: (i) affect Contractor's ownership of all other intangible intellectual property (e.g., processes, ideas, know how) that Contractor has developed in the course of performance hereunder, (ii) prevent Contractor from selling similar services elsewhere, or (iii) prevent Contractor from marketing, licensing or selling any and all intellectual property it develops hereunder to other customers, provided no State confidential information is used or disclosed in the process.
16. **COUNTERPARTS:** This Contract may be executed in two (2) or more counterparts, each, and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument. Any signature page transmitted by electronic mail in portable document format will have the same legal effect as an original executed signature page.
17. **CULTURAL AND LINGUISTIC COMPETENCY AND SENSITIVITY:** Contractor shall make a good faith effort to recruit, develop, train, promote, and retain a culturally and linguistically diverse governance, leadership, and workforce, who are responsive to the population in the service area, or otherwise participate in the State's efforts to promote culturally competent care in accordance with applicable federal and State law and CMS guidelines.
18. **DEFAULT:**
- a. If, through any cause, the Contractor shall fail to fulfill in timely and proper manner the obligations under this Contract, the Department shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In case of default by the Contractor for any reason, the Department may procure substitute services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. Contractor is responsible for any delays resulting from its failure to deliver or provide services or other deliverables required under this Contract. Default or Termination for Cause may be cause for debarment.
 - b. In addition, in the event of default by the Contractor under this Contract or upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, the Department may immediately cease doing business with the Contractor, immediately terminate this Contract for cause, and act to debar the Contractor from doing future business with the State.
19. **DISCLOSURE OF CONFLICTS OF INTEREST:** The Contractor shall disclose any known conflicts of interest, or perceived conflicts of interest, at the time they arise, as follows:
- a. Disclose any relationship to any business or associate to whom the Contractor is doing business that creates or may give the appearance of a conflict of interest related to this Contract.
 - b. By signing the RFP, Contractor certifies that it shall not knowingly take any action or acquire any interest, either directly or indirectly, that will conflict in any manner or degree with the performance of its services during the term of the Contract.
 - c. Disclose prior to employment or engagement by the Contractor, any firm principal, staff member or Subcontractor, known by the Contractor to have a conflict of interest or potential conflict of interest related to this Contract.
 - d. All notices required by this subsection must be provided to the Department within thirty (30) Calendar Days of Contractor becoming aware of the conflict.

20. DISCLOSURE OF LITIGATION AND CRIMINAL CONVICTION OR ADVERSE FINANCIAL

CONDITION: The Contractor's failure to fully and timely comply with the terms of this clause, including providing reasonable assurances satisfactory to the State, may constitute a material breach of the Contract and result in Termination for Cause.

- a. The Contractor shall notify the State in its proposal, 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. The Contractor shall promptly notify the State of any criminal litigation, investigations or proceeding involving the Contractor or any Subcontractor, or any of the forgoing entities' then current officers or directors during the term of the Contract.
- b. The Contractor shall notify the State in its proposal, and promptly thereafter as otherwise applicable, of any civil litigation, regulatory finding or penalty, arbitration, proceeding, or judgments against it or its Subcontractors during the three (3) years preceding its proposal, or which may occur during the term of any contract awarded to the Contractor 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 Contractor, or (2) a claim or written allegation of fraud by the Contractor or any Subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any Subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or Subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Contractor or Subcontractor.
- c. In the event the Contractor, an officer of the Contractor, or an owner of a twenty-five percent (25%) or greater share of the Contractor, is convicted of a criminal offense incident to the proposal 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 Contractor's business integrity, and such contractor shall be prohibited from entering into a contract for goods or services with any department, institution, or agency of the State.
- d. The Contractor shall notify the State of any legal action that could adversely affect the Contractor's financial conditions or ability to meet the requirements of the Contract.
- e. All notices under this clause shall be provided in writing to the State within thirty (30) Calendar Days after the Contractor learns about any such criminal, regulatory, or civil matters or financial circumstances or material change to prior disclosures, unless such matters are governed by the other stated 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. Contractor 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.

21. ELECTRONIC PROCUREMENT (NCGS § 143-48.3):

a. GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:

- i. 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 Contractor 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.
- ii. The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. 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.
- iii. Contractor shall at all times maintain the confidentiality of its username and password for the Statewide E-procurement Services. Contractor shall be responsible for all activity and all charges by its agents or employees. Contractor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Contractor's account, Contractor shall immediately change its password and notify the Supplier Manager of the security breach by email. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

b. E-PROCUREMENT FEES – APPLICABLE ONLY TO GOODS PURCHASES

- i. **THE SUCCESSFUL BIDDER(S) SHALL PAY A TRANSACTION FEE, CURRENTLY 1.75% (.0175), ON THE TOTAL DOLLAR AMOUNT (EXCLUDING SALES TAXES) FOR THE AMOUNT OF ANY GOODS INCLUDED ON EACH PURCHASE ORDER ISSUED THROUGH THE STATEWIDE E-PROCUREMENT SERVICE (OR ANY OFFICIAL REPLACEMENT SERVICE). NCGS § 66-58.12; See *NC E-Procurement Terms of Use*.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall not be stated or included as a separate item on the invoice. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the Contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the Contract.
- ii. Contractor or its authorized reseller, as applicable, will be invoiced monthly for the State's transaction fee by the E-Procurement Supplier Manager (Supplier Manager), based on a) purchase activity for the prior month, or b) purchases for which the supplier invoice has been paid. Unless the Supplier Manager receives written notice from the Contractor identifying with specificity any errors in an invoice for the transaction fee within thirty (30) Calendar Days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days

after receipt of the invoice for the transaction fee, or it shall be considered a material breach of contract.

- iii. Pursuant to NCGS § 147-86.23, the service will charge 1) interest on past due balances at the rate set by the Secretary of Revenue pursuant to NCGS § 105-241.21 as of the date the balances are past due, and 2) late payment penalties, currently ten percent (10%) of the account receivable. No interest shall be charged on disputed and overdue amounts to the extent the State agrees to reduce or adjust the amount in dispute. The Supplier Manager shall provide, whenever reasonably requested by the Contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

22. **ENTIRE AGREEMENT AND ORDER OF PRECEDENCE:** This Contract consists of the following documents incorporated herein by reference:

- a. Any amendments, business requirements, or implementation plans, executed by the Parties, in reverse chronological order;
- b. Execution of Contract, if any;
- c. Best and Final Offers and negotiation documents, in reverse chronological order, if any;
- d. Written clarifications, in reverse chronological order, if any;
- e. Addenda to the RFP, in reverse chronological order, if any;
- f. The RFP in its entirety; and
- g. Offeror's proposal.

In the event of a conflict between the Contract documents, the term in the Contract with the highest precedence shall prevail. The Contract documents constitute the entire agreement between the parties and supersede all prior oral or written statements or agreements.

23. **EQUAL EMPLOYMENT OPPORTUNITY:** Contractor shall comply with all Federal and State requirements and North Carolina Executive Order 24 dated October 18, 2017, concerning fair employment and employment of the disabled and concerning the treatment of all employees without regard to discrimination by reason of race, color, ethnicity, national origin, age, disability, sex, pregnancy, religion, National Guard or veteran status, sexual orientation, gender identity or expression.

24. **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 because 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.

25. **GOVERNMENTAL RESTRICTIONS:** In the event any governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship, or performance of the items or services offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, the issuing Department immediately, indicating the specific regulation which required such alterations. The Department reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

26. **HISTORICALLY UNDERUTILIZED BUSINESS (HUBs):** Pursuant to NCGS § 143-48 and Executive Order 150 (1999), the Department invites and strongly encourages participation with

businesses owned by minorities, women, disabled individuals, disabled business enterprises, and nonprofit work centers for the blind and severely disabled.

27. INDEMNIFICATION:

- a. Contractor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Contractor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of Contractor.
- b. Contractor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Contractor goods and/or services to the State. The representations and warranties in the preceding sentences shall survive the termination or expiration of this Contract. The State, Department, and/or Office of the Attorney General shall have the option to participate at their own expense in the defence of such claim(s) or action(s) filed, and the State shall be responsible for its own litigation expenses if it exercises this option.
- c. Contractor shall hold and save the Department, State, its officers, agents, and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device, or appliance delivered relating to this Contract. This provision shall survive the termination or expiration of this Contract.
- d. Notwithstanding any other term or provision in this Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the Department and State under applicable law.

28. INDEPENDENT CONTRACTORS: Contractor and its employees, officers and executives, and Subcontractors, if any, shall be independent Contractors and not employees or agents of the Department. The Contract shall not operate as a joint venture, partnership, trust, agency, or any other similar business relationship.

29. INHERENT SERVICES: If any services, deliverables, functions or responsibilities not specifically described in the Contract are required for the proper performance, provision, and delivery of the services and deliverables to be delivered by Contractor pursuant to the Contract, or are an inherent part of or necessary subtask included within the Contract, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Contractor will furnish all necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary to provide the services to be delivered by Contractor under the Contract.

30. INSURANCE: During the term of the Contract, the Contractor, at its sole cost and expense, shall provide commercial insurance coverage of such type and with such terms and limits as may be reasonably associated with the Contract. At a minimum, the Contractor shall provide and maintain the following coverage and limits:

- a. **Worker's Compensation:** The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of five hundred thousand dollars (\$500,000), covering all of Contractor's employees who are engaged in any work under the Contract. If any work is sublet, the Contractor shall require the Subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract.
 - b. **Commercial General Liability:** General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of two million dollars (\$2,000,000) Combined Single Limit.
 - c. **Automobile:** Automobile Liability Insurance, to include liability coverage, covering all owned, hired, and non-owned vehicles, used relating to the Contract. The minimum combined single limit shall be five hundred thousand dollars (\$500,000) for bodily injury and property damage; five hundred thousand dollars (\$500,000) for uninsured/under insured motorist; and five thousand dollars (\$5,000) for medical payment.
 - d. **Requirements:** Providing and maintaining adequate insurance coverage is a material obligation of the Contractor 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 Contractor shall always 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 Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract.
31. **LITIGATION:** If a demand is asserted, or litigation or administrative proceedings are begun against the Contractor or against the Department and Contractor jointly relating to the services being provided under this Contract, the Contractor shall notify the Department within five (5) State Business Days of becoming aware of such action. To the extent no conflict of interest exists or arises, Parties may agree to joint defense and agree to cooperate fully in defense of such litigation.
- a. In the event of litigation against the Department related to the Contract, Contractor's performance, or services provided under the Contract, Contractor will cooperate with Department fully in the defense of such litigation.
 - b. Any civil or administrative settlements between Contractor and any entity related to this Contract are public record. All settlements must be reported to the Department within thirty (30) Calendar Days of an executed settlement agreement and a copy of the settlement agreement must be provided to the Department upon request.
 - c. This provision shall survive expiration or termination of the Contract.
32. **MEDIA CONTACT APPROVAL AND DISCLOSURE:** Contractor shall not use the name or seal of the North Carolina Division of Health Benefits, the North Carolina Department of Health and Human Services or the State of North Carolina in any media release or public announcement or disclosure relating to the terms of this Contract without prior approval of the Department. Contractor shall not provide any information to the media regarding a recipient of services under this Contract without first receiving approval from the Department. In the event the

Contractor is contacted by the media for information related to the terms of this Contract, the Contractor shall contact the Department as soon as practical. Contractor must submit any proposed media release regarding the terms of this Contract to the Department for review and approval at least seven (7) State Business Days in advance of intended disclosure, to the extent practicable. The Department may, to the extent reasonable and lawful, timely object to its publication or require changes to the information intended for public release. The requirements of this Section shall not apply to any information the Contractor is required by law or by any court of competent jurisdiction to disclose.

33. **MONITORING OF SUBCONTRACTORS:** Contractor shall perform on-going monitoring of all Subcontractors and shall confirm compliance with subcontract requirements. As part of on-going monitoring, the Contractor shall identify to the Subcontractor(s) deficiencies or areas for improvement and shall require the Subcontractor(s) to take appropriate corrective action. Contractor shall perform a formal performance review of all Subcontractors at least annually.
34. **NOTICES:** Any notices permitted or required under the Contract must be delivered to the appropriate Contract Administrator for each Party. Unless otherwise specified in the Contract, any notices shall be in writing and **delivered by email**. In addition, notices may be delivered by first class U.S. Mail, commercial courier (e.g., FedEx, UPS, DHL), or personally delivered provided the notice is also emailed to the Contract Administrator at approximately the same time. All Notices required under this Contract including, but not limited to legal matters, contract termination, allegations of breach, and audits shall be delivered in accordance with this section of the Contract.
35. **OUTSOURCING:** Any Contractor or Subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or conduct center services are being provided. If, after award of a contract, the Contractor wishes to relocate or outsource any portion of performance to a location outside of the United States, or to contract with a Subcontractor for any such performance, which Subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract. Contractor shall give notice to the using agency of any relocation of the Contractor, employees of the Contractor, or other persons providing performance under a State contract to a location outside of the United States.
36. **OWNERSHIP OF DELIVERABLES:** All project materials, including deliverables, software, data, and documentation created during the performance or provision of services hereunder that are not licensed to the Department or other State entity, or are not proprietary to the Contractor are the property of the Department and must be kept confidential or returned to the Department, or destroyed. Proprietary Contractor materials shall be identified to the Department by the Contractor prior to use or provision of services hereunder and shall remain the property of the Contractor. Derivative works of any Contractor proprietary materials prepared or created during the performance of provision of services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the Department and the State. This term shall survive termination or expiration of the Contract.

37. **PAYMENT AND INVOICE TERMS:**

- a. Contractor shall submit a State of North Carolina Substitute W-9 Form, Request for

Taxpayer Identification Number within two (2) Calendar Days of Contract award. The W-9 can be found at:

https://files.nc.gov/ncosc/documents/NCAS_forms/State_of_North_Carolina_Sub_W-9_01292019.pdf.

- i. Completed W-9 should be sent to Medicaid.FinanceAP@dhhs.nc.gov and Dan.parker@dhhs.nc.gov.
- ii. Contractor shall submit verification of submission of required forms via email to the Department's Contract Administrator for contractual matters. Failure to provide a completed form may delay payment to the Contractor.
- b. Contractor shall register for the North Carolina electronic Vendor Portal (eVP) within two (2) Calendar Days of execution of the Contract at the following link:
<https://evp.nc.gov/>.
- c. Contractor shall submit verification of registration with North Carolina electronic Vendor Portal (eVP) to the Department's Contract Administrator for contractual matters. Failure to register may delay payment to Contractor.
- d. Contractor must submit one (1) invoice per calendar month, no later than the fifteenth (15th) Calendar Day of the month, unless the Department approves another date. Invoices shall state the period of performance (month, year) and include the total amount invoiced for the period.
 - i. For Implementation Services: Contractor shall include one-time implementation costs within fifteen (15) Calendar Days of the launch of MDS Validation Services defined within the Contract and pursuant to the amounts *in Section VII. Attachment C: Cost Proposal*.
- e. Invoices must be submitted as follows:
 - i. Electronically to:
Medicaid.FinanceAP@dhhs.nc.gov
karen.l.williams@dhhs.nc.gov
 - ii. Medicaid accounting staff may be reached at 919-855-4114 for questions regarding invoices.
 - iii. The Department will promptly notify the Contractor of any changes to the information above for submission of invoices.
- f. Payment will only be made for services and/or deliverables accepted by the Department in accordance with the Contract requirements and *Section VII Attachment C: Cost Proposal*.
- g. Except as otherwise provided, the Contractor is responsible for all payments to Subcontractors under the Contract.
- h. Payment terms are net not later than thirty (30) Calendar Days after receipt of a correct invoice as verified by the Department.
- i. In the event any invoice is incorrect, and the Department requires changes, the payment terms shall be net thirty (30) Calendar Days from the date the corrected invoice is resubmitted by the Contractor.
- j. The Department reserves the right to dispute an invoice after payment and require the Contractor to include a credit on the subsequent month's invoice to resolve disputes.
- k. Any reductions based on liquidated damages or other performance issues, may be

withheld from the Contractor's invoices. Contractor shall provide a credit memo for such reductions within ten (10) Calendar Days, upon Department's request.

38. **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Contractor 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 obtaining any Contract or award issued by the State and its Departments and other agencies or entities. The Contractor 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 State, except as shall have been expressly communicated to the Department in writing prior to acceptance of the Contract or award in question. The Contractor and its authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of the Contract; obligation or Contract for future award of compensation as an inducement or consideration for making the Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for termination of all outstanding contracts. Violations of this provision may result in debarment of the Contractor as permitted by 09 NCAC 06B.1206, 01 NCAC 05B.1520, or other provision of law.
39. **RECORD RETENTION:** All records and data held by the Contractor as it relates to this Contract shall be retained and maintained as required by North Carolina law, federal law, State and Department Record Retention requirements and policies.
- a. All records created or modified by the Contractor and not duplicated in Department system via interfaces must be retained for ten (10) years, unless a longer or shorter period is required by federal or State law or policy. Federal record retention standards are located in 45 C.F.R. § 74.53. The State policy is mandated by the State Archives of North Carolina. See <https://archives.ncdcr.gov/government>.
 - b. Records shall not be destroyed, purged, or disposed of without the express written consent of the Department.
 - c. If any litigation, claim, negotiation, audit, disallowance action or other action involving this Contract starts before the expiration of the legally required retention period, the records must be retained until completion of the action and resolution of all issues which arise from it.
 - d. In the event there are changes in record retention requirements or policies due to North Carolina law, federal law, State or Department record Retention Policies, the Contractor shall make the necessary changes to be in compliance with all Records Retention requirements.
 - e. Record Retention requirements included within the body of this Contract, subsequent contracts and amendments are intended to supplement this term. In the event of conflict, the provisions of this term are the controlling requirements.
 - f. At the point the Contract terminates/expires, all data must be transitioned to the State in a format prescribed by the Department unless that data has exceeded its archive requirements. The Department may request verification from the Contractor that archive requirements are being met.
 - g. This term survives termination or expiration of the Contract.
40. **RESPONSE TO STATE INQUIRES AND REQUESTS FOR INFORMATION:** The Contractor shall prioritize requests from the Department to respond to inquiries from any Departments under

the State of North Carolina, the North Carolina General Assembly or other government agencies or bodies. Contractor shall respond to urgent requests from the Department within twenty-four (24) hours and according to the guidance and timelines provided by the Department.

41. **RIGHT TO PUBLISH:** The Department agrees to allow the Contractor to publish material associated with the terms of this Contract provided the Contractor receives prior written approval from the Department. The Contractor shall submit for review any presentation or publication that will be given to outside parties that contains data and information relating to the terms of this Contract at least thirty (30) Calendar Days in advance. The Contractor shall not advertise or publish information for commercial benefit concerning this contract without the prior written approval of the Contracting Officer.
42. **SEVERABILITY:** If a court of competent authority holds that a provision or requirement of the 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 the Contract shall remain in full force and effect.
43. **SOVEREIGN AND GOVERNMENTAL IMMUNITY:** Notwithstanding any other term or provision in this Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to the Department and State under applicable law. Notwithstanding any other term or provision in this Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of governmental immunity that otherwise would be available to the Contractor under applicable law against a third party.
44. **STATE CONTRACT REVIEW:** This RFP and subsequent contracts are exempt from the State contract review and approval requirements pursuant to NCGS § 143B-216.80(b)(4).
45. **SUBCONTRACTORS:**
 - a. Unless otherwise notified by the Department, acceptance of Contractor's proposal includes any Subcontractor(s) specified therein.
 - b. Work performed under this Contract by the Contractor, or its employees shall not be subcontracted without prior written approval of the Department. Contractor must submit a written request for approval in accordance with Paragraph 34. **NOTICES** of this *Section III.D.* of the Contract at least thirty (30) Calendar Days prior to the anticipated start of services by the Subcontractor. Any request for Subcontractor approval shall include a completed *Section VII. Attachment L: Subcontractor Identification Form*.
 - c. Upon request and within five (5) State Business Days of such request, Contractor shall provide the Department with complete copies of any contracts made by and between the Contractor and any Subcontractors. The Contractor remains solely responsible for the performance of its Subcontractors. Subcontractors, if any, shall adhere to the same standards required of the Contractor and this Contract. Any contracts made by the Contractor with a Subcontractor shall include an affirmative statement that the Department is an intended third-party Beneficiary of the Contract; that the Subcontractor has no contract with the Department; and that the Department shall be indemnified by the Contractor for any claim presented by the Subcontractor. Notwithstanding any other

term herein, Contractor shall timely exercise its contractual remedies against any non-performing subcontractor and, when deemed appropriate by the Department, substitute another Subcontractor.

- d. The Contractor shall neither participate with nor enter into any agreement with any individual or entity that has been excluded from participation in federal health care programs or has been debarred from doing business with the State of North Carolina.
 - e. Any contract(s) between the Contractor and Subcontractor(s) require:
 - i. The Subcontractor to agree that the State, CMS, the DHHS Inspector General, the US Comptroller General, or their designees have the right to audit, evaluate, and inspect its premises, any books, records, contracts, computer or other electronic systems of the Subcontractor relating to its Medicaid enrollees, or of the Subcontractor's contractor, that pertain to any aspect of services and activities performed, or determination of amounts payable under the Contractor's contract with the State;
 - ii. The Subcontractor agrees that the right to audit by the State of North Carolina, the DHHS Inspector General, the US Comptroller General or their designees, will exist through ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later; and
 - iii. That if the State, CMS or the DHHS Inspector General determine that there is a reasonable possibility of fraud or similar risk, the State, CMS or the DHHS Inspector General may inspect, evaluate, and audit the Subcontractor at any time.
46. **SURVIVAL**: The expiration, termination, or cancellation of this Contract will not extinguish the rights of either party that accrue prior to expiration, termination, or cancellation or any obligations that extend beyond termination, expiration or cancellation, either by their inherent nature or by their express terms.
47. **TAXES**: Any applicable taxes shall be invoiced as a separate item and in accordance with this paragraph and applicable laws.
- a. NCGS § 143-59.1 bars the Department from entering into contracts with Contractors if the Contractor or its affiliates meet one of the conditions of NCGS § 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under NCGS § 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Contractor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Contractor certifies that it and all its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
 - b. All agencies participating in this Contract are exempt from federal taxes, such as excise and transportation. Exemption forms submitted by the Contractor will be executed and returned by the using agency.
48. **TERMINATION**: The Department shall provide any notice of termination to the Contractor's Contract Administrator for contractual matters, pursuant to *Section VII. Attachment D: Contract Administrators* and Paragraph 34. **NOTICES** of this *Section III. D.* of the Contract.
- a. **Termination without Cause**: The Department may terminate this Contract, in whole or in part, by giving thirty (30) Calendar Days prior notice in writing to the Contractor.

Contractor 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 Department, the Department will pay for all services performed and products delivered in conformance with the Contract up to the date of termination.

- b. **Termination for Cause:** In the event any goods, software, or service furnished by the Contractor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within thirty (30) Calendar Days, or other time period specified by the Department, after providing written notice thereof to Contractor, the Department may arrange for the provision and the fulfillment of such obligations, all at the sole cost and expense of Contractor, and the Contractor shall refund to Department all sums expended by Department in so doing. The rights and remedies of the Department provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Contractor shall not be relieved of liability to the Department for damages sustained by the Department arising from Contractor's breach of the Contract; and the Department may, in its discretion, withhold any payment due as a setoff until the damages are finally determined or as agreed by the Parties. Voluntary or involuntary bankruptcy or receivership by Contractor shall be cause for termination.

- c. **Contract Expiration, Termination, and Transition Obligations of Contractor:**

Upon the termination or expiration of this Contract for any reason, the Contractor shall provide, at the sole option of the Department, up to six (6) months of transition assistance requested by the Department to allow for the continuation of services without interruption or adverse effect and facilitate the orderly transfer of such services to the Department or its designees. If the Department exercises this option, the Parties agree that such transition assistance shall be deemed to be governed by the terms and conditions of this Contract, except for those Contract terms and conditions that do not reasonably apply to such transition assistance. Contractor shall provide a Transition Assistance Plan for Department review and approval within thirty (30) Calendar Days of request.

- 49. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of this Contract and all provisions that specify a time for performance.
- 50. **TITLES AND HEADINGS:** Titles and headings in this RFP, and in any subsequent contract, are for convenience only and shall have no binding force of effect.
- 51. **WAIVER:** The failure to enforce or the waiver by the State of any right or of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance. The Department reserves the right to waive any of the requirements in this Contract by providing written notice of such waiver to Contractor. In order to constitute a waiver, said waiver must be entitled "Waiver of Contract Requirements," list the specific requirement(s) being waived, the timeframe for such waiver, and be signed and dated by the Deputy Secretary for the Division of Health Benefits. For avoidance of doubt or dispute, there shall be no tacit, de facto, verbal, informal, or written waivers signed by anyone other than the Deputy Secretary for the Division of Health Benefits. Without such explicit written and signed "Waiver of Contract Requirements" document, the waiver is not

effective.

E. Confidentiality, Privacy and Security Protections

1. The requirements of this Section shall survive expiration or termination of the Contract. The requirements to protect the privacy and security of State-owned data shall survive so long as Contractor holds State-owned data.
2. **Confidential Information**
 - a. The Contractor, its agents, and its Subcontractors shall maintain the privacy, security and confidentiality of all data, information, working papers, instruments, studies, reports, and other documents related to the Contract in accordance with the standards of the NCDHHS privacy and security policies, state regulations, and federal regulations including: the Privacy Rule at 45 C.F.R. Parts 160 and 164, subparts A and E, the Security Standards at 45 C.F.R. Parts 160, 162 and 164, subparts A and C (“the Security Rule”), as required by HIPAA, and the applicable provisions of the Health Information Technology for Economic and Clinical Health Act (HITECH).
 - b. The Contractor shall treat all information obtained through its performance under the Contract as confidential information and shall not use or disclose such information except as provided under this Contract. The Contractor will implement necessary privacy and security measures to safeguard the receipt, storage, and processing of confidential information arising under this Contract, including the use of strong encryption algorithms meeting NIST criteria and HIPAA security standards to encrypt all confidential information including protected health information (PHI) and personally identifiable information (PII) while in transit and at rest. Any use, sale, disclosure, or offer of confidential information to any individual or organization except as contemplated under the Contract or approved in writing by the Department shall be a violation of the Contract. Any such violation will be considered a material breach of the Contract.
 - c. Contractor warrants that all its employees, Subcontractors, and any approved third-party contractors shall hold all information received during performance of the Contract in the strictest confidence and shall not disclose the same to any third party except as contemplated under the Contract or approved in writing by the Department. Contractor warrants that its employees, Subcontractors, and any approved third-party Contractors are subject to a non-disclosure, confidentiality or similar agreement that is enforceable in North Carolina and sufficient in breadth to include and protect confidential information related to the Contract. The Contractor shall, upon request by the Department, verify and produce true copies of any such agreements. Production of such agreements by the Contractor may be made subject to applicable confidentiality, non-disclosure, or privacy laws, provided that the Contractor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the North Carolina Public Records laws in NCGS § 132-1 et. seq. The Department may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the Department for the Contractor’s execution. The Department may exercise its rights under this paragraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes, including but not limited to 26 U.S.C. 6103, SSA, and IRS Publication 1075 (Tax Information Security Guidelines for Federal, State, and Local Agencies and Entities), HIPAA, and implementing

regulation in the Code of Federal Regulations and any future regulations imposed upon the Department of Information Technology Services or the North Carolina Department of Revenue pursuant to future statutory or regulatory requirements.

- d. The Department, State auditors, State Attorney General, Federal officials as authorized by Federal law or regulations, and State officials as authorized by State law or regulations, as well as the authorized representatives of the foregoing, shall have access to confidential information, persons, and records in accordance with the requirements of State and Federal laws and regulations. No other person or entity shall be granted access to confidential information unless State and Federal laws and regulations allow such access. Use or disclosure of confidential information shall be limited to purposes directly connected with the administration of the Contract.
- e. The Contractor warrants that without prior written approval of the Department, the Contractor shall not incorporate confidential or proprietary information of any person or entity not a Party to the Contract into any materials furnished to the Department, nor without such approval shall the Contractor disclose to the Department or induce the Department to use any confidential or proprietary information of any person or entity not a party to the Contract.
- f. The foregoing confidentiality provisions do not prevent the Contractor from disclosing information that (i) at the time of disclosure by the Department is already known by the Contractor without an obligation of confidentiality other than under this Contract, (ii) is publicly known or becomes publicly known through no act of the Contractor other than an act that is authorized by the Department, (iii) is rightfully received by Contractor from a third party and Contractor has no reason to believe that the third party's disclosure was in violation of an obligation of confidence to the Department, (iv) is independently developed by the Contractor without use of the Department's confidential information, (v) is disclosed without similar restrictions to a third party by the Department, or (vi) is required to be disclosed pursuant to a requirement of law or a governmental authority, so long as the Contractor, to the extent possible provides the Department with timely prior notice of such requirement and coordinates with the State in an effort to limit the nature and scope of such required disclosure.

3. HIPAA and HITECH

- a. The Department has declared itself to be a hybrid entity under HIPAA with the Division of Health Benefits being a covered health care component. As such, this Contract and related activities are subject to HIPAA and Health Information Technology for Economic and Clinical Health Act (HITECH). Contractor shall comply with all HIPAA and HITECH requirements and regulations, as amended, including:
 - i. Compliance with the Privacy Rule, Security Rule, and Notification Rule;
 - ii. The development of and adherence to applicable Privacy and Security Safeguards and Policies;
 - iii. Timely reporting of violations regarding the access, use, and disclosure of protected health information (PHI); and
 - iv. Timely reporting of privacy and/or security incidents at:
<https://www.ncdhhs.gov/about/administrative-divisions-offices/office-privacy-security>.

- b. Contractor will be performing functions on behalf of the Department that make Contractor a business associate for purposes of HIPAA regulations Contractor and this Contract are subject to the terms and conditions of the Business Associate Agreement attached to this Contract.
 - c. Contractor shall cooperate and coordinate with the Department and its privacy officials and other compliance officers as mandated by HIPAA and HITECH and accompanying regulations, or as requested by the Department, during performance of the Contract so that both Parties are in compliance with HIPAA and HITECH.
 - d. In addition to federal law and regulation, Contractor shall comply with State rules and regulation regarding protected information and Department and State policies including State IT Security Policy and standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions.
4. **North Carolina Identity Theft Protection Act and Other Protections**
Certain data and information received, generated, maintained or used by Contractor may be classified as “*identifying information*” within the meaning of NCGS § 14-113.20(b) or “*personal information*” within the meaning of NCGS § 75-61(10). Contractor is subject to the North Carolina Identity Theft Protection Act requirements, NCGS § 132-1.10 and NCGS § 75-65 and must protect such identifying information and personal information as required by law, Department and State policy, and the terms of this Contract. Contractor shall report security incidents and breaches of all protected information, whether PHI, identifying information, or personal information as required in these Confidentiality, Privacy, and Security Provisions.
5. **State of North Carolina and NCDHHS Privacy and Security Requirements**
- a. The Contractor shall implement internal data security measures, and other industry security best practices utilizing appropriate hardware and software necessary to monitor, maintain, and ensure data integrity in accordance with all applicable federal regulations, state regulations, NCDHHS privacy and security policies. The Contractor will maintain all Privacy and security safeguards throughout the term of this agreement. In addition, the Contractor agrees to maintain compliance with the following:
 - NCDHHS Privacy Manual and Security Manual, both located online at:
<https://policies.ncdhhs.gov/departamental/policies-manuals/section-viii-privacy-and-security>
 - NC Statewide Information Security policies, located online at:
<https://it.nc.gov/resources/cybersecurity-risk-management/esrmo-initiatives/statewide-information-security-policies>
 - b. **Encryption and Transmission:** The Contractor will implement strong encryption algorithm that meets industry encryption standard criteria as defined by NIST and HIPAA Security Standards to encrypt all confidential information including protected health information (PHI) and personally identifiable information (PII) while in transit and at rest to ensure data confidentiality and security.
 - c. **Data Security:** The Contractor shall implement internal data security measures, environmental safeguards, firewalls, access controls, and other industry security best practices utilizing appropriate hardware and software necessary to monitor, maintain, and ensure data integrity in accordance with all applicable federal regulations, state regulations and NCDHHS privacy and security policies. In the event the Contractor obtains

written consent by a NCDHHS Division or Office to enter into a third-party agreement to whom the Contractor provides confidential information, the Contractor shall ensure that such agreement contains provisions reflecting obligations of data confidentiality and data security stringent as those set forth in the contract.

- d. **Duty to Report:** In addition to any NCDHHS Privacy and Security Office (PSO) notification requirements in a Business Associate Agreement (BAA) with a NCDHHS Division or Office, the Contractor shall report all suspected and confirmed privacy and significant cybersecurity incidents as defined by NCGS § 143B-1320(a)(16a) involving unauthorized access, use, disclosure, modification, or data destruction to the NCDHHS Privacy and Security Office at <https://security.ncdhhs.gov/> within twenty-four (24) hours after the incident is first discovered. If the privacy or security incident involves Social Security Administration (SSA) data or Centers for Medicare and Medicaid Services (CMS) data, the Contractor shall report the incident within one (1) hour after the breach is first discovered. At a minimum, such privacy and security incident report will contain to the extent known: the nature of the incident, specific information about the data compromised, the date the privacy or security incident occurred, the date the Contractor was notified, and the identity of affected or potentially affected individual(s). During the performance of this contract, the Contractor is to notify the NCDHHS Privacy and Security Office of any contact by the federal Office for Civil Rights (OCR) received by the Contractor. In addition, the Contractor will reasonably cooperate with NCDHHS Divisions and Offices to mitigate the damage or harm of such security incidents.
- e. **Cost Borne by Contractor:** If any applicable federal regulations, state regulations, local law, or rules requires the NCDHHS division/office or the Contractor to give affected persons written notice of a privacy or security breach arising out of the Contractor's performance under this contract, the Contractor shall bear the cost of the notice.

6. Continuous Monitoring

- a. The Contractor shall maintain compliance with the State Chief Information Officer's (CIO) Continuous Monitoring Process mandate, requiring that Contractors hosting state-owned data outside of NC DIT's infrastructure environment work with state agencies to implement a risk management program that continuously monitors risk through the performance of assessments, risk analysis, and data inventory.
- b. To comply with this mandate, set forth in NCGS § 143B-1376 http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_143B.html and based upon NIST 800-137, "Information Security Continuous Monitoring (ISCM) for Federal Information Systems and Organizations", the Contractor shall perform security/risk assessments on its information systems using the latest NIST 800-53 controls to assess its compliance with enterprise security standards as outlined below.
- c. **Security Assessment**
 - i. Contractors providing Infrastructure as a Service, Platform as a Service and/or Software as a Service for the state agency are required to obtain approval from the NCDHHS Privacy and Security Office to ensure their compliance with statewide security policies.
 - ii. To obtain such approval, the Contractor shall annually provide both a written attestation to its compliance and an industry recognized third party assessment

report, such as the Federal Risk and Authorization Management Program (FedRAMP) certification, SOC 2 Type 2, HiTRUST or ISO 27001. State agencies will be required to review these security assessment reports, assess the risk of each contractor and vendor, ensure completion of all findings using a Corrective Action Plan (CAP), and provide an annual certification to the Contractor's compliance to the State CIO.

- d. As a part of the continuous monitoring process and in lieu of the security assessment requirements above, the following risk analysis compliance is required:
 - i. The Contractor shall perform a risk analysis, either by using a third-party assessor or by performing a self-analysis, on a three-year cycle (with a third-party analysis mandated every third year);
 - ii. The Contractor shall provide a risk analysis for its cloud-hosted providers or off-site hosting service providers; and
 - iii. The Contractor shall provide all findings identified in this risk analysis to NCDHHS Privacy and Security Office within thirty (30) Calendar Days of analysis completion, also including a corrective action plan documenting how each finding will be remediated.
- e. The Contractor shall work with the state agency to provide a data inventory of all cloud hosted services, by assisting the state agency with completing a Privacy Threshold Analysis (PTA) documenting the data classification and the data fields hosted within the cloud, offsite, or Contractor-hosted environment. The Contractor shall review a Privacy Threshold Analysis (PTA) with the NCDHHS Privacy and Security Office annually and assist with updating the PTA when changes to the data being hosted occur.
- f. NCDHHS Privacy & Security office may perform periodic independent security assessments of Contractor hosted applications on the public/private/hybrid cloud or On-Prem data centers. The Contractor must provide access to their applications' hosting environment and their key resources to NCDHHS designated resources and NCDHHS engaged vendors to perform a privacy & security risk assessment that includes vulnerability analysis, penetration testing, and risk analysis based on the latest NIST 800-53, Federal, State and NCDHHS requirements.

7. Service Organization Control (SOC) Reports

Except as otherwise provided in this Section, all SOC 1 and SOC 2 Type II reports, and associated SOC 2 corrective action plans, must be submitted within ten (10) Calendar Days of Contract execution and annually thereafter to the NCDHHS Privacy and Security Office in a format to be specified by the State. The Department will accept ISO 27001 certification for security controls in lieu of a SOC 2 Type II report. Annual reports must be submitted within thirty (30) Calendar Days of completion unless another timeframe is approved by the Department.

8. North Carolina Identity (NCID) Service

- a. For all software owned or leased by Contractor that connects to State hardware or software, Contractor must externalize identity management and may be required to utilize the North Carolina Identity Service for the identity management and authentication related functions performed by Contractor's applications. NCID is the State's enterprise identity management (IDM) service. The North Carolina Department of Information Technology operates it. Additional information regarding this service can be

found in the DIT Service Catalog at: <https://it.nc.gov/services/nc-identity-management-ncid> and the NCID Web site at: <https://www.ncid.its.state.nc.us/>.

- b. The use of any other IDM service will require Department and State approval. The protocol (web services, LDAP, SAML, etc.) shall be determined by the Department and the Contractor based on the implementation. In addition, Contractor may be required to implement multi factor authentication per the State specifications.

9. Privacy and Security Related Deliverables

- a. The following shall be submitted in response to this RFP:
 - i. Vendor Readiness Assessment Report (VRAR)
<https://it.nc.gov/documents/vendor-readiness-assessment-report;>
 - ii. System Security Plan (SSP) using the Department's SSP template that will be provided via email upon request to Medicaid.Procurement@dhhs.nc.gov;
 - iii. Vendor SOC 2 or ISO 27001 or FedRamp or equivalent compliance certificates;
 - iv. Network Architecture Diagram; and
 - v. Data Flow Diagram and Description.
- b. The following shall be submitted to the Department at least sixty (60) Calendar Days prior to service implementation or "go-live," unless the Department sets another due date, in which case Contractor shall have a least thirty (30) Calendar Days advanced notice of the due date:
 - i. Final version of SSP;
 - ii. Final version of VRAR;
 - iii. Final version of network architecture and data flow diagrams;
 - iv. Self-Assessment (NIST 800-53) – The template will be provided by the Department upon contract execution;
 - v. Business Continuity Plan (BCP);
 - vi. Disaster Recovery Plan (DRP); and
 - vii. Continuous Operation Plan (COOP).

F. Public Records and Trade Secrets Protections

1. Pursuant to NCGS § 132-1, et seq., this Contract and information or documents provided to the Department under the Contract are Public Record and subject to inspection, copy and release to the public unless exempt from disclosure by statute.
2. **Any proprietary or confidential information which conforms to exclusions from public records as provided by Chapter 132 of the General Statutes must be clearly marked as such with each page containing the trade secret or confidential information identified with bold face as "CONFIDENTIAL." If only a portion of each page marked "CONFIDENTIAL" contains trade secret information, the trade secret information shall be designated with a contrasting color or by a box around such information.** Any material labeled as confidential constitutes a representation by the Contractor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under NCGS § 66-152(3). Under no circumstances shall price information be designated as confidential. Contractor is urged and cautioned to limit the marking of information as trade secret or confidential so far as is possible.

3. Regardless of what Contractor may label as a trade secret, the determination of whether it is or is not entitled to protection will be made in accordance with NCGS § 132-1.2 and NCGS § 66-152(3). If any challenge, legal or otherwise, is made related to the confidential nature of information redacted by the Contractor, the Department will provide reasonable notice of such action to Contractor, and Contractor shall be responsible for the cost and defense of, or objection to, release of any material. The Department is not obligated to defend any challenges as to the confidential nature of information identified by the Contractor as being trade secret, proprietary, and otherwise confidential. The Department shall have no liability to Contractor with the respect to disclosure of Contractor's confidential information ordered by a court of competent authority pursuant to NCGS § 132-9 or other applicable law.
4. A redacted copy of this Contract and any subsequent amendments, documents, or materials relating to or provided as part of this Contract, shall be provided to the Department within thirty (30) Calendar Days of execution. Redacted copies must clearly indicate where information has been redacted. For the purposes of this Contract, redaction means to edit the document by obscuring information that is considered confidential and proprietary **and** meets the definition of Confidential Information set forth in NCGS § 132-1.2. In lieu of redacting information by obscuring, Contractor may replace the information, paragraphs or pages with the word "Redacted." By submitting a redacted copy, the Contractor 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 and/or Redacted meet the requirements of Chapter 132 of the General Statutes. Redacted copies provided by Contractor to the Department may be released in response to public record requests without notification to the Contractor. Information submitted by Contractor that is not marked "Confidential" or "Trade Secret" will become a public record.
5. This Section shall survive termination or expiration of the Contract for any reason.

The remainder of this page is intentionally left blank.

IV. MINIMUM QUALIFICATIONS

The Offeror must meet the Minimum Qualifications specified in this Section to be considered and have its response evaluated as defined in *Section II.G. Evaluation Process and Contract Award*.

The Offeror must complete *Section VII. Attachment A: Minimum Qualifications Response* and provide the required information as well as any documentation or details necessary to demonstrate its adherence to each requirement as part of the Offeror's Proposal.

A. Acceptance of Terms and Conditions

The Offeror agrees to all the terms and conditions, including confidentiality, privacy and security protections, public records and trade secrets protections, specified in *Section III.F.* of this RFP.

B. Eligibility to Contract

1. As of the date of its submission of a response to this RFP, the Offeror is not on the list of vendors debarred from doing business with the State of North Carolina.
2. As of the date of its submission of a response to this RFP, the Offeror is not on a federal list of parties that are excluded from participation in Medicare, Medicaid, or other federal health care programs, or from receiving federal contracts, or federal financial or non-financial assistance.
3. Offeror agrees to notify the Department immediately if it is debarred or excluded from State or federal contracting, participation in health care programs or receipt of financial or non-financial assistance, prior to the Contract Award date.
4. Offeror acknowledges and understands that debarment or exclusion from State or federal contracting, program participation, or assistance will result in immediate disqualification from Contract Award.

C. Financial Stability and Legal Disclosure

The Offeror is financially stable and has disclosed any legal actions that could adversely affect its financial condition or ability to meet the requirements of this RFP as required in *Section VII. Attachment E: Certification of Financial Condition and Legal Action Summary*.

Important Note Regarding Disclosure: The Offeror is requested to provide certain financial documents, including prior year and current financial statements, tax filings or independent audit reports with *Section VII. Attachment E: Certification of Financial Condition and Legal Action Summary* to enable the Department to verify and assess Offeror's financial stability. Offerors are cautioned that failure to provide documents as indicated or requested may result in disqualification. In addition, the documents must be provided both in hard copy and electronic/soft copy as specified in *Section II.E.4*. **Soft copies must be provided in PDF or similar format. Website addresses or hyperlinks to financial documents will not be accepted.**

D. Experience Requirements

Offeror Shall:

1. Offeror has a minimum of three (3) years of demonstrated experience specifically in the following:
 - a. Managing an MDS Validation Program for a state's Medicare/Medicaid certified skilled nursing facility (SNF), including onsite and remote reviews;
 - b. Developing Case Mix Index (CMI) for SNF reimbursement rate setting;
 - c. Conducting MDS training for nursing facility staff on the Case Mix methodology and use of the RUG III reimbursement system;
 - d. Conducting and communicating outcomes of MDS Validation reviews and experience contracting with health care payers, including, but not limited to federal, state, and local government entities; and
 - e. Providing services to accommodate a state's transition of reimbursement technology.
2. All the Offeror's experience specified in this section must have occurred within the five (5) years immediately preceding the date the RFP is issued by the Department.

The remainder of this page is intentionally left blank.

V. SCOPE OF SERVICES AND PERFORMANCE REQUIREMENTS

A. MDS Validation Services Objectives

The Contractor will verify the MDS evaluations as completed by nursing facilities and train nursing facility staff on the accurate completion of MDS assessments, appropriate supporting documentation, and use of the thirty-four (34) Resource Utilization Grouper-III (RUG-III) reimbursement system or a subsequent reimbursement system. The RUG-III reimbursement system is a part of the skilled nursing facility Prospective Payment System; of which a key component is the Case Mix reimbursement methodology which is used to determine resident care needs. In addition, the Contractor shall be required to develop Case Mix Indices (CMI) to be used by the Department for nursing facility rate setting.

B. General Requirements

1. The Contractor shall:
 - a. Manage the MDS Validation Program for the State's Medicare/Medicaid certified SNFs;
 - b. Conduct MDS training for nursing facility staff on the Case Mix methodology and use of the RUG III reimbursement system or a subsequent reimbursement system;
 - c. Develop Case Mix Index (CMI) for nursing facility reimbursement rate setting;
 - d. Provide services to accommodate the transition of the nursing facility reimbursement methodology from the RUG III reimbursement system to the Patient Driven Payment Model (PDPM) and accommodate the Department's modernization of the current rate system;
 - e. Have the experience, knowledge, and resources to support all the services outlined in this Contract;
 - f. Have a proven track record of on-time implementation, delivery of services and high level of customer satisfaction.
2. The Contractor shall conduct on-site reviews, as well as remote reviews upon request, in all Medicare/Medicaid certified SNFs throughout North Carolina on an annual basis. The Department Supportive Documentation Guidelines (SDG) shall be used for the purpose of determining whether the facility's MDS assessments are supported by clinical documentation. The SDG's shall be posted on the Contractor's website to allow access by providers, and shall be updated annually following CMS's release of the Resident Assessment Instrument manual. Based upon the determination of whether the facility's MDS assessments are supported by clinical documentation, the following non-mutually exclusive actions will be taken:

Percentage of MDS Assessments Supported by Clinical Documentation	Corresponding Impact
Over twenty-five percent (25%) of Cases Unsupported	The facility's reimbursement rate may be altered using the RUG III reimbursement system or a subsequent reimbursement system.
Twenty-five to forty percent (25-40%) Cases Unsupported	The facility must have an on-site review the following year.

Forty percent (40%) or More Cases Unsupported	The facility must have a follow-up on-site review no earlier than one hundred and eighty (180) calendar days following the date of the exit interview.
---	--

3. The outcome of the on-site reviews, and the data and analysis associated with them (using the CMI methodology), will be provided to the Department's Provider Reimbursement section by email in a mutually agreed upon format. The Prospective Payment System (PPS) will be used by the Department to calculate the facility's quarterly reimbursement rates.
4. The Contractor shall operate the Department's MDS Validation Review program in accordance with the requirements of the Contract and perform the core functions described in *Section V.C.*

C. Core Functions

1. System Maintenance and Updates

- a. The Contractor shall monitor CMS published guidance, drafts and final MDS item sets, revised MDS data specification files, and MDS 3.0 Resident Assessment Instrument (RAI) manual updates to facilitate reimbursement system maintenance strategies.
- b. The Contractor shall perform research of peer state system maintenance processes to inform and support state decisions, as required to inform Department of any updated processes or requirements at a state or federal level. This research shall be submitted to the Department's Contract Administrator for day-to-day activities.
- c. The Contractor shall assist the Department to modify NC Medicaid State Plan language for finalized changes and navigation of CMS approval process.

2. Case Mix Indices (CMI)

- a. The Contractor shall develop quarterly CMI for each SNF utilizing the raw data from the CMS MDS collection server.
- b. Within sixty (60) days of Contract Award, The Contractor shall develop a system for calculating the average CMI utilizing the RUG-III reimbursement system or subsequent reimbursement system, including maintaining a database for storing, analyzing, and validating the MDS data for completeness.
- c. The Contractor shall process the data through classification software, assign Case Mix weights, and develop a facility-wide and Medicaid average CMI calculated for each facility as directed by the Department. Refer to the CMS website at <https://www.cms.gov/> for current MDS 3.0 software specifications.
- d. The Contractor shall generate preliminary resident rosters for each facility and deliver these in a PDF file format to the facilities and in pdf and Excel file format to the

Department's Provider Reimbursement section by email to medicaid.providerreimbursement@dhhs.nc.gov, no later than the fifth (5th) day of February, May, August, and November.

- e. The Contractor shall provide the Department's Provider Reimbursement section with an Excel file containing the CMI to be used in the nursing facility reimbursement rate setting process by the twentieth (20th) day of the third month of each March, June, September, and December. This file shall be transmitted via e-mail with secure password availability.
- f. The Contractor shall submit a monthly report detailing any revised Time Weighted CMI Rosters due to unsupported MDS review findings to the Department's Provider Reimbursement section and the nursing home facility not later than the final State Business Day of each month. If there are no revised Time Weighted CMI rosters for the time period in question, the Contractor shall submit a report stating this.

3. System Modification (PDPM Evaluation)

- a. The Contractor shall monitor CMS published guidance, drafts and final MDS item sets, revised MDS data specification files, and MDS 3.0 RAI manual updates to determine information available for PDPM modeling.
- b. The Contractor shall provide training for the Department regarding PDPM classification components, as requested by Department.
- c. The Contractor shall review and modify MDS classification algorithms to allow for concurrent PDPM nursing component resident assessment classification.
- d. The Contractor shall revise resident roster reporting processes and programming logic to allow for concurrent PDPM nursing component classification as requested by Department.
- e. The Contractor shall conduct research and provide guidance to the Department regarding internal and industry discussions related to future PDPM evaluation and implementation strategies.

4. Rate System Modernization

In the event that the Department requests Rate System Modernization, the Contractor shall provide the following to the Department:

- a. Assistance with modification of time-weighted CMI methodology and Fair Rental Value (FRV) system modeling;
- b. Quarterly shadow reimbursement of time-weighted CMI rosters as requested;
- c. Review of applicable nursing facility reimbursement calculation files and assist with updates and modifications to accommodate rate modernization;
- d. Perform research on peer states to inform and support the Department rate system modernization, as requested.

- e. Rate modernization implementation, including internal discussions, industry negotiation, and the public comment process;
- f. Assistance with modifying the NC Medicaid State Plan language for finalized changes and navigation of the CMS approval process; and
- g. Ad hoc reports and consultative services as requested for analysis, planning and response to CMS inquiries.

5. Provider Education and Training

- a. The Contractor shall develop a training program within thirty (30) days of Contract Award for nursing facility staff on the MDS Validation Program. The training program shall focus on accurate completion of the MDS and the provision of the required documentation. The training program shall be conducted by an RAC-CT qualified staff member.
- b. The Contractor shall conduct a minimum of eight (8) training sessions each year via teleconferencing for nursing facility staff on the MDS Validation Program. All training shall be planned in consultation with and approved by the Department's Contract Administrator for day-to-day activities.
- c. The Training Plan may be revised with prior approval of the Department. The Training Plan must include, at a minimum, two (2) comprehensive day-long training sessions which provide training on the entirety of the MDS program, and six (6) shorter training sessions focusing on areas of concern that have been identified by the Contractor and/or the Department, and approved by the Department. The first training session shall occur within sixty (60) days of Contract Award.
- d. The Contractor must provide initial and ongoing training for call center staff about North Carolina Medicaid fee-for-service policy for nursing homes; CMS policy for nursing homes; and North Carolina Medicaid managed care policy for nursing homes and other topics deemed necessary to provide technical assistance to North Carolina nursing home providers. The initial training for call center staff shall begin within thirty (30) Calendar Days of the Contract Effective Date.

D. Qualifications and Program Administration Requirements

1. Program Administration

The Contractor shall:

- a. Maintain a computer database with the capability to generate reports required by *Section V. Scope of Work and Requirements* at the request of the Department. Data shall be transmitted in Microsoft Excel or other format pre-approved by the Department, via secured e-mail.
- b. Develop and maintain a web portal that allows secure access by Department and providers.

- c. Prepare and mail reviews, review results, Ten-Day Letters and report notifications according to established timelines. These items must also be posted to the web portal.
- d. Prepare, reproduce, mail and follow-up on all routine correspondence.
- e. Pay all postage and shipping charges related to performance of this Contract.
- f. Oversee all program obligations as listed in the RFP, including the activities of any subcontractors approved by the Department under this Contract.
- g. Attend quarterly MDS Validation Review contract meetings with the Department remotely or in person as directed by the Department.
- h. Meet at the Department's office in Raleigh, North Carolina as requested by the Department to, among other things, discuss/address problems and review progress reports.
- i. Ensure continual licensure, training, credentialing and technical assistance of key personnel and staff to meet the requirements of this RFP.
- j. Furnish the necessary personnel, materials, services, facilities, travel and other activities and actions necessary or incidental to accomplish the requirements of this RFP.
- k. Develop and provide internal policies, procedures, processes and workflows which describe how the requirements in this RFP will be performed for Department review and approval within thirty (30) Calendar Days of Contract award.
- l. Obtain Department approval for all plans, processes, forms, form letters, report formats, provider communications, training material, call scripts, web site information, and similar types of work and communication products before implementation and release.

2. Provider Website and Help Desk

- a. Contactor shall maintain a provider help desk, accessible by telephone or email, to provide assistance to providers. This help desk should be available from 8:00 a.m. to 5:00 p.m. during State Business Days. Contact information for the help desk should be posted on the website.
- b. The Contractor shall maintain a website for nursing home providers containing current information on North Carolina Case Mix Reimbursement.

E. Implementation

1. Implementation Plan

- a. Contractor is responsible for engaging the resources to support implementation of the MDS Validation Review Program no later than forty-five (45) Calendar Days following the Contract Effective Date.
- b. Within thirty (30) Calendar Days of the Contract Effective Date, Contractor shall provide the Department Contract Administrator for day-to-day activities an Implementation Plan for review and approval to describe Contractor's Implementation Plan and schedule for meeting Contract requirements.
- c. Contractor is required to submit a preliminary implementation plan as part of its proposal.

- d. The Implementation Plan shall include and address, at a minimum, the following requirements:
 - i. A comprehensive list of each task, activity, and deliverable required during implementation;
 - ii. All documentation required for implementation;
 - iii. A schedule of key activities for implementation of the objectives and tasks and all Contract requirements;
 - iv. The format and delivery method of requirements and deliverables;
 - v. Metrics to be monitored and measured for implementation; and
 - vi. Execution of Contractor's Staffing Plan.
- e. The Contractor shall continuously update the status of each task, subtask, and deliverable in the Implementation Plan and provide ongoing updates to the Department in the form of status reports and status update meetings throughout implementation. The Department shall provide guidance and final approval on the reporting format and meeting schedule.
- f. The Offeror shall provide initial and ongoing training for personnel about North Carolina Medicaid fee-for-service policy for nursing homes; North Carolina managed care policy; CMS policy for nursing homes; and other topics deemed necessary to provide technical assistance to North Carolina nursing home providers, within thirty (30) Calendar Day of the Contract Effective Date.

2. Implementation Milestones, Activities and Schedule

Section V.E. Table 1 Implementation Milestones outlines the required due dates for implementation milestones, activities and requirements.

Section V.E. Table 1 Implementation Milestones

ACTIVITY	DUE DATE
Establish Implementation Team	Within thirty (30) days of Contract Award
Engaging the resources to support implementation of the MDS Validation Review Program	Within forty-five (45) days of Contract Award
Provide Implementation Plan for review and approval to describe Contractor's plan and schedule for meeting Contract requirements	Within thirty (30) days of Contract Award
Identify Key Personnel	Within ten (10) days of Contract Award
Onboard Nursing Staff and other Key Personnel	Within fifteen (15) days of Contract Award
Provide initial training for personnel about North Carolina Medicaid fee-for-service policy for nursing homes; North Carolina managed care policy; CMS policy for nursing homes; and other topics deemed	Within thirty (30) days of Contract Award

necessary to provide technical assistance to North Carolina nursing home providers.	
Submit a provider education training plan.	Within thirty (30) days of Contract Award
Submit a Business Continuity Plan demonstrating how Contractor will restore the MDS Validation Program following a natural or manmade disaster.	Within forty-five (45) days of Contract Award
Conduct first provider education training.	Within sixty (60) days of Contract Award
Submit a Quality Assurance Plan for the Department's approval to include oversight of staff qualifications, performance, and processes.	Within one hundred and twenty (120) days of Contract Award

- a. For any date that falls on a weekend or State holiday, the due date shall be the next State Business Day.
- b. Adjustments to the dates specified in *Section V.E* may be made after the Contract Effective Date in the Department's sole discretion. Any such changes shall be communicated in accordance with *Section III.D.51. WAIVER*.

3. Kickoff and Onboarding Meetings

- a. The Contractor's Key Personnel are required to attend kickoff, onboarding, and escalation meetings with the Department at the dates, time and location set by the Department following the Contract Effective Date. Contractor and Department shall determine other Contractor attendees necessary to attend.
- b. Kickoff meeting attendees shall review the Contract terms and deliverables, confirm roles and responsibilities, and discuss other topics as determined by the Department in consultation with the Contractor.
- c. Onboarding meeting attendees shall participate in orientation and training sessions to fully understand the operational aspects of the Contract.

F. Staffing

1. Contractor shall maintain a Staffing Plan throughout the term of this Contract that demonstrates its ability to meet all Contractual requirements.
 - a. The Staffing Plan shall include the organizational structure of the staff performing services under this Contract, including support staff.
 - b. The Staffing Plan shall include the approach to ensuring adequate statewide coverage within thirty (30) Calendar Days of the launch of the contract.

- c. The Staffing Plan shall include an approach to mitigate staffing shortages or turnover, an increase in caseloads, and emergencies or events impacting Participants that may require a targeted response.
 - d. Contractor shall submit the Staffing Plan to the Department for review no later than thirty (30) Calendar Days following the Contract Effective Date, annually thereafter, and upon request.
2. Contractor staff performing services under this Contract shall be available by phone and email every State Business Day and shall return all voicemail and email messages within one (1) State Business Day, or sooner if an escalated response is requested by the Department.
3. Contractor is solely responsible for and incurs all the costs related to, recruiting, hiring, training, monitoring performance of, and managing Key Personnel, Transition Coordinators, and other staff necessary to meet contractual requirements.
4. Contractor is required to provide Key Personnel and may utilize additional personnel roles to perform the functions of the Contract unless otherwise specifically stated activities are to be performed by a designated role.
5. Key Personnel
 - a. Contractor shall provide Key Personnel as defined in *Section V. F. Staffing, Table 1: Key Personnel* for the duration of the Contract.
 - b. Contractor shall notify the Department of any recommended appointment or substitution of Key Personnel, including the name, role, biography or resume, and other information requested by the Department for the recommended personnel.
 - c. Key Personnel shall hold and maintain the minimum certifications, credentials and experience defined in *Section V. F. Staffing, Table 1: Key Personnel*.
 - i. The Contractor may request an exception to requirements for minimum certifications, credentials and experience defined in *Section V. F. Staffing, Table 1: Key Personnel* by submitting a request to the Department in writing. If an exception is requested, the personnel in question may not complete any work related to this Contract until the Department submits approval of the personnel in writing.
 - ii. The Department shall notify the Contractor within fifteen (15) State Business Days if the exception is approved.

Section V. F. Staffing, Table 1: Key Personnel		
Role	Duties and Responsibilities of the Role	Minimum Certifications, Credentials and Experience Required by the Department
1. Project Director	The Project Director shall serve as the liaison to the Department Provider Reimbursement section. The Project Director shall have the written authority to represent the Contractor in discussions with the Department in matters pertaining to this Contract and to make day-to-day operational	Project Director must have demonstrated knowledge and experience in the requirements of the Contract, including knowledge of the following: <ul style="list-style-type: none"> • RUG-III Reimbursement System;

Section V. F. Staffing, Table 1: Key Personnel		
Role	Duties and Responsibilities of the Role	Minimum Certifications, Credentials and Experience Required by the Department
	decisions related to the services provided under this Contract.	<ul style="list-style-type: none"> • Patient Driven Payment Model (PDPM) Reimbursement System; • Development of the Case Mix Index for SNF reimbursement rate setting; • Data Systems Services; • Quality Assurance; and • Coordination of ad hoc reporting.
2. Project Manager	<p>The Project Manager must be a Registered Nurse (RN), with a valid, unencumbered license issued by the North Carolina Board of Nursing, or a Nurse Licensure Compact (NLC) multistate license, and be Resident Assessment Coordinator-Certified (RAC-CT). The Project Manager shall serve as liaison to the Department Contract Administrator and Clinical Policy section. The Project Manager shall be responsible for the management of the MDS Nursing Facility reviews, the creation and implementation of MDS Provider training presentations and supervision of the MDS Validation nurse reviewers. The Project Manager shall respond to requests for information from nursing facility providers and the Department Contract Administrator.</p>	<p>Project Manager must have a minimum of five (5) years of experience managing a field staff involved in MDS assessment, RAC-CT certification, and experience in the following areas:</p> <ul style="list-style-type: none"> • Clinical knowledge and experience with the MDS RUG-III system or subsequent reimbursement system; • Knowledge of the operation of nursing facilities; • Knowledge and familiarity with data bases and analysis of data; • Administrative experience in health care; • At least four (4) years of experience supervising nurses; • Excellent communication skills and ability to plan and carry out complex work assignments; and • Experience managing and conducting statewide training efforts directed to providers.
3. Nursing Staff	The Contractor shall maintain a minimum of two (2) FTE staff of Registered Nurses (RNs) to conduct MDS Validation reviews throughout the	RNs providing services under this Contract shall:

Section V. F. Staffing, Table 1: Key Personnel		
Role	Duties and Responsibilities of the Role	Minimum Certifications, Credentials and Experience Required by the Department
	<p>state. The number of FTEs should be based on the number of nursing facilities in the state and the amount of time required for the review all nursing facilities in a twelve (12) month cycle.</p> <p>Nursing staff must be onboarded within fifteen (15) Calendar Days of Contract Effective Date.</p>	<ul style="list-style-type: none"> • Have a valid, unencumbered license issued by the North Carolina Board of Nursing or a Nurse Licensure Compact (NLC) multistate license ; • Be Resident Assessment Coordinator-Certified (RAC-CT); • Have a minimum of three (3) years experience conducting MDS reviews; and • Have demonstrated training or expertise with the MDS and RUG-III classification system.

- d. Contractor may subcontract with an agency or organization within North Carolina for the nursing staff to conduct the reviews, subject to the **prior written** approval of the Department. The Contractor shall complete and submit *Section VII. Attachment L: Subcontractor Identification Form* to the Department's Contract Administrator for day-to-day activities requesting approval.
- e. The Contractor shall provide copies of all RN's licenses upon written request of the Department. The Contractor shall notify the Department immediately if any RN employed, or subcontracted by, the Contractor has their license revoked or otherwise encumbered while employed.
- f. The Contractor shall identify and maintain other essential staff and identify the roles they will perform to support the performance of the MDS Validation Program core functions and services.
- g. Contractor shall ensure Key Personnel are in place within fifteen (15) State Business Days of the Contract Effective Date. If a permanent appointment cannot be made within fifteen (15) State Business Days of the Contract Effective Date, the Contractor shall appoint an individual to serve in the role on an interim or acting basis until a permanent appointment is approved by the Department.
- h. The Department may, at its sole discretion, reject a potential candidate or require the removal of Key Personnel providing services under the Contract and request an acceptable substitution.
- i. Contractor shall inform the Department in writing within seven (7) State Business Days of vacancies in Key Personnel positions.

- j. Contractor shall recommend a replacement for Key Personnel positions within fifteen (15) State Business Days of the vacancy, unless another timeframe is approved by the Department.
 - i. Contractor shall submit the recommendation in writing to the Department's Contract Administrator for day-to-day activities and include the name, Key Personnel role, biography or resume, and other information as requested by the Department.
 - ii. Within fifteen (15) State Business Days of the request, the Department will notify the Contractor if the recommendation is approved.
 - iii. If the Department does not approve the recommendation, the Contractor will have ten (10) State Business Days to make another recommendation.
 - iv. The Parties will work in good faith to timely fill Key Personnel positions that become vacant during the term of the Contract and not unreasonable withhold or delay approval.
- k. Contract shall have the sole responsibility for, and incur all the costs related to, recruiting, hiring, training, monitoring performance of, and managing sufficient professional and other staff to meet the requirements listed in this Contract.
- l. Contractor shall assure that all personnel understand the programs, processes, and applicable federal and state regulations and requirements in this RFP

G. Reports

1. Contractor shall submit complete and accurate reports in accordance with the requirements and timeframes in a format agreed upon by the Department, which may include MS Excel, MS Word or other formats based on the report data and requirements. For any date that falls on a weekend or state holiday, the due date shall be the next State Business Day.
2. Contractor shall submit required reports to the Department's Contract Administrator for day-to-day activities within the timeframes specified in this Contract.
3. Contractor shall provide a weekly written report (Weekly Report) to the Department's Contract Administrator for day-to-day activities by the last day of the following business week, showing the results of the review for each nursing facility. The report shall include the following information:
 - a. Provider name;
 - b. Facility identification Number;
 - c. Region;
 - d. Chain or management affiliation;
 - e. Type of review;
 - f. Date of last MDS Validation review;
 - g. Percentage of unsupported assessments for last MDS Validation review;
 - h. Time-weighted for current review;
 - i. Current review date;
 - j. Total census of the facility;
 - k. Total residents per time-weighted roster;
 - l. Number of assessments reviewed;
 - m. Percentage of unsupported assessments;
 - n. Confirmation of the expanded review;

- o. Date(s) for the exit conference;
 - p. Date the ten-day letter was mailed;
 - q. SFY start of year expected reviews;
 - r. SFY end of year expected reviews;
 - s. Number and percentage of scheduled and unscheduled reviews;
 - t. Number and percentage of reviews completed;
 - u. Number and percentage of unsupported and supported reviews;
 - v. Number and percentage of expanded and not expanded reviews; and
 - w. Number and percentage of surveys mailed and surveys received.
4. Contractor shall submit a monthly written report (Monthly Report) to the Department's Contract Administrator for day-to-day activities by the fifteenth (15th) of the following month that shall include a summary of the previous month's activities. This report shall be transmitted via secured e-mail in a format pre-approved by the Department. This report shall include the results of the review for each nursing facility from the previous month.
 5. Contractor shall notify, by mail and email, the nursing facility of the MDS Validation review results within ten (10) Calendar Days of the review exit conference date. Contractor shall use the mailing and email address collected from the web portal nursing provider registration to notify each nursing facility.
 6. Contractor shall submit a post review CMI Report to the nursing facility via the web portal within ten (10) Calendar Days of the review exit conference date identifying the assessments where the RUG classification or subsequent classification system changed as a result of the MDS Validation review.
 7. Contractor shall submit a MDS Validation review statistics final report within ninety (90) Business Days of the end of each state fiscal year.
 8. Monthly standard reports are due no later than the fifteenth (15th) Calendar Day of each month and shall be submitted by Contractor electronically in a format pre-approved by the Department. Quarterly standard reports are due on the fifteenth (15th) Calendar Day of the month following the end of the quarter.
 9. Reports shall contain, at a minimum, the data elements defined within the Contract.
 10. Reports shall be submitted in a format pre-approved by the Department.
 11. Contractor shall submit ad hoc reports requested by the Department within ten (10) State Business Days of the Department's request or within such other timeframe as approved by the Department's Contract Administrator for day-to-day activities.
 12. The Contractor may suggest the consolidation of reports where there is an advantage to the Department in obtaining and reviewing data in a timely and comprehensive approach. Any such changes shall be communicated in accordance with *Section III.D.51. WAIVER* and incorporated into the Contract via a future amendment.

H. Quality Assurance

The Contractor shall:

1. Cooperate fully and completely with all quality assurance audits, evaluations, studies, investigations, surveys, reviews, and findings conducted by the Department or State.
2. Develop and submit a Quality Assurance Plan for the Department's approval to include oversight of staff qualifications, performance, and processes. The Quality Assurance Plan should also measure quality of care, service problems, and Participant satisfaction. The Quality Assurance Plan shall be submitted for Department approval within one-hundred and twenty (120) days of the Contract Effective Date and should be updated and sent to the Department at least quarterly thereafter.
3. Assure that all personnel perform according to standards found in the Quality Assurance Plan developed by the Contractor and approved by the Department's Contract Administrator for day-to-day activities.
4. Ensure the Quality Assurance Plan includes policies and procedures to report to the Department's Contract Administrator for day-to-day activities any incidents that have or may have violated an individual's rights or have or may have had an adverse effect on the health, welfare, or safety of the individual based on activities conducted by Contractor.
5. Ensure the Quality Assurance Plan includes policies and procedures that provide representation for scheduled meetings to discuss and maintain quality of NC Medicaid's MDS Validation Program.

I. Business Continuity Plan

1. Contractor shall develop and maintain a Business Continuity Plan that demonstrates the approach the Contractor shall utilize to provide services and meet the requirements set forth in the Contract with minimal disruption to services in the event of public health emergencies, natural disasters, sudden and unexpected increases in enrollment, variances in staffing levels and turnover, and other emergencies or unplanned events.
2. The Contractor shall submit to the Department for review its Business Continuity Plan no later than forty-five (45) State Business Days of the Contract Effective Date and annually thereafter. Within thirty (30) State Business Days of receipt, the Department shall provide feedback to the Contractor.
3. The Business Continuity Plan shall include, at a minimum:
 - a. Identification of disaster situations (e.g., fire, flood, terrorist event, or hurricanes/tornadoes), which could result in a major failure;
 - b. Recovery procedures that would be instituted to achieve normal operation, including any remote access relocation plans;
 - c. A timeframe required to accomplish full recovery from the point of interruption; and
 - d. Procedures for coordinating with the Department in the event of a disaster; and the procedures for notifying the Department and other relevant parties detailing the status of the system and any alternative phone numbers and business plans.

4. Contractor shall notify the Department each time the Plan is activated within two (2) hours of an event. All quality and performance standards required in the RFP shall apply to the back-up procedures.

VI. CONTRACT PERFORMANCE

A. Contract Violations and Noncompliance

1. The Contractor shall comply with all terms, conditions, requirements, performance standards, and applicable laws as set forth in the Contract or any amendments thereto including any rules, policies, or procedures incorporated pursuant to the Contract.
2. The Department reserves the right to impose any and all remedies available under the terms of the Contract, at law or in equity, and in the event that the Department determines, in its sole discretion, that the Contractor has violated any provision of the Contract, or if the Contractor does not comply with any other applicable North Carolina or federal law or regulation, compliance with which is mandated expressly or implicitly by this Contract.

B. Notice of Deficiency

1. The Department will provide Contractor with written notice of imposition of remedial actions, a corrective action plan (CAP), liquidated damages, or other remedies available under the Contract, detailing the nature of underperformance, violation or noncompliance, any actions the Department seeks to impose against the Contractor, and, if applicable, the method and timeframes by which Contractor may dispute the claim of noncompliance and the imposed actions.
2. Within three (3) State Business Days of full remediation of the identified violation(s) in the Notice of Deficiency, or within another timeframe as requested by the Department, the Contractor shall provide the Department with written notice confirming the date that the noncompliant behavior was resolved and the actions the Contractor took to remediate the noncompliance.

C. Remedial Actions and Corrective Action Plans

1. In the event the Department determines Contractor is underperforming as to the terms, conditions, requirements, or performance standards as set forth in the Contract, the Department may require remedial actions such as providing technical assistance or requiring additional training or require the Contractor to submit a Corrective Action Plan (CAP) for Department approval.
2. Following a Notice of Deficiency, the Contractor shall immediately cease the noncompliant behavior and take actions to mitigate the harm caused by the violation until technical assistance, training or other remedial action is completed, or a CAP is implemented.
3. Contractor shall accept and implement a Department defined CAP or develop a CAP for Department approval as required in this Section.
4. If required, the Contractor shall develop and implement a CAP to address areas of deficiency. The Contractor shall submit the CAP for Department approval within fifteen (15) Calendar

Days, or another timeframe as determined by the Department depending on the nature of the violation, from the date of the Notice of Deficiency requiring the CAP.

5. Any CAP required to be submitted by the Contractor shall, at a minimum, identify the following:
 - a. The finding resulting in request for corrective action by the Department;
 - b. A description of how the finding resulting in a request for corrective action will be remediated;
 - c. The timeline for the implementation and completion of the corrective action(s); and
 - d. The name of the responsible person who will lead all corrective action activities.
6. Upon receipt, the Department may accept the CAP as submitted, accept the plan with specified modifications, or reject the plan.
7. If the Department requests modifications or rejects the CAP, the Contractor shall revise or submit a new plan within ten (10) Calendar Days, or another timeframe as determined by the Department depending on the nature of the violation, that addresses the issues or concerns identified.
8. The Contractor shall provide updates to the Department on the remediation of all findings resulting in a request for corrective action at the interval requested by the Department.
9. Remedial actions required under this Section are not contestable, and the Contractor shall be required to complete the remedial action within the timeframe provided in the Notice of Deficiency, a requirement to submit and implement a CAP shall be completed in accordance with the requirements of this Section.

D. Liquidated Damages

1. If the Contractor is determined to be in violation of the terms, conditions, requirements, and/or performance standards of the Contract, it is presumed that the Department will be harmed. Any liquidated damages are not intended to be a penalty but are intended to be reasonable estimates of the Department's projected financial loss and damage resulting from the Contractor's nonperformance. Accordingly, in the event the Contractor fails to perform in accordance with the Contract, the Department may assess liquidated damages as provided in this Section. Nothing in this Section is intended to prohibit the Department from exercising other rights and remedies as may be appropriate due to Contractor's failure to perform.
2. The Department shall provide the Contractor with written notice of the imposition of liquidated damages detailing the nature of the noncompliance, the assessed liquidated damages, and the method and timeframes by which the Contractor must respond including how the Contractor may appeal the assessment through the dispute resolution process.
3. Payment of Liquidated Damages and other Monetary Sanctions
 - a. If the Contractor elects not to appeal the assessment of liquidated damages or other monetary sanctions, the assessed amounts shall be due and payable within thirty-five (35) Calendar Days of the date on the written notice assessing the liquidated damages or other monetary sanctions.
 - b. If the Contractor elects to appeal the assessment of liquidated damages or other monetary sanctions, but does not prevail, the liquidated damages or other monetary

sanctions shall be due and payable within ten (10) Calendar Days of the date on the written notice of final decision issued by the Department upholding its original decision to impose the liquidated damages or other monetary sanctions (including a final decision modifying the amount owed).

- c. If the Contractor fails to pay liquidated damages or other monetary sanctions by the applicable due date, the Contractor shall be subject to interest and a late payment penalty in accordance with NCGS § 147-86.23 until the past due amount is paid.
4. Notwithstanding the Contractor's request to appeal the assessment of liquidated damages, the Department shall have the right to retroactively impose liquidated damages on the Contractor for violations of the terms of the Contract during the pendency of a dispute in accordance with this section if the Contractor does not prevail in the appeal process and the violations continued during the process to dispute a contract performance action.
5. Liquidated damages assessed by the Department do not affect the Contractor's rights or obligations with respect to any third party.

E. Process to Appeal a Contract Performance Action and Dispute Resolution

1. Contractor shall have the right to appeal certain contract performance actions by the Department, such as liquidated damages, through the process, except that the Contractor shall not have the right to contest the Department's decision to require the Contractor to perform a remedial action.
2. Contractor shall exhaust the dispute processes as provided in the Contract to contest the imposition of intermediate sanctions, the assessment of liquidated damages, and/or for cause termination of the Contract by the Department before pursuing any other administrative, legal, or equitable remedy that may be afforded to the Contractor under North Carolina or federal law or regulation.
3. **Dispute Resolution**
 - a. To raise a dispute, the Contractor shall submit a written request for dispute resolution within thirty (30) Calendar Days of the date on the written notice imposing the Department's intended action. The Department may extend the Contractor's deadline to request dispute resolution for good cause if the Contractor requests an extension within ten (10) Calendar Days of the date on the written notice.
 - b. The Contractor shall include in the written request for dispute resolution all arguments, materials, data, and information necessary to resolve the dispute (including all evidence, documentation, and exhibits).
 - c. The Contractor waives any dispute not raised within thirty (30) Calendar Days of the date on the written notice imposing any proposed action by the Department (unless the Department grants an extension).
 - d. The Contractor also waives any arguments it fails to raise in writing within thirty (30) Calendar Days (unless the Department grants an extension) of the date on the written notice imposing the proposed action, and waives the right to use any materials, data, and information not contained in or accompanying the Contractor's written request for dispute resolution in any subsequent legal, equitable, or administrative proceeding (to include the Office of Administrative Hearings, NC Superior Court, or federal court).

- e. The Department shall review the dispute resolution request and submitted evidence and information and issue a written final decision within sixty-five (65) Calendar Days of the Contractor's request for dispute resolution. The Department shall have the right to extend its deadline to issue the final decision for good cause and shall notify the Contractor of any extension and the reason for such extension.
- f. The final decision issued by the Department following dispute resolution shall not be subject to further appeal within the Department.

F. Performance Standards and Liquidated Damages

- 1. The Contractor shall meet the performance standards as set forth in *Section VI. Table 1: Performance Standards and Liquidated Damages*.
- 2. The Contractor shall be evaluated based on their compliance with each listed standard on a monthly and quarterly basis, as well as the content and the timeliness of the monthly and quarterly reports, unless otherwise stated.
- 3. The Contractor must meet each Performance Standard each month during the term of the Contract.
- 4. Failure to comply may result in the imposition of liquidated damages as outlined in *Section VI. Contract Performance*.
- 5. If the Contractor is determined to have not complied with a performance standard in the prior month, Department may require Contractor to put a Corrective Action Plan (CAP) in place as outlined in *Section VI.C Contract Compliance and Liquidated Damages* and this section. Compliance with CAPs, if any, will be assessed on a quarterly basis.

The remainder of this page is intentionally left blank.

Section VI. Table 1: Performance Standards and Liquidated Damages

Item #	Measure	Performance Standard	Measurement Period	Description	Liquidated Damage
1.	Weekly Report of Data Elements	Submission of the weekly report each week by close of business each Friday.	Weekly	Contractor must provide a weekly written report with data elements defined in this RFP to the Department's Contract Administrator for day-to-day activities showing the results of the review for each facility by close of business each Friday.	Five hundred dollars (\$500) per missed or delayed report.
2.	Monthly Activities Report	Submission of a monthly report of prior month activities by the fifteenth (15 th) of the following month.	Monthly	Contractor must provide a monthly written report to the Department's DHB Contract Administrator for day-to-day activities by the fifteenth (15 th) of the following month that must shall include a summary of the previous month's activities, including the results of the review for each nursing facility.	One thousand dollars (\$1,000) per missed or delayed report.
3.	Ten-Day Letter	Ninety-five percent (95%) of review results are submitted to nursing facilities within ten (10) days of exit conference.	Quarterly	Contractor must notify the nursing facility of the MDS Validation Review results for each beneficiary within ten (10) days of the review exit conference date.	One thousand two hundred fifty dollars (\$1,250) per incident of non-compliance per reporting period.
4.	Post-Review CMI Report	Ninety-five percent (95%) of reports are submitted to nursing facilities within thirty (30) days of review.	Quarterly	Contractor must submit a post-review CMI Report to the nursing facility identifying the assessments where the RUG classification changed because of the MDS Validation Review within thirty (30) days of the review.	One thousand two hundred fifty dollars (\$1,250) per incident of non-compliance per reporting period.
5.	Minimum Review Quantity	Minimum of ten (10) reviews per month.	Quarterly	Contractor shall ensure that each nursing facility is reviewed once per Contract year with a minimum of ten (10) facilities reviewed per month.	One hundred dollars (\$100) for every facility under thirty-five reviewed.
6.	Preliminary Time Weighted CMI Roster	Submission of Preliminary Time Weighted Roster Quarterly.	Quarterly	Contractor shall submit quarterly a Preliminary Point in Time CMI roster to the Department's Provider Reimbursement section and the nursing home facility.	Two thousand dollars (\$2,000) per missed or delayed roster.
7.	Final Time Weighted CMI Roster	Submission of Final Time Weighted Roster by specific date each quarter.	Quarterly	Contractor shall submit quarterly a Time Weighted CMI roster to the Department's Provider Reimbursement section and the nursing home facility. The roster shall be submitted by the	Two thousand dollars (\$2,000) per missed or delayed roster.

Section VI. Table 1: Performance Standards and Liquidated Damages

Item #	Measure	Performance Standard	Measurement Period	Description	Liquidated Damage
				twentieth (20th) of March, June, September, and December.	
8.	Revised Time Weighted Roster for Unsupported MDS Review Findings or Provider Reconsideration	Submission of Revised Time Weighted Roster as needed.	Monthly	Contractor shall submit a monthly report detailing any revised Time Weighted CMI Rosters due to unsupported MDS review findings or provider reconsiderations to the Department's Provider Reimbursement section and the nursing home facility. If there are no revised time weighted CMI rosters for the time period in question, Contractor shall submit a report stating this.	One thousand dollars (\$1,000) per missed or delayed roster.
9.	CMI Changes Report	Submission of report for CMI Changes due to MDS Validation reviews.	Monthly	Contractor shall submit a monthly report of CMI changes due to MDS Validation reviews to the Department's Provider Reimbursement section. If there are no CMI changes for the time period in question, Contractor shall submit a report stating this.	One thousand dollars (\$1,000) per missed or delayed report.
10.	Yearly Report	Submission of yearly MDS Review Statistics Final Report.	Yearly	Contractor shall submit a state fiscal year North Carolina DHB Medicaid MDS Validation Review Statistics Final Report by the end of each calendar year.	Two thousand dollars (\$2,000) per missed or delayed report.
11.	Help Desk Availability	Help desk shall be available during business hours.	Monthly	Contractor shall maintain a provider help desk during business hours as outlined in this RFP.	Two hundred dollars (\$200) for each State Business Day the Offeror does not maintain a help desk for providers during normal business hours.
12.	Supportive Documentation Guidelines	Submission of SDG Reports as needed.	Monthly	Contractor shall develop a Resource Utilization Group, Version III MDS Validation Review SDG for MDS 3.0 Assessments or subsequent SDG as directed by the Department.	One thousand dollars (\$1,000) per missed or delayed report.
13.	Website Availability and Maintenance	Provider website must be available and updated.	Monthly	Contractor shall maintain a website for nursing home providers containing current information on North Carolina Case Mix Reimbursement.	Two hundred dollars (\$200) for each day where the Offeror does not maintain

Section VI. Table 1: Performance Standards and Liquidated Damages

Item #	Measure	Performance Standard	Measurement Period	Description	Liquidated Damage
					an updated and assessable website.
14.	Nursing Facility Training	Completing eight (8) training sessions yearly.	Yearly	Contractor shall submit documented completion of at least eight (8) training sessions across North Carolina for nursing facility staff on the MDS Validation Program each year.	One thousand dollars (\$1,000) for every training session less than the minimum completed within the prior year.
15.	UPL Demonstration	Submission of the UPL demonstration on a mutually approved delivery date.	Yearly	Contractor shall provide and be responsible for calculation of the Upper Payment Limit (UPL) demonstration for nursing facility reimbursement rate setting on an annual basis and as required by CMS and requested by the Department's Provider Reimbursement section.	Two thousand dollars (\$2,000) per missed or delayed submission.
16.	Ad Hoc Reporting	Submission of ad hoc reports as needed.	Yearly	Contractor shall provide ad hoc reporting and analysis services including fiscal impact analysis of CMI calculation and analyses of changing from a point-in-time methodology to a Time-Weighted methodology. Contractor shall provide ad hoc reporting and analysis services of changing from the RUG-III Case Mix methodology to Patient Driven Payment Model (PDPM), including project planning, application system changes, fiscal impact analysis and meetings with the Department and stakeholders. Ad hoc reports may be required for analysis, planning, and to respond to CMS inquiries. Reports shall be delivered by a mutually agreed upon date.	One thousand dollars (\$1,000) per missed or delayed submission.

VII. Attachments to the RFP

The following attachments are included in this *Section VII. Attachments to the RFP*

- A. Minimum Qualifications Response
- B. Offeror's Response to Technical Evaluation Questions
- C. Offeror's Cost Proposal
- D. Contract Administrators
- E. Certification of Financial Condition and Legal Action Summary
- F. State Certifications
- G. Federal Certifications and Disclosures
- H. Disclosure of Litigation and Criminal Convictions
- I. Location of Workers Utilized by Contractor
- J. Offeror Request for Proposed Modifications to the Terms and Conditions
- K. Business Associate Agreement
- L. Subcontractor Identification Form
- M. Legal Grounds for Marking Information Confidential
- N. Evaluation Methodology

Attachment A: Minimum Qualifications Response

The Offeror must demonstrate it meets the Minimum Qualifications to have its response evaluated by the Department. The Offer **MUST** complete this Attachment by selecting and checking a box under each numbered or lettered item, where indicated, and providing any necessary details and documentation to demonstrate it meets each required qualification.

Any Offeror Proposal that does not meet any Minimum Requirement will be disqualified and will not be given any further consideration by the Evaluation Committee, unless it is determined that such disqualification is not in the best interest of the Department.

1. Agreement to Terms and Conditions

The Offeror agrees and accepts, without exception all terms and conditions, including confidentiality, privacy and security protections and public records and trade secrets protections, specified in Section III of this RFP. The Offeror may suggest modifications to the terms and conditions per the instructions in *Section II.C.3.c.* and complete *Section VII. Attachment J: Offeror Request for Proposed Modifications to the Terms and Conditions*, and acknowledges such suggestions are not part of any subsequent Contract unless explicitly accepted by the Department in accordance with *Section II. C.3.c.*

☐ Offer Confirms

☐ Offer Does Not Confirm

2. Eligibility to Contract

- a. As of the date of its submission of a response to this RFP, the Offeror is not on the list of vendors debarred from doing business with the State of North Carolina.

☐ Offer Confirms

☐ Offer Does Not Confirm

- b. As of the date of its submission of a response to this RFP, the Offeror is not on a federal list of parties that are excluded from participation in Medicare, Medicaid, or other federal health care programs, or from receiving federal contracts, or federal financial or non-financial assistance.

☐ Offer Confirms

☐ Offer Does Not Confirm

- c. Offeror agrees to notify the Department immediately if it is debarred or excluded from State or federal contracting, participation in health care programs or receipt of financial or non-financial assistance, prior to the Contract Award date.

☐ Offer Confirms

☐ Offer Does Not Confirm

- d. Offer acknowledges and understands that debarment or exclusion from State or federal contracting, program participation, or assistance will result in immediate disqualification from Contract Award.

☐ Offer Confirms

☐ Offer Does Not Confirm

3. Financial Stability and Legal Disclosure

The Offeror is financially stable and has disclosed any legal actions that could adversely affect its financial condition or ability to meet the requirements of this RFP as required by *Section VII*.

Attachment E: Certification of Financial Condition and Legal Action Summary.

☐ Offer Confirms

☐ Offer Does Not Confirm

4. Experience Requirements

Offeror has a minimum of three (3) years' of demonstrated experience providing services as described or services similar to those described in this RFP with a minimum of three (3) entities to include other agencies of State government, county government, municipal government, or corporate employer in NC or in other states. This experience must include:

1. Managing an MDS Validation Program for a state's Medicare/Medicaid certified skilled nursing facility (SNF), including onsite and remote reviews;
2. Developing Case Mix Index (CMI) for SNF reimbursement rate setting;
3. Conducting MDS training for nursing facility staff on the Case Mix methodology and use of the RUG III reimbursement system;
4. Conducting and communicating outcomes of MDS Validation reviews and experience contracting with health care payers, including, but not limited to federal, state, and local government entities; and
5. Providing services to accommodate a state's transition of reimbursement technology.

All of the Offeror's experience specified in this section must have occurred within the five (5) years immediately preceding the date the RFP is issued by the Department as outlined in the following table. Where Offeror indicates areas of experience that are for services *similar* to those described in this RFP, Offeror must reference the specific RFP requirements and RFP section(s) relating to the similar services and describe, in detail, how the services are similar to be considered. It is the responsibility of the Offeror to clearly demonstrate in detail how services are similar and should be considered in the column titled *Description of Services Provided (e.g., MDS Validation Program Management, CMI Development, or similar services to those described in RFP)* below.

Area #	Description of Services Provided (e.g., MDS Validation Program Management, CMI Development, or similar services to those described in RFP)	Size of population served by program(s)	Period of Experience (Start Date and End Date)	Relevant RFP Requirement Section of the experience (i.e., <i>Section V. D. 1.</i>)
1	Managing an MDS Validation Program for a state's Medicare/Medicaid certified skilled nursing facility (SNF), including onsite and remote reviews			
2	Developing Case Mix Index (CMI) for SNF reimbursement rate setting			

Area #	Description of Services Provided (e.g., MDS Validation Program Management, CMI Development, or similar services to those described in RFP)	Size of population served by program(s)	Period of Experience (Start Date and End Date)	Relevant RFP Requirement Section of the experience (i.e., <i>Section V. D. 1.</i>)
3	Conducting MDS training for nursing facility staff on the Case Mix methodology and use of the RUG III reimbursement system			
4	Conducting and communicating outcomes of MDS Validation reviews and experience contracting with health care payers, including, but not limited to federal, state, and local government entities			
5	Providing services to accommodate a state's transition of reimbursement technology.			

By completing and signing Attachment A: *Minimum Qualifications Response*, the Offeror affirms adherence to the required Minimums Qualifications and attests the information provided herein is accurate, and the individual signing certifies they are authorized to make the foregoing statements on behalf of the Offeror.

Offeror Signature

Date

Printed Name and Title

Attachment B: Offeror's Response to Technical Evaluation Questions

Instructions:

Offeror must respond to all questions and each part and subpart to each question in *Section VII. Attachment B: Offeror's Response to Technical Evaluation Questions*. Offeror's response to each question must follow the corresponding question. The Offeror must confirm adherence to and describe its approach to meet the requirements of the Contract as indicated. This includes providing a detailed narrative, diagrams, exhibits, examples, sketches, descriptive literature and/or detailed information specifically tailored for the North Carolina Medicaid program to demonstrate Offeror's ability to meet specifications of the RFP. The Offeror's Response to Technical Evaluation Questions should clearly indicate the citation and/or location of exhibits, attachments, flows, etc. that supplement responses in this Attachment B and demonstrate understanding and the ability to meet each specification. The Department is not required to look for or consider information outside of the response for individual questions where the Offeror fails to clearly indicate the location of supplemental exhibits, attachments, flows, etc. Further, where indicated and applicable, Offeror must describe any limitations or issues it has with meeting the requirements of the question. Offeror's response to each question must follow the corresponding question. The Department reserves the right to validate information provided within Offeror's response.

The table below provides an overview of the evaluation criteria and the questions within this Attachment B that correspond to each criterion. Cost will be evaluated based on the response to *Section VII. Attachment C: Cost Proposal*. The table below is provided for convenience only, and each question may encompass requirements from multiple sections of the RFP. The evaluation processes, including those for costs, are explained further in *Section VII. Attachment N: Evaluation Methodology*.

Summary of Evaluation Criteria and Corresponding Questions		
Question #s	Evaluation and RFP Scope Section	RFP Section Reference
1–6 Service Delivery Criteria		
1–4	Core Functions	<i>Section V.C. Core Functions</i>
5	Provider Education and Training	<i>Section V.C.5. Provider Education and Training</i>
6	Staffing	<i>Section V.C. Qualifications and Program Administration Requirements and Section V.F. Staffing</i>
7–12 Program Administration Criteria		
7	Program Administration	<i>Section V.D.1. Program Administration</i>
8	Implementation	<i>Section E.1. Implementation</i>

9	Quality Assurance	<i>Section V.H. Quality Assurance</i>
10	Business Continuity	<i>Section V.K Business Continuity Plan</i>
11	Privacy and Security Protections	<i>Section III.E.9. Privacy and Security Related Deliverables</i>
12-13	Qualifications and Experience Criteria	
12-13	Past Experience and Performance	

The remainder of this page is intentionally left blank.

Technical Evaluations Questions

A. SERVICE DELIVERY

Core Functions

Evaluation Question
<p>1. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach to meet the requirements of the RFP and <i>Section V.C.1 System Maintenance and Updates</i>.</p> <p>The response should address how Offeror will meet the requirements of each sub-section of <i>Section V.C.1.</i>, including:</p> <ul style="list-style-type: none">a. Monitoring CMS published guidance, drafts and final MDS item sets, revised MDS data specification files, and MDS 3.0 Resident Assessment Instrument (RAI) manual updates to facilitate reimbursement system maintenance strategies;b. Performing research of peer state system maintenance processes; andc. Assisting the Department to modify NC Medicaid State Plan language and navigating the CMS approval process.
<div><input type="checkbox"/> Offeror confirms adherence</div> <div><input type="checkbox"/> Offeror does not confirm adherence</div> <p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <div><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</div> <div><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</div> <p>Click or tap here to enter text.</p>

Evaluation Question

2. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach to meet the requirements of the RFP and *Section V.C.2 Case Mix Indices (CMI)*.

The response should address how Offeror will meet the requirements of each sub-section of *Section V.C.2*, including:

- a. Developing quarterly CMI for each SNF;
- b. Developing systems for calculating the average CMI utilizing the RUG-III reimbursement system or subsequent reimbursement system; and
- c. Processing the data through a classification software.
- d. Offeror's response should include a sample of each of the following:
 - i. A resident roster as described in *Section V.C.2.d*.
 - ii. An Excel file as described in *Section V.C.2.e*.

☐ Offeror confirms adherence

☐ Offeror does not confirm adherence

Offeror's Response:

Click or tap here to enter text.

The Offeror must describe any limitations or issues meeting the requirements of this question.

☐ Offeror has no limitation(s) or issues(s).

☐ Offeror has limitation(s) or issue(s) described following their response below.

Click or tap here to enter text.

Evaluation Question

3. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach to meet the requirements of the RFP and *Section V.C.3 System Modification (PDPM Evaluation)*.

The response should address how Offeror will meet the requirements of each sub-section of *Section V.C.3*, including:

- a. Monitoring CMS published guidance, drafts and final MDS item sets, revised MDS data specification files, and MDS 3.0 RAI manual updates to determine information available for PDPM modeling;
- b. Providing training for the Department regarding PDPM classification components;
- c. Reviewing and modifying MDS classification algorithms to allow for concurrent PDPM nursing component resident assessment classification; and
- d. Revising resident roster reporting processes and programming logic to allow for concurrent PDPM nursing component classification.

☐ Offeror confirms adherence

☐ Offeror does not confirm adherence

Offeror's Response:

Click or tap here to enter text.

The Offeror must describe any limitations or issues meeting the requirements of this question.

☐ Offeror has no limitation(s) or issues(s).

☐ Offeror has limitation(s) or issue(s) described following their response below.

Click or tap here to enter text.

Evaluation Question

4. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach to meet the requirements of the RFP and *Section V.C.4 Rate System Modernization*.

The response should address how Offeror will meet the requirements of each sub-section of *Section V.C.4*, including:

- a. Assisting with modification of time-weighted CMI methodology and Fair Rental Value (FRV) system modeling;
- b. Quarterly shadow reimbursement of time-weighted CMI rosters;
- c. Reviewing of applicable nursing facility reimbursement calculation files and assist with updates and modifications to accommodate rate modernization;
- d. Rate modernization implementation, including internal discussions, industry negotiation, and the public comment process;
- e. Assisting with modifying the NC Medicaid State Plan language for finalized changes and navigation of the CMS approval process.

☐ Offeror confirms adherence

☐ Offeror does not confirm adherence

Offeror's Response:

Click or tap here to enter text.

The Offeror must describe any limitations or issues meeting the requirements of this question.

☐ Offeror has no limitation(s) or issues(s).

☐ Offeror has limitation(s) or issue(s) described following their response below.

Click or tap here to enter text.

Training

Evaluation Question
<p>5. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach to meet the requirements of the RFP and <i>Section V.C.5 Provider Education and Training</i>.</p> <p>The response should address how Offeror will meet the requirements of each sub-section of <i>Section V.C.5</i>, including:</p> <p>The response should describe in detail Offeror's approach for each of the following:</p> <ul style="list-style-type: none">a. An example of a training program for nursing facility staff on the MDS Validation Program which focuses on accurate completion of the MDS and the provision of the required documentation. This must include one (1) example of an agenda and educational materials that could be used for one (1) of the eight (8) remote training sessions for nursing facility staff.b. An example of a training plan for call center staff to learn about North Carolina Medicaid fee-for-service policy for nursing homes, CMS policy for nursing homes, and North Carolina Medicaid managed care policy for nursing homes.
<div><input type="checkbox"/> Offeror confirms adherence</div> <div><input type="checkbox"/> Offeror does not confirm adherence</div> <p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <div><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</div> <div><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</div> <p>Click or tap here to enter text.</p>

Staffing

Evaluation Question
<p>6. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach, including the use of any subcontractors, to meet the requirements of the RFP in accordance with <i>Section V.F Staffing</i>.</p> <p>The response should include:</p> <ul style="list-style-type: none"> a. A proposed Staffing Plan with sufficient key personnel, staff, and RNs, and the organizational structure needed to satisfy the requirements described in this RFP; b. A list of proposed Key Personnel, including the individuals’ credentials and experience specific to the identified role. If Offeror has not identified Key Personnel at the time of submitting its Offer, Offeror must state the actions it will take to ensure Key Personnel are identified and in place in accordance with all timelines. c. Describe Offeror’s approach for meeting the staffing requirements including recruitment and selection of needed personnel. Offeror must also describe the approach and strategy to mitigate risks associated with meeting and maintaining the staffing levels necessary to perform contract requirements. d. Approach and plan for training and onboarding new Key Personnel and new reviewers.
Response
<p>Offeror’s Response:</p> <p>Click or tap here to enter text.</p> <div> <input type="checkbox"/> Offeror has submitted the detailed draft Outreach and Education Plan. <input type="checkbox"/> Offeror has not submitted the detailed draft Outreach and Education Plan. </div> <p>Click or tap here to enter text.</p>

Program Administration

Evaluation Question
<p>7. Offeror must confirm adherence to the requirements of the Department, and describe its ability, capacity and proposed approach to meet the requirements of the RFP and <i>Section V.D.1 Program Administration</i>.</p> <p>The response should address, at a minimum, how Offeror will meet the following requirements of <i>Section V.D.1</i>:</p> <ul style="list-style-type: none">a. Maintain a computer database and web portal with the capability to generate reports required by <i>Section V. Scope of Work and Requirements</i> at the request of the Department. Data shall be transmitted in Microsoft Excel or other format pre-approved by the Department, via secured e-mail. Offeror's response must include a sample of both the weekly and monthly reports that meets the requirements outlined in <i>Section V.G.3 and V.G.4</i>.b. Prepare and mail reviews, review results, Ten-Day Letters and report notifications according to established timelines.
<div><input type="checkbox"/> Offeror confirms adherence</div> <div><input type="checkbox"/> Offeror does not confirm adherence</div> <p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <div><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</div> <div><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</div> <p>Click or tap here to enter text.</p>

Implementation

Evaluation Question	
<p>8. Offeror must confirm adherence to the milestones, activities, and schedule in <i>Section E.1. Implementation Plan</i>. The response must include a detailed draft Implementation Plan that incorporates, at a minimum, all elements listed in <i>Section E.1.e</i> and demonstrates the Offeror's capacity to meet the timeline and requirements of the RFP.</p>	
<input type="checkbox"/> Offeror confirms adherence	<input type="checkbox"/> Offeror does not confirm adherence
<p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <p><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</p> <p><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</p> <p>Click or tap here to enter text.</p>	

Quality Assurance

Evaluation Question
<p>9. Offeror must confirm adherence to the requirements of the Department and describe its capacity and approach to meet the requirements of the RFP and <i>Section V.H. Quality Assurance</i>.</p> <p>The response must include:</p> <ul style="list-style-type: none">a. A description of Offeror's quality assurance policies, procedures and practices it will implement to ensure completion and validation of the accuracy of the services required in the RFP;b. A detailed draft Quality Assurance Plan that includes, at a minimum, all elements of <i>Section V.H. Quality Assurance</i>; andc. Approach for participation in Department initiated reviews and incorporation of feedback and recommendations.
<div><input type="checkbox"/> Offeror confirms adherence</div> <div><input type="checkbox"/> Offeror does not confirm adherence</div> <p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <div><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</div> <div><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</div> <p>Click or tap here to enter text.</p>

Business Continuity and Disaster Recovery

Evaluation Question	
<p>10. Offeror must confirm adherence to the requirements of the Department and describe its ability and approach to meet the requirements of the RFP and <i>Section V.K. Business Continuity Plan</i>. The response must include a detailed draft Business Continuity Plan to meet all requirements and elements of <i>Section V.K. Business Continuity Plan</i>.</p>	
<input type="checkbox"/> Offeror confirms adherence	<input type="checkbox"/> Offeror does not confirm adherence
<p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <p><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</p> <p><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</p> <p>Click or tap here to enter text.</p>	

Privacy and Security Protections

Evaluation Question	
<p>11. Offeror must confirm adherence to and describe its ability and approach to meet all Confidentiality, Privacy and Security Protections defined within the RFP. The response must include the following <i>Section III.E.9.a)</i> deliverables:</p> <ul style="list-style-type: none">a. Vendor Readiness Assessment Report (VRAR) https://it.nc.gov/documents/vendor-readiness-assessment-report;b. System Security Plan (SSP) using the Department's SSP template that will be provided via email upon request to Medicaid.Procurement@dhhs.nc.gov;c. Vendor SOC 2 or ISO 27001 or FedRamp or equivalent compliance certificates;d. Network Architecture Diagram https://it.nc.gov/resources/statewide-it-procurement/vendor-engagement-resources; ande. Data Flow Diagram and Description.	
<p><input type="checkbox"/> Offeror confirms adherence <input type="checkbox"/> Offeror does not confirm adherence</p> <p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <p><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</p> <p><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</p> <p>Click or tap here to enter text.</p>	

QUALIFICATIONS AND EXPERIENCE

Past Experience and Performance

Evaluation Question
<p>12. Offeror must describe their past experience providing services similar to those included in the requirements of this RFP, including a description of the services provided and the populations served.</p> <p>Response must:</p> <ul style="list-style-type: none">a. Identify other State Medicaid or other programs for which Offeror has performed substantially similar services and include the number of years of providing services;b. Describe the factors, experience, and processes that make Offeror qualified to successfully provide the services required by this RFP;c. Detail Offeror's experience and capability collaborating with the community, providers, beneficiaries, and other stakeholders; andd. Explain how success was measured and validated.
<p>Offeror's Response:</p> <p>Click or tap here to enter text.</p> <p>The Offeror must describe any limitations or issues meeting the requirements of this question.</p> <p><input type="checkbox"/> Offeror has no limitation(s) or issues(s).</p> <p><input type="checkbox"/> Offeror has limitation(s) or issue(s) described following their response below.</p> <p>Click or tap here to enter text.</p>

Evaluation Question

13. Offeror must provide a list of contracts for services that are similar to those described in this RFP in the last five (5) years and disclose information required in *Section VII. Attachment H: Disclosure of Litigation and Criminal Convictions*.

Offeror's response should:

- a. Disclose any performance or compliance issues which required formal notice from the other party that have occurred in any Contract held by the Offeror in the past five (5) years. If any performance or compliance issues have occurred, Offeror's response must explain corrective actions taken to prevent future occurrence of the issue(s);
- b. Any contract that was terminated due to contractual breach or insufficient performance within the past five (5) years. If any such terminations have occurred, Offeror response must explain the circumstances or reasons surrounding the termination; and
- c. If Offeror has no such terminations, Offeror must respond by stating no terminations have occurred.

Offeror has disclosed all information required in *Section VII. Attachment H: Disclosure of Litigation and Criminal Convictions*.

☐ Yes

☐ No. (If this box is checked, Offeror must indicate the reason below as part of **Offeror's Response**.)

Offeror's Response:

Click or tap here to enter text.

The Offeror must describe any limitations or issues meeting the requirements of this question.

☐ Offeror has no limitation(s) or issues(s).

☐ Offeror has limitation(s) or issue(s) described following their response below.

Click or tap here to enter text.

Attachment C: Cost Proposal

Introduction and Instructions

- I. This *Attachment C: Cost Proposal* provides maximum allowable cost per Contract Year. Offerors are reminded that the responsibility for providing adequate supporting data lies solely with them. Further, the Offeror is solely responsible for establishing reasonableness of proposed costs; therefore, it is in the Offeror's best interest to submit a fully supportable and well-prepared cost proposal. Total monthly and annual cost shall include all costs associated with providing the required services outlined in this RFP, including employee salaries, materials, travel, and miscellaneous administrative and overhead costs. The selected Vendor may not request reimbursement for any additional expenses.
- II. The basis and rationale for all proposed costs should be provided as part of the proposal so that the Department can place reliance on the information as current, complete, and accurate. Offeror must submit a detailed narrative summarizing what is included in *Attachment C: Cost Proposal Workbook*.
- III. All prices shall be firm and fixed for the entire three (3) year Contract Term, plus the two one (1) year options to extend.
- IV. The Offeror shall use the Department's *Attachment C: Cost Proposal Workbook*, which will be provided in MS Excel format upon request as provided in *Section II.E.3.* of the RFP.

Minimum Data Set (MDS) Validation and Case Mix (CM) Reimbursement Calculation Cost Table		
Contract Year	Monthly Cost	Annual Cost
Base Year 1	\$	\$
Base Year 2	\$	\$
Base Year 3	\$	\$
Optional Year 4	\$	\$

Optional Year 5	\$	\$
Total Contract for Contract Years 1-5:		\$

Attachment D: Contract Administrators

Contract Administrators are the persons to whom notices provided for in this Contract shall be given, and to whom matters relating to the administration of this Contract shall be addressed. The Department and Contractor may change its respective administrator, address, and telephone number by providing written notice.

A. For the Department

1. Contract Administrator for contractual issues:

Name & Title	Theodore Fort Senior Contract Development Specialist
Physical Address	820 S. Boylan Avenue, McBryde Building Raleigh, NC 27603
Mail Service Center Address	2501 Mail Service Center Raleigh, NC 27699-1950
Telephone Number	919-527-7197
Email Address	theodore.fort@dhhs.nc.gov Medicaid.Contractadministrator@dhhs.nc.gov

2. Contract Administrator for day-to-day activities:

Name & Title	Karen L. Williams, RN, BS LTC Nurse Consultant
Physical Address	820 S. Boylan Avenue Raleigh, NC 27603
Mail Service Center Address	2501 Mail Service Center Raleigh, NC 27699-2501
Telephone Number	919-855-4378
Email Address	Karen.l.williams@dhhs.nc.gov Medicaid.Contractadministrator@dhhs.nc.gov

3. Contract Administrator for Federal, State, and Department security matters:

Name & Title	Pyreddy Reddy, NCDHHS CISO
Address 1	695 Palmer Drive, Raleigh, NC 27603
Telephone Number	919-855-3090
Email Address	Pyreddy.Reddy@dhhs.nc.gov Medicaid.Contractadministrator@dhhs.nc.gov

4. Contract Administrator for HIPAA and Policy Coordinator for Federal, State, and Department privacy matters:

Name & Title	Andrew Albright, Privacy Officer
Physical Address	1985 Umstead Drive, Kirby Building Raleigh, NC 27603
Mail Service Center Address	2501 Mail Service Center Raleigh, NC 27699-2501
Telephone Number	919-527-7747
Email Address	andrew.a.albright@dhhs.nc.gov Medicaid.Contractadministrator@dhhs.nc.gov

B. For the Contractor

1. Contract Administrator for contractual issues:

Name & Title	
Address	
Telephone Number	
Email Address	

2. Contract Administrator for day-to-day activities:

Name & Title	
Address	
Telephone Number	
Email Address	

3. Contractor's Coordinator for Privacy and Security matters:

Name & Title	
Address	
Telephone Number	
Email Address	

Attachment E: Certification of Financial Condition and Legal Action Summary

The Offeror must complete and sign this Attachment **and include the required documents** as indicated herein.

The undersigned hereby certifies that:

- ☐ The Offeror has **included**¹ the following documents with this completed *Certification of Financial Condition And Legal Action Summary*.
 - a. ☐ Audited or reviewed financial statements (preferably audited) prepared by an independent Certified Public Accountant (CPA for the two most recent fiscal years, including at a minimum balance sheet, income statement, and cash flow statement for each year. Must provide contact information for the CPA/audit firm.
 - b. ☐ The current Month End Balance Sheet and Year-to-Date Income Statement at the time of proposal submission.
 - c. ☐ The most recent corporate tax filing OR independent audit report. If submitting the independent audit report, it must include contact information for the audit firm.
- ☐ The Offeror is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.
- ☐ The Offeror has **included**² a brief statement outlining and describing its financial stability.
- ☐ The Offeror has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.
- ☐ The Offeror is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.
- ☐ The Offeror is not the subject of any current litigation or findings of noncompliance under federal or state law.
- ☐ The Offeror has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.
- ☐ The Offeror acknowledges that this is a continuing certification, and the Offeror shall notify the Department within fifteen (15) calendar days of any material change to any of the representations made herein.

¹ Failure to provide audited or reviewed financial statements for the two most recent fiscal years may result in disqualification.

² Failure to provide a statement outlining and describing financial stability may result in disqualification.

If any one or more of the foregoing boxes is NOT checked, the Offeror shall explain the reason in the space below:

Click or tap here to enter text.

The Offeror is encouraged to explain any negative financial information in its financial statements below and provide documentation supporting those explanations:

Click or tap here to enter text.

By completing this Certification of Financial Condition and Legal Action Summary, the Offeror confirms documents are attached³ as indicated herein and affirms the ability to financially support implementation and on-going costs associated with the Contract, and the individual signing certifies they are authorized to make the foregoing statements on behalf of the Offeror.

Signature

Date

Enter Printed Name

³ Failure to provide documents as indicated or requested may result in disqualification.

Attachment F: State Certifications

State Certifications

Contractor Certifications Required by North Carolina Law

Instructions: The person who signs this document should read the text of the statutes and Executive Order listed below and consult with counsel and other knowledgeable persons before signing. The text of each North Carolina General Statutes and of the Executive Order can be found online at:

- Article 2 of Chapter 64: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf
- G.S. 133-32: <http://www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=133-32>
- Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009): <https://digital.ncdcr.gov/digital/collection/p16062coll5/id/11940>
- G.S. 105-164.8(b): http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf
- G.S. 143-48.5: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html
- G.S. 143-59.1: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf
- G.S. 143-59.2: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf
- G.S. 143-133.3: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html
- G.S. 143B-139.6C: http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf

Certifications

- (1) **Pursuant to G.S. 133-32 and Executive Order No. 24 (Perdue, Gov., Oct. 1, 2009)**, the undersigned hereby certifies that the Contractor named below is in compliance with, and has not violated, the provisions of either said statute or Executive Order.
- (2) **Pursuant to G.S. 143-48.5 and G.S. 143-133.3**, the undersigned hereby certifies that the Contractor named below, and the Contractor's subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: <https://www.e-verify.gov/>
- (3) **Pursuant to G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an "ineligible Contractor" as set forth in G.S. 143-59.1(a) because:
- (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**
- (b) [check **one** of the following boxes]
- ☐ Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**
- ☐ The Contractor or one of its affiliates **has** incorporated or reincorporated in a "tax haven country" as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (4) **Pursuant to G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor's officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (5) **Pursuant to G.S. 143B-139.6C**, the undersigned hereby certifies that the Contractor will not use a former employee, as defined by G.S. 143B-139.6C(d)(2), of the North Carolina Department of Health and Human Services in the administration of a contract with the Department in violation of G.S. 143B-139.6C and that a violation of that statute shall void the Agreement.
- (6) The undersigned hereby certifies further that:
- (a) He or she is a duly authorized representative of the Contractor named below;
- (b) He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
- (c) He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

Contractor's Name: Click or tap here to enter text.

Contractor's Authorized Agent:

Signature _____ Date _____

Printed Name: Click or tap here to enter text. Title: Click or tap here to enter text.

Attachment G: Federal Certifications and Disclosures

The undersigned states that:

1. He or she is the duly authorized representative of the Contractor named below;
2. He or she is authorized to make, and does hereby make, the following certifications on behalf of the Contractor, as set out herein:
 - a. The Certification Regarding Nondiscrimination;
 - b. The Certification Regarding Drug-Free Workplace Requirements;
 - c. The Certification Regarding Environmental Tobacco Smoke;
 - d. The Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions; and
 - e. The Certification Regarding Lobbying;
3. He or she has completed the Certification Regarding Drug-Free Workplace Requirements by providing the addresses at which the contract work will be performed;
4. [Check the applicable statement]
☐ He or she **has completed** the attached **Disclosure Of Lobbying Activities** because the Contractor **has made, or has an agreement to make**, a payment to a lobbying entity for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action;
OR
☐ He or she **has not completed** the attached **Disclosure Of Lobbying Activities** because the Contractor **has not made, and has no agreement to make**, any payment to any lobbying entity for influencing or attempting to influence any officer or employee of any agency, any Member of Congress, any officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action.
5. The Contractor shall require its subcontractors to whom such certifications and disclosures apply, if any, to make the same certifications and disclosure.

Signature

[Click or tap here to enter text.](#)

Title

[Click or tap here to enter text.](#)

Contractor Name

Date

[This Certification Must be Signed by the Same Individual Who Signed the Proposal Execution Page]

I. Certification Regarding Nondiscrimination

The Contractor certifies that it will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (h) the Food Stamp Act and USDA policy, which prohibit discrimination on the basis of religion and political beliefs; and (i) the requirements of any other nondiscrimination statutes which may apply to this Agreement.

II. Certification Regarding Drug-Free Workplace Requirements

1. The Contractor certifies that it will provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - b. Establishing a drug-free awareness program to inform employees about:
 - i. The dangers of drug abuse in the workplace;
 - ii. The Contractor's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - c. Making it a requirement that each employee be engaged in the performance of the agreement be given a copy of the statement required by paragraph (a);
 - d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the agreement, the employee will:
 - i. Abide by the terms of the statement; and
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
 - e. Notifying the Department within ten days after receiving notice under subparagraph (d)(ii) from an employee or otherwise receiving actual notice of such conviction;
 - f. Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(ii), with respect to any employee who is so convicted:
 - i. Taking appropriate personnel action against such an employee, up to and including termination; or
 - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
 - g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
2. The sites for the performance of work done in connection with the specific agreement are listed below (list all sites; add additional pages if necessary):

Address:

Street:	Click or tap here to enter text.
City, State, Zip Code:	Click or tap here to enter text.

Address:

Street:	Click or tap here to enter text.
City, State, Zip Code:	Click or tap here to enter text.

3. Contractor will inform the Department of any additional sites for performance of work under this agreement.

4. False certification or violation of the certification may be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment. 45 C.F.R. 82.510.

III. Certification Regarding Environmental Tobacco Smoke

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000.00 per day and/or the imposition of an administrative compliance order on the responsible entity.

The Contractor certifies that it will comply with the requirements of the Act. The Contractor further agrees that it will require the language of this certification be included in any subawards that contain provisions for children's services and that all subgrantees shall certify accordingly.

IV. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

Instructions

[The phrase "prospective lower tier participant" means the Contractor.]

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originates may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 22 C.F.R. 513.100. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized in paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension, and/or debarment.

Certification

1. **The prospective lower tier participant certifies**, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

V. Certification Regarding Lobbying

The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federally funded contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form SF-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) who receive federal funds of \$100,000.00 or more and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

VI. Disclosure Of Lobbying Activities

Instructions

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal Identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP- DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate boxes. Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate boxes. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D. C. 20503

Disclosure of Lobbying Activities

(Approved by OMB 0344-0046)

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action <input type="checkbox"/> a. Bid/offer/application <input type="checkbox"/> b. Initial Award <input type="checkbox"/> c. Post-Award	3. Report Type <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year: Enter Year Quarter: Enter Qtr Date of Last Report: Enter a date.												
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier (if known): Enter Text Congressional District (if known): Enter Text		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Name:</td> <td>Click or tap here to enter text.</td> </tr> <tr> <td>Street Address:</td> <td>Click or tap here to enter text.</td> </tr> <tr> <td>City, State, Zip:</td> <td>Click or tap here to enter text.</td> </tr> <tr> <td>Congressional District (if known):</td> <td>Click or tap here to enter text.</td> </tr> </table>	Name:	Click or tap here to enter text.	Street Address:	Click or tap here to enter text.	City, State, Zip:	Click or tap here to enter text.	Congressional District (if known):	Click or tap here to enter text.				
Name:	Click or tap here to enter text.													
Street Address:	Click or tap here to enter text.													
City, State, Zip:	Click or tap here to enter text.													
Congressional District (if known):	Click or tap here to enter text.													
6. Federal Department/Agency: Click or tap here to enter text.		7. Federal Program Name/Description: Click or tap here to enter text. CFDA Number (if applicable): Click here to enter text.												
8. Federal Action Number (if known): Click or tap here to enter text.	9. Award Amount (if known) \$Click here to enter text.													
10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI)</i> Click or tap here to enter text.		b. Individuals Performing Services (last name, first name, MI): <i>(including address if different from No.10a.)</i> Click or tap here to enter text.												
<i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i>														
11. Amount of Payment <i>(check all that apply):</i> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2">\$Click or tap here to enter text.</td> </tr> <tr> <td><input type="checkbox"/> Actual</td> <td><input type="checkbox"/> Planned</td> </tr> </table>	\$Click or tap here to enter text.		<input type="checkbox"/> Actual	<input type="checkbox"/> Planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: Click or tap here to enter text.									
\$Click or tap here to enter text.														
<input type="checkbox"/> Actual	<input type="checkbox"/> Planned													
12. Form of Payment <i>(check all that apply):</i> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><input type="checkbox"/> a. cash</td> <td style="width: 30%;"><input type="checkbox"/> b. In-kind (specify below):</td> </tr> <tr> <td>Nature:</td> <td>Click to enter text.</td> </tr> <tr> <td>Value:</td> <td>\$Click to enter text.</td> </tr> </table>	<input type="checkbox"/> a. cash	<input type="checkbox"/> b. In-kind (specify below):	Nature:	Click to enter text.	Value:	\$Click to enter text.								
<input type="checkbox"/> a. cash	<input type="checkbox"/> b. In-kind (specify below):													
Nature:	Click to enter text.													
Value:	\$Click to enter text.													
14. Brief Description of Services Performed or to be Performed and Date(s) of Services, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11(attach Continuation Sheet(s) SF-LLL-A, if necessary): Click or tap here to enter text.														
15. Continuation Sheet(s) SF-LLL-A attached:		<input type="checkbox"/> Yes <input type="checkbox"/> No												
16. Information requested through this form is authorized by title 31 U. S. C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U. S. C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Signature:</td> <td colspan="2"></td> </tr> <tr> <td>Print Name:</td> <td colspan="2">Click or tap here to enter text.</td> </tr> <tr> <td>Title:</td> <td colspan="2">Click or tap here to enter text.</td> </tr> <tr> <td>Telephone No.</td> <td>Enter text.</td> <td>Date:</td> </tr> </table>	Signature:			Print Name:	Click or tap here to enter text.		Title:	Click or tap here to enter text.		Telephone No.	Enter text.	Date:
Signature:														
Print Name:	Click or tap here to enter text.													
Title:	Click or tap here to enter text.													
Telephone No.	Enter text.	Date:												
Federal Use Only		Authorized for Local Reproduction Standard Form - LLL												

Attachment H: Disclosure of Litigation and Criminal Convictions

The Offeror must provide information regarding litigation and criminal conviction in response to the RFP by completing this Disclosure of Litigation and Criminal Conviction Form.

1. The Offeror shall disclose 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.

☐ Offeror does not have information to disclose
disclose as follows:

☐ Offeror has information to

2. The Offeror shall disclose if it, or its any of its subcontractors, are the subject of any current litigation or investigations of noncompliance under Federal or State law.

☐ Offeror does not have information to disclose
disclose as follows:

☐ Offeror has information to

3. The Offeror shall disclose any civil litigation, regulatory finding or penalty, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer 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 Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Contractor or any subcontractor violated any Federal, State or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Offeror or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Offeror or subcontractor.

☐ Offeror does not have information to disclose
disclose as follows:

☐ Offeror has information to

4. In the event the Offeror, an officer of the Offeror, or an owner of a twenty-five percent (25%) or greater share of the Offeror, 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 Offeror's business integrity, such Offeror shall be prohibited from entering into a contract for goods or Services with any department, institution, or agency of the State.

☐ Offeror does not have information to disclose
disclose as follows:

☐ Offeror has information to

5. The Offeror shall disclose in the *Section VII. Attachment E: Certification of Financial Condition and Legal Action Summary* any legal action that could adversely affect the Offeror's financial conditions or ability to meet the requirements of any Contract resulting from the RFP.

☐ Offeror does not have information to disclose
disclose as follows:

☐ Offeror has information to

By signing the RFP, Offeror certifies that the information provided in this Attachment is true to the best of its information and belief. Offeror agrees to notify Department of any changes to the information provided that arise prior to award of any Contract resulting from the RFP. By signing the RFP, Offeror further acknowledges the requirements set forth in the BACKGROUND CHECKS AND DISCLOSURE OF LITIGATION AND CRIMINAL CONVICTION OR ADVERSE FINANCIAL CONDITIONS term of the Contract and the resulting obligations should a Contract be awarded to the Offeror.

Attachment I: Location of Workers Utilized by Contractor

In accordance with NCGS 143-59.4, the Contractor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of the Contract.

Contractor shall complete items a) and b) and sign below.

a) Will any work under this Contract be performed outside the United States? ☐ YES ☐ NO

If "YES":

1. List the location(s) outside the United States where work under the Contract will be performed by the Contractor, any subcontractors, employees, or other persons performing work under the Contract.

Click or tap here to enter text.

2. Specify the manner in which the resources or workers will be utilized:

Click or tap here to enter text.

b) Where, within the U.S., will work be performed? List all U.S. locations.

Click or tap here to enter text.

The undersigned acknowledges and agrees that:

1. The Department will evaluate the additional risks, costs, and other factors associated with the utilization of workers outside the United States prior to making an award or executing a contract.
2. Contractor shall provide written notice to the Department of the relocation of the Contractor, its employees or subcontractors, or other persons performing services under the Contract, to a location outside of the United States.
3. All Contractor or subcontractor personnel providing call or contact center services to the State of North Carolina under this Contract, if applicable, **shall disclose** to inbound callers the location from which the call or contact center services are being provided.

Enter Entity Name

Signature of Authorized Representative

Entity Name

Enter Name and Title

Name and Title

Date

Attachment J: Offeror Request for Proposed Modifications to the Terms and Conditions

As provided in *Section II. C. 3.*, Offeror may submit proposed modifications to the terms and conditions of the RFP for consideration by the Department. The proposed modifications do not alter the terms and conditions of the RFP and have no force or effect on the RFP or any resulting Contract unless accepted by the Department and incorporated through a BAFO, negotiation document, addenda to the RFP or amendment to the Contract.

The Department at its sole discretion may consider any proposed modifications submitted in this Attachment.

The Offeror must check one of the boxes below to indicate whether it is proposing modifications to the terms and conditions of the RFP:

- ☐ The Applicant **DOES NOT** propose modifications.
- ☐ The Applicant **DOES** propose modifications as provided in the following table:

	RFP Citation	Redline of Proposed Modification
	(i.e., section & page number)	(i.e., include text as published in RFP and strikethrough words, phrases or sentences proposed to be deleted and underline words, phrases, or sentences proposed to be added)
1.		
2.		
3.		
4.		
5.		

Attachment K: Business Associate Agreement

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF HEALTH BENEFITS

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made effective upon the later of the execution dates of this Agreement ("Effective Date") by and between North Carolina Department of Health and Human Services, Division of Health Benefits ("Covered Entity") and _____ ("Business Associate") (collectively the "Parties").

1. BACKGROUND

- a. Covered Entity and Business Associate are Parties to a contract entitled: **#30-2025-013-DHB Minimum Data Set (MDS)** (the "Contract"), whereby Business Associate agrees to perform certain services for or on behalf of Covered Entity.
- b. Covered Entity is an organizational unit of the North Carolina Department of Health and Human Services (the "Department") that has been designated in whole or in part by the Department as a health care component for purposes of the HIPAA Privacy Rule.
- c. The relationship between Covered Entity and Business Associate is such that the Parties believe Business Associate is or may be a "business associate" within the meaning of the HIPAA Privacy Rule.
- d. The Parties enter into this Agreement with the intention of complying with the HIPAA Privacy Rule provision that a Covered Entity may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.

2. DEFINITIONS

Unless some other meaning is clearly indicated by the context, the following terms shall have the following meaning in this Agreement:

- a. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R. § 160.103.
- b. "HIPAA" means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as modified and amended by the Health Information Technology for Economic and Clinical Health ("HITECH") Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- c. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- d. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164.
- e. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

- f. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- g. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or the person to whom the authority involved has been delegated.
- h. Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have in the Privacy Rule.

3. OBLIGATIONS OF BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards and comply, where applicable, with subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required by 45 C.F.R. § 164.410.
- e. Business Associate agrees, in accordance with 45 C.F.R. § 164.502(e)(1) and § 164.308(b)(2), to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such information.
- f. Business Associate agrees to make available protected health information as necessary to satisfy Covered Entity's obligations in accordance with 45 C.F.R. § 164.524.
- g. Business Associate agrees to make available Protected Health Information for amendment and incorporate any amendment(s) to Protected Health Information in accordance with 45 C.F.R. § 164.526.
- h. Unless otherwise prohibited by law, Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received, by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to make available the information required to provide an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

4. PERMITTED USES AND DISCLOSURES

- a. Except as otherwise limited in this Agreement or by other applicable law or agreement, if the Contract permits, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Contract, provided that such use or disclosure:
 - 1) would not violate the Privacy Rule if done by Covered Entity; or
 - 2) would not violate the minimum necessary policies and procedures of the Covered Entity.
- b. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that:
 - 1) the disclosures are Required by Law; or

- 2) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement or by other applicable law or agreements, if the Contract permits, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- d. Notwithstanding the foregoing provisions, Business Associate may not use or disclose Protected Health Information if the use or disclosure would violate any term of the Contract or other applicable law or agreements.

5. TERM AND TERMINATION

- a. **Term.** This Agreement shall be effective as of the Effective Date stated above and shall terminate when the Contract terminates.
- b. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, at its option:
 - 1) Provide an opportunity for Business Associate to cure the breach or end the violation, and terminate this Agreement and services provided by Business Associate, to the extent permissible by law, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2) Immediately terminate this Agreement and services provided by Business Associate, to the extent permissible by law; or
 - 3) If neither termination nor cure is feasible, report the violation to the Secretary as provided in the Privacy Rule.
- c. **Effect of Termination.**
 - 1) Except as provided in paragraph (2) of this section or in the Contract or by other applicable law or agreements, upon termination of this Agreement and services provided by Business Associate, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - 2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

6. GENERAL TERMS AND CONDITIONS

- a. Except as provided in this Agreement, all applicable terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- b. In the event of a conflict in terms between this Agreement and the Contract, the interpretation that is in accordance with the Privacy Rule shall prevail. In the event that a conflict then remains, the Contract terms shall prevail so long as they are in accordance with the Privacy Rule.
- c. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

IN WITNESS WHEREOF, the Parties, through their authorized representatives, execute this Agreement as of the Effective Date.

BUSINESS ASSOCIATE

Name:
Title:

Date

COVERED ENTITY

Jay Ludlam, Deputy Secretary
NC Medicaid

Date

Attachment L: Subcontractor Identification Form

The Contractor must complete a *Subcontractor Identification Form* for each known Subcontractor, as defined in Contract Section III. *DEFINITIONS, CONTRACT TERM, GENERAL TERMS AND CONDITIONS, OTHER PROVISIONS & PROTECTIONS, A. Definitions*, who will be used to meet the Contract requirement or otherwise perform any services pursuant to the Contract (i.e., there should be one form for each Subcontractor). After Contract Award, the *Subcontractor Identification Form* must be submitted by the Contractor to the Department in accordance with Contract Section III.D.45. **SUBCONTRACTORS** for review and approval of all new subcontractors.

By executing the Contract, or submitting this Attachment after Contract Execution in accordance with the **Subcontractor** clause of the Contract, the Contractor:

1. Certifies that the information provided in this Attachment is true to the best of its information and belief; and
2. Acknowledges the requirements set forth in the Terms and Conditions related to Subcontractors and the resulting obligations, including requiring Department approval of any Subcontractors used in the performance of the Contract; and
3. Agrees to notify the Department of any material changes to the information provided in this Attachment that arise prior to execution or during the term of the Contract.
4. Check One and complete as needed:
 - ☐ Offeror **is not** proposing subcontractors as part its proposal.
 - ☐ Offeror **is** proposing the subcontractors listed below and a completed Attachment L: Subcontractor Identification Form is submitted with its proposal:

Attachment L: Subcontractor Identification Form	
A: Subcontractor Identification	
1. Business Information. Provide the requested Information in the space provided:	
Legal Name of Subcontractor	Click or tap here to enter text.
Name Used for Business if Different	Click or tap here to enter text.
FEIN/Taxpayer ID	Click or tap here to enter text.
Address	Click or tap here to enter text.
Contract Executed	<input type="checkbox"/> Yes <input type="checkbox"/> No
Term of Contract	Click or tap here to enter text.
Name of Contact Person Title Phone Number Email Address	Click or tap here to enter text.

2. Scope of Subcontracted Services. Identify the scope of services and activities that will be provided by the Subcontractor; cite specific Sections of the Contract as applicable:

Click or tap here to enter text.

3. Is Subcontractor a government entity?

☐ Yes ☐ No

Attachment M: Legal Grounds for Marking Information Confidential

Pursuant to *Section II.F. Confidentiality and Prohibited Communications During Evaluation*, Offeror shall identify the legal grounds for asserting that pages and sections of its proposal marked as Confidential is confidential, including the citation to state law.

Proposal Section / Location	Page Number	Description of Redaction	Statement of Legal Grounds	State Law Citation

By signing the RFP, the Offeror 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 NCGS § 132 and § 66-152(3). Under no circumstances shall price information be designated as confidential

Attachment N: Evaluation Methodology

Offeror's responses will be evaluated using the applicable evaluation methodologies described within this *Attachment N: Evaluation Methodology* and the process described in *Section II.G Evaluation Process and Contract Award*.

1. Minimum Qualifications Rating

The Evaluation Committee will review the Offeror's responses to the questions in *Section VII. Attachment A: Minimum Qualifications Response* and evaluate the responses based on the requirements described in the RFP. Based upon this review, the Evaluation Committee will record a rating for each question using *Attachment N: Table 1. Minimum Qualifications Rating Scale* provided below.

Attachment N: Table 1. Minimum Qualifications Rating Scale	
Rating	Definition
Meets	<ul style="list-style-type: none">The Proposal meets the stated requirements, andOfferor provided any required confirmation.
Does Not Meet	<ul style="list-style-type: none">The Proposal has NOT met the stated requirements, orOfferor fails to provide confirmation.

2. Question Level Evaluation

For each question in *Section VII. Attachment B: Offeror's Response to Technical Evaluation Questions*, the Evaluation Committee will review Offeror's response and evaluate the response at the question level, considering and documenting any strengths and weaknesses in the response based on the requirements described in the RFP and comparatively across all Offerors. Based upon this review, the Evaluation Committee shall describe a response using the categories in the Strengths or Weaknesses tables in this subsection. A rationale will be documented when a significant strength, strength, weakness, or significant weakness is identified. No rationale will be provided for a determination of acceptable. The Evaluation Committee will only consider information provided in response to each specific question within the Offeror's *Section VII. Attachment B: Offeror's Response to Technical Evaluation Questions*.

The following *Attachment N: Table 2. Strengths and Weaknesses* shall be used for evaluating Questions 1–13. within the Offeror's *Section VII. Attachment B: Offeror's Response to Technical Evaluation Questions*.

Attachment N: Table 2. Strengths and Weaknesses	
Rating	Definition
Significant Strength	<ul style="list-style-type: none">The response meets the requirements of the State; andInformation disclosed, described, or provided greatly enhances the potential for successful contract performance and/or appreciably exceeds specified performance or capability requirements in a way that will be advantageous to the State.
Strength	<ul style="list-style-type: none">The response meets the requirements of the State; andInformation disclosed, described, or provided enhances the potential for successful contract performance and/or that exceeds specified performance or capability requirements in a way that will be advantageous to the State.

Attachment N: Table 2. Strengths and Weaknesses	
Rating	Definition
Acceptable	<ul style="list-style-type: none"> • The response meets the requirements of the State; and • Information disclosed, described, or provided is responsive to the question and does not raise concerns that the offeror will be able to meet the RFP requirements.
Weakness	<ul style="list-style-type: none"> • The response meets some of the requirements of the State; and • Information disclosed, described, or provided exposes a potential flaw that increases the risk of unsuccessful contract performance.
Significant Weakness	<ul style="list-style-type: none"> • The response meets either some or none of the requirements of the State; and <ul style="list-style-type: none"> ○ Information disclosed, described, or provided exposes a significant potential flaw that increases the risk of unsuccessful contract performance; or ○ The response contained insufficient information to evaluate.

3. Criterion Level Rating

After the Evaluation Committee has reviewed and evaluated each of the Offeror's responses at the question level, the Evaluation Committee shall evaluate Offeror's overall response at the Criterion Level and determine a consensus rating for each criteria using *Section VII. Attachment N: Table 3. Criterion Level Rating Scale* provided below. The Evaluation Committee will determine a criterion level rating based upon the Committee's overall impression of an Offeror's response to the questions within the criterion and comparatively across all Offerors. Any strengths or weaknesses recorded by the Committee during the question level evaluation are not dispositive and do not necessarily result in any specific criterion level rating being assigned.

Attachment N: Table 3. Criterion Level Rating Scale	
Rating	Definition
Exceeds Requirements	<p>The responses demonstrate that the Offeror:</p> <ul style="list-style-type: none"> • Understands the requirements of the RFP; • Has proposed an approach that meets and, in some areas, exceeds requirements in a way that adds value to the Department; • Demonstrates Offeror has the capacity, capability, and/or experience to implement or operationalize the approach; and/or • The information disclosed, described, or provided is responsive and increases Department's confidence Offeror will be able to meet and, in some areas, exceeds, the requirements of the RFP.
Meets Requirements	<p>The responses demonstrate that the Offeror:</p> <ul style="list-style-type: none"> • Understands the requirements of the RFP and has proposed an approach that meets the requirements; • Demonstrates the Offeror's capacity, capability, and/or experience needed implement or operationalize the approach; and/or • The information disclosed, described, or provided is responsive and does not raise concerns the Offeror will be able to meet the requirements of the RFP.

Attachment N: Table 3. Criterion Level Rating Scale	
Rating	Definition
Partially Meets Requirements	<p>The responses demonstrate the Offeror:</p> <ul style="list-style-type: none"> • Demonstrate the Offeror has a fair understanding of the requirements of the RFP; • Proposed an approach that demonstrates limited capacity, capability, and/or experience to implement or operationalize the requirements; and/or • The information disclosed, described, or provided raise concerns Offeror will be able to meet the requirements of the RFP and may have performance issues.
Does Not Meet Requirements	<p>No response provided or the responses provided:</p> <ul style="list-style-type: none"> • Demonstrates Offeror has an insufficient understanding of the requirements; or • Demonstrates a proposed approach that does not meet requirements; or • Does not demonstrate sufficient capacity, capability, and/or experience to meet the requirements; and/or • The information disclosed, described, or provided, raise substantial concerns the Offeror will be able to meet the requirements of the RFP and may have performance issues.

4. Cost Proposal

The Offeror's proposed cost is an evaluation factor in the selection process. Costs will be evaluated with the relative importance listed in the chart in *Section II. Table 3*. Costs will be evaluated based on Total Costs, including option years, for the service and technical capability offered. A rating will not be assigned for costs.

5. Final Ranking

The Evaluation Committee will conduct an analysis in accordance with NCGS § 143-135.9 of the Offerors' proposals, comparing the ratings of each response, and the total price provided in the Offeror's Cost Proposal to determine which response provides the best trade-off between price and performance. The Department will use a narrative of relative strengths and weaknesses to support this ranking. Offeror proposals will be ranked from most advantageous to least advantageous using the evaluation factors stated in this RFP and their relative importance and comparatively across all Offerors. (See *Section II. Table 3*.) which lists the evaluation criteria in descending order of importance.) Note that the overall ranking of any Offeror proposal may be adjusted up or down during the Evaluation Committee's final ranking of Proposals.