



# **STATE OF NORTH CAROLINA**

**Department of Health and Human Services**

**Division of Health Benefits**

**Request for Qualifications**

**#30-2024-003-DHB**

**Automated Solutions for Business**

**Processes**



## STATE OF NORTH CAROLINA

### Request for Qualifications #30-2024-003-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 North Carolina General Statute 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 response. Failure to do so may subject your response to rejection.**

**ID Number:**

---

Federal ID Number or Social Security Number

---

Offeror Name

**STATE OF NORTH CAROLINA**  
**Department of Health and Human Services Division of**  
**Health Benefits**

<b>Refer <u>ALL</u> Inquiries regarding this RFQ to:</b>  <a href="#">Tyler Ragor - Contract Specialist</a> <a href="mailto:Medicaid.Procurement@dhhs.nc.gov">Medicaid.Procurement@dhhs.nc.gov</a>	<b>Request for Qualifications #: 30-2024-003-DHB</b>
	<b>Responses will be publicly opened: at</b> <b>2:00 PM, Eastern Time</b>
	<b>Contract Type: Open Market</b>
	<b>Commodity Number: 8111: Computer Services</b> <b>8116: Information Technology Service Delivery</b>
	<b>Description: Automated Solutions for Business Processes</b>
	<b>Using Agency: Department of Health and Human Services, Division of Health Benefits</b> <b>Requisition Number: N/A</b>

**EXECUTION**

In compliance with this Request for Qualifications, and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein, and in any subsequent Task Order. By executing this Request for Qualifications, the undersigned Vendor certifies that this response is submitted competitively and without collusion (G.S. 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 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this response, 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 G.S. §143-48.5, the undersigned Offeror certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFQ, 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. G.S. 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 execution of this response to the RFQ, the undersigned certifies, 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 response prior to submittal shall render response invalid and it WILL BE REJECTED. Late responses cannot be accepted.**

<b>VENDOR:</b> Click here to enter text.		
<b>STREET ADDRESS:</b> Click here to enter text.	<b>P.O. BOX:</b> Click here to enter text.	<b>ZIP:</b> Click here to enter text.
<b>CITY &amp; STATE &amp; ZIP:</b> Click here to enter text.	<b>TELEPHONE NUMBER:</b> Click here to enter text.	<b>TOLL FREE TEL. NO:</b> Click here to enter text.
<b>PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10):</b> Click here to enter text.		
<b>PRINT NAME &amp; TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:</b> Click here to enter text.		<b>FAX NUMBER:</b> Click here to enter text.
<b>VENDOR'S AUTHORIZED SIGNATURE:</b>	<b>DATE:</b> Click here to enter text.	<b>E-MAIL:</b> Click here to enter text.

Offer valid for at least 180 days from date of response opening. After this time, any withdrawal of response shall be made in writing, effective upon receipt by the agency issuing this RFQ.

**ACCEPTANCE OF RESPONSE**

If any or all parts of this response are accepted by the State of North Carolina, an authorized representative of the Department of Health and Human Services shall affix his/her signature hereto and this document and all provisions of this Request for Qualifications along with the Offeror response and the written results of any negotiations shall make the offeror eligible to be considered for a Qualified Offeror Pool. A copy of this acceptance will be forwarded to the successful Offeror(s).

**FOR STATE USE ONLY:** Offer accepted for Qualified Vendor Pool this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as indicated on the attached certification, by \_\_\_\_\_.

Authorized Representative of Department of Health and Human Services.

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## 1.0 PURPOSE AND BACKGROUND

The North Carolina Department of Health and Human Services ("DHHS" OR "DEPARTMENT" OR STATE), Division of Health Benefits ("DHB") is seeking to create a pool of qualified Offerors to support business automation consulting and solutions design, development and implementation to address manual business processes including the use of business process improvement best practices, Machine Learning (ML), Data Mining, Robotic Process Automation (RPA) or Artificial Intelligence (AI) and automation capabilities to increase operational and oversight efficiencies.

DHHS is issuing this Request for Qualifications (RFQ) to identify Offerors qualified to provide automated solutions or consulting related to automated solutions for multiple use cases to improve operational and oversight efficiencies. Use cases being considered include, but are not limited to the following:

1. Office of Compliance & Program Integrity (OCPI) Reporting and Sample Selection
2. OCPI Eligibility Determination & Redetermination, Auditing and Testing
3. OCPI Audit Finding Notifications
4. OCPI Corrective Action Tracking/Validation
5. Overpayment Computation, Notification, Collection and Tracking
6. Comparative Claims Testing
7. Consultation regarding industry best practices for the ethical use of Artificial Intelligence (AI) or related tools in NC Medicaid programs with a focus on operational and vendor oversight
8. Oversight of Medicaid Managed Care Organizations financial compliance, clinical policy adherence, or Claim Payment or Denial accuracy Vendor or Internal Call Center Quality monitoring

The Department intends to identify additional use cases for implementation under this RFQ.

Responses shall be submitted in accordance with the terms and conditions of this RFQ and any addenda issued hereto.

## 2.0 GENERAL INFORMATION

DHHS is issuing this Request for Qualifications (RFQ) to identify Offerors capable of providing automated solutions for DHB Business Processes of the nature outlined above and in Attachment B. Once a pool of qualified Offerors has been established via this RFQ, DHHS will give preference to the use of the resultant Master Services Agreement ("MSA" OR "Agreement" OR "Contract") for all work within scope in awarding task orders to qualified vendors. Qualified vendors under the Master Services Agreement will have the opportunity to bid on Task Orders issued under the MSA.

### **Request for Qualification (RFQ) Process:**

1. NCDHHS will publish an RFQ containing a description of services sought, all applicable terms and conditions, and qualification criteria.
2. Qualification criteria are focused on relevant experience (past performance) for similar services, experience in delivering similar services on time and on budget and a rate card for labor categories necessary to perform these services. The rate card will establish a not-to-exceed rate by labor category (fully burdened) and will serve to determine price reasonableness. Rates may be further negotiated at the Task Order (TO) level.
3. Interested offerors may submit applications which will be evaluated by NCDHHS to determine which offerors to include in a qualified vendor pool.
4. NCDHHS may issue additional iterations of this RFQ to expand the qualified vendor pool as needed.
5. Qualified vendors will be included in the MSA.

### **Task Order (TO) Process:**

1. Upon development of requirements that are within the scope of the MSA, a TO request will be issued to vendors under the MSA, allowing them to competitively bid on the work.
2. Evaluation criteria at the TO level will include a) response to technical specifications; b) total cost of ownership and c) any other requirements not previously addressed under the RFQ. All other evaluation criteria will have been adjudicated at the MSA level. Selection will be on a best value/tradeoff basis.
3. The NCDHHS reserves the right to award a TO on a sole source basis consistent with the requirements for justifying a Waiver of Competition.

The following table outlines DHHS' projected timeline for implementation of automated business processes.

Action	Responsibility	Date	Time (EST)
Posting of RFQ – Round 1	State	July 11, 2024	
Preproposal Conference	State	July 17, 2024	2pm
Submit written questions to DHHS	Vendor	July 24, 2024	2pm
DHHS Posting of responses to questions	State	July 30, 2024	4pm
Submit Response to RFQ	Vendor	September 30, 2024	2pm
Complete Evaluation of Offeror Applications	State	October 31, 2024	N/A
Notify Qualified Offerors	State	January 10, 2025	N/A
Task Order Issuance	State	As Needed	N/A
Posting of RFQ – Additional Rounds (As Needed)	TBD		

## PRE-PROPOSAL CONFERENCE

- a. The Department will hold a Pre-proposal Video Conference on the date and time indicated in the RFP Schedule for one hour 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](mailto: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 by the date and time indicated in the RFP Schedule.
- f. The Department limits the number of representatives attending on behalf of each Offeror or organization to two (2) representatives 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.



## 2.1 REQUEST FOR QUALIFICATIONS DOCUMENT

The RFQ is comprised of the base RFQ document, any attachments, any relevant supporting documentation, and any addenda released before notification of qualification. All attachments and addenda released for this RFQ in advance of any notification of qualification are incorporated herein by reference.

## 2.2 NOTICE TO OFFERORS REGARDING RFQ TERMS AND CONDITIONS

It shall be the Offeror's responsibility to read the Instructions, the State's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFQ and comply with all requirements and specifications herein. Offerors also are responsible for obtaining and complying with all Addenda that may be issued in connection with this RFQ.

If Offerors have questions, issues, or proposed modifications regarding any term, condition, or other component within this RFQ, those must be submitted in accordance with the instructions in Attachment K, Proposed Modifications to Terms and Conditions. If the State determines that any changes will be made as a result, then such decisions will be communicated in the form of an RFQ addendum. The State may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the RFQ that have been addressed during the question-and-answer period. Other than through this process, the State rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response that purports to vary any terms and conditions or Offerors' instructions herein or to render the response non-binding or subject to further negotiation. Offeror's response shall constitute a firm offer. **By execution and delivery of this RFQ Response, the Offeror agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, 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 Offeror's response as nonresponsive.**

If an Offeror desires modification of the terms and conditions of this solicitation, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFQ, about whether specific language proposed as a modification is acceptable to or will be considered by the State. Identification of objections or exceptions to the State's terms and conditions in the response itself shall not be allowed and shall be disregarded or the response rejected.

An Offeror may, however, include a separate page along with its response, titled "Request for Qualifications Modifications to Terms and Conditions," and identify specific modifications that it requests the State to consider. The State will evaluate all responses without regard to any proposed modifications. Once a response has been identified as one for which prequalification recommendation has been made but prior to approval of the recommendation, the State, in its sole and absolute discretion, may consider any proposed modifications attached to that response. Any modification(s) to the terms and condition agreed to by the State in writing will be in the resulting contract. Any ambiguity, vagueness, inconsistency or conflict, either internal to such modification(s) or arising when read in conjunction with other portions of the Contract, shall be construed strictly in favor of the State. By executing and submitting its response to this RFQ, Offeror understands and agrees that the State may exercise its discretion not to respond to or not to consider any and all proposed modifications Offeror(s) may request and may accept Offeror's response under the terms and conditions of this RFQ.

Contact with anyone working for or with the State regarding this RFQ other than the State Contract Specialist named on the face page of this RFQ in the manner specified by this RFQ shall constitute grounds for rejection of said Offeror's response, at the State's election.

## 2.3 REQUEST FOR QUALIFICATIONS QUESTIONS

Upon review of the RFQ documents, Offerors may have questions to clarify or interpret the RFQ in order to submit the best response possible. To accommodate the Response Questions process, Offerors shall submit any such questions by the above due date for Offerors seeking qualification.

Vendors contact regarding this RFQ with anyone other than the contact person listed on Page One of this RFQ may be grounds for rejection of said Vendor's offer.

Written questions concerning this RFQ must be received by the stated deadline. They must be sent via e-mail to [Medicaid.Procurement@dhhs.nc.gov](mailto:Medicaid.Procurement@dhhs.nc.gov). Please enter "Questions Solicitation xxxxxx" as the subject for the email. Questions should be submitted in the following format:

Question #	RFQ Section	RFQ Page Number(s)	Vendor Question
1	(Example: 5.4.a)	64	Question regarding specific issue?
2			

An addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Ariba Sourcing Tool and shall become an Addendum to this RFQ.

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

## 2.4 RESPONSE SUBMITTAL

The Vendor's proposal is subject to the conditions made a part hereof and the receipt requirements described herein must be submitted as indicated below.

- a. **Vendor must submit its proposal in response to this solicitation to the Ariba Sourcing Tool. Paper and email copies will be deemed non-responsive, and the proposal will not be considered. Proposals submitted by physical mail delivery or in person delivery in response to this solicitation will be deemed non-responsive and will not be considered further. Files must not be password-protected and must be capable of being copied to other media.**
- b. **INSUFFICIENCY OF REFERENCES TO OTHER DATA:** Only information that is received in response to this RFQ will be evaluated. Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation. The Department will not click on any links to access information.
- c. **It is the responsibility of the Vendor to submit their proposal in accordance with these instructions to the Ariba Sourcing Tool by the specified time and date of opening. All electronic proposal submissions are subject to the conditions made a part hereof. Vendor shall bear the risk for late electronic submission due to unintended or unanticipated delay, including but not limited to internet issues, network issues, local power outages, or application issues.**
- d. **Proposal and Rate Card Workbook must be submitted to the Ariba Sourcing Tool.**
- e. Vendor's Proposal and Rate Card Workbook must be separate files and clearly named (e.g. **RFQ 30-xxxxx, Vendor's Name, Proposal**) and (e.g. **RFQ 30-xxxxx, Vendor's Name, Rate Card**).
- f. If your proposal is being submitted as multiple files, then the file names must be clearly noted. For example: **RFQ 30-xxxxx, Vendor's Name, Proposal 1 of 2; RFQ 30-xxxxx, Vendor's Name, Proposal 2 of 2.**
- g. Vendor must submit **one (1) executed (signed) electronic copy of its proposal.**
- h. Proposals must be submitted with the Execution page signed and dated by an official authorized to bind the Vendor's firm. Failure to submit a signed proposal shall result in disqualification. All proposals must comply with *Section 6.3.1 General Instructions for Offer and Section 6.3.2 Offer Organization*.
- i. Vendor must submit one (1) electronic copy of Vendor's **redacted proposal** to the Ariba Sourcing Tool in accordance with Chapter 132 of the General Statutes, Public Records, identified as **RFQ 30-xxxxx, Vendor's Name, Proposal Redacted**. For the purposes of this RFQ, redaction means to edit a document by obscuring or removing information that is considered confidential and/or proprietary by Vendor and that meets the definition of Confidential Information set forth in G.S. 132-1.2. If Vendor's proposal does not contain Confidential Information, Vendor must submit a signed statement to that effect as **RFQ 30-xxxxx, Vendor's Name, Statement of Confidential Information**. If no redacted proposal is submitted by the Vendor, then the Department may use the unredacted proposal for any public record requests.
- j. This RFQ is available electronically on the electronic Vendor Portal (eVP) at the following website: <https://evp.nc.gov>.

- k. Proposal documents as submitted must include the entire RFQ, proposal, and all addenda. Linked or referenced documents from web or other locations cannot be included and will not be considered or evaluated. Hyperlinks and uniform resource locators (URLs) are not permitted in any of the proposal documents.

For Vendor training on how to use the Ariba Sourcing Tool to view solicitations, submit questions, develop responses, upload documents, and submit offers to the State, Vendors should go to the following site: <https://eprocurement.nc.gov/training/vendor-training>.

Questions or issues related to using the Ariba Sourcing Tool itself can be directed to the North Carolina eProcurement Help Desk at 888-211-7440, Option 2. Help Desk representatives are available Monday through Friday from 7:30 AM EST to 5:00 PM EST.

- l. Offerors should exercise due diligence to ensure their response is consistent with all instructions, clearly written and addresses all requirements and questions of the RFQ.
- m. 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 RFQ, including but not limited to, assistance from outside resources, computer programs, contract 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 will it excuse or consider for relief to the Offeror, any omissions or errors in Offeror's response that result for any reason.
- n. **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.

## 2.5 RESPONSE CONTENTS

Offerors shall complete all attachments of this RFQ that require the Offeror to provide information and include an authorized signature where requested. Offeror RFQ responses shall include the following items and those attachments should be arranged in the following order:

- a. Cover Letter
- b. Title Page: Include the company name, address, phone number and authorized representative along with the Request for Qualification Number.
- c. Completed and signed EXECUTION PAGE, along with the body of the RFQ (), and signed receipt pages of any addenda released in conjunction with this RFQ (if required to be returned).
- d. Completed Offeror Response (Section 4.1)
- e. ATTACHMENT A: INSTRUCTIONS TO OFFERORS
- f. ATTACHMENT B: AUTOMATED USE CASE EXAMPLES
- g. Completed ATTACHMENT C: LOCATION OF WORKERS UTILIZED BY OFFEROR
- h. ATTACHMENT D – DIT TERMS AND CONDITIONS
- i. Completed and signed version of ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION
- j. Responses to the Questions outlined in Paragraph 5.0, Scope of Work.
- k. ATTACHMENT F – FEDERAL CERTIFICATIONS
- l. Completed and signed version of ATTACHMENT G: BUSINESS ASSOCIATE ADDENDUM
- m. Completed version of ATTACHMENT H: SUPPLEMENTAL VENDOR INFORMATION – Historically Underutilized Businesses
- n. ATTACHMENT I: TERMS AND CONDITIONS – FEDERALLY FUNDED CONTRACTS
- o. Completed ATTACHMENT J: Rate Card
- p. ATTACHMENT K: SEPARATE DOCUMENT (NOT INCLUDED IN THE RESPONSE ITSELF): If necessary, a list of Offeror issues or proposed alternative language concerning State Terms and Conditions (see Section 2.2 NOTICE TO OFFERORS REGARDING TERMS AND CONDITIONS for additional information).
- q. ATTACHMENT L: AGENCY TERMS AND CONDITIONS
- r. Completed ATTACHMENT M: LEGAL GROUNDS FOR MARKING INFORMATION CONFIDENTIAL.

- s. Completed ATTACHMENT N: SUBCONTRACTOR IDENTIFICATION FORM.
- t. Completed and signed ATTACHMENT O: STATE CERTIFICATIONS
- u. Completed and ATTACHMENT P: DISCLOSURE OF LITIGATION AND CRIMINAL CONVICTIONS

## 2.6 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- 1) **Agency:** The term “Agency” within this document refers to the North Carolina Department of Health and Human Services (NCDHHS). Synonymous with Department.
- 2) **Application** – An Offeror’s response to this RFQ
- 3) **Business Associate Agreement (BAA):** as that term is defined in the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”).
- 4) **Best and Final Offeror (BAFO)** – Best and Final Offer, submitted by an Offeror to alter its initial offer, made in response to a request by the issuing Agency.
- 5) **Business Process Modeling (BPM):** Business Process Modeling is the activity of representing processes of an enterprise so they can be analyzed, improved, and automated.
- 6) **Business Day:** Business days mean Monday through Friday from 8:00 AM – 5:00 PM ET. State holidays are excluded. A list of North Carolina State Holidays is located here: <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>
- 7) **Buyer:** The employee of the State or Other Eligible Entity that places an order with the Offeror.
- 8) **Calendar Day:** Includes the time from midnight to midnight each day, and all days in a month, including weekends and holidays. Unless otherwise specified in this RFQ, days means Calendar Days.
- 9) **Cloud-Based System:** A solution for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.
- 10) **Contract Lead:** Representative of DHB Contract Management and Procurements Unit who correspond with potential Offerors in order to identify and contract with that Offeror providing the best value to the State and who will administer this contract for the State.
- 11) **Commercial Off-the-Shelf (COTS).** A ready-made solution that is adapted to the specific needs of the State’s business.
- 12) **Communications Management Plan:** Policy-driven approach to providing stakeholders with information. The plan formally defines who should be given specific information, when that information should be delivered and what communication channels will be used to deliver the information.
- 13) **Configuration Management (CM):** A systems engineering process for establishing and maintaining consistency of a products performance, functional and physical attributes with its requirements, design, and operational information throughout its life.
- 14) **Equity, Diversity and Inclusion (EDI)**
- 15) **Deliverables:** Any unique and verifiable product or other tangible material that must be delivered to the State to complete a process, phase, or project.
- 16) **Department (NCDHHS or DHHS):** 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 and is also synonymous with Agency.
- 17) **Development (DEV):** Refers to the Development stage of the Software Development Lifecycle
- 18) **Design, Development, and Implementation (DDI):** A phase in the project cycle.
- 19) **Division of Health Benefits (DHB):** The Division within NCDHHS responsible for implementing the Medicaid program.
- 20) **Disaster Recovery (DR)**
- 21) **Disaster Recovery Plan (DRP):** A written plan for processing critical applications in the event of a major hardware or software failure or destruction of facilities

- 22) **Document Management Plan:** Coordination and control of the flow (storage, retrieval, processing, printing, routing, and distribution) of electronic and paper documents in a secure and efficient manner, to ensure that they are accessible to authorized personnel as and when required.
- 23) **Electronic Health Information (EHI)**
- 24) **Electronic Health Record (EHR)**
- 25) **Encounters:** Medical information submitted by Providers (physicians, hospitals, Ancillaries, etc.) which document both the clinical conditions, services, and items delivered to the member.
- 26) **End User Documentation:** Documentation that contains information on individual user interface elements (such as grids, navigation panes, data editors, charts, etc.), and provides instructions for end-users about how to solve the most-common tasks with these interface elements.
- 27) **Enterprise Architecture Documentation:** Conceptual blueprint that defines the structure and operation of an organization.
- 28) **Enterprise Content Management (ECM):** A systematic approach to managing an organization's content throughout its lifecycle.
- 29) **E-Procurement Services:** The program, system, and associated services through which the State conducts electronic procurement.
- 30) **Federal Financial Participation (FFP)**
- 31) **Fee-For-Service (FFS):** A system of payment where a physician or other Provider is paid a fee for each service rendered.
- 32) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
- 33) **Health Insurance Portability and Accountability Act (HIPAA):** A 1996 federal law, and any associated amendments, additions, or revisions thereto, that restricts access to individuals' private medical information.
- 34) **Health Level Seven (HL7):** A healthcare-specific standards organization focused on creating a defined set of international messaging standards used to support interoperability and communication between
- 35) **Historically Underutilized Business (HUB):** <https://ncadmin.nc.gov/businesses/hub>
- 36) **Implementation Plan:** Detailed document that identifies all milestones and deliverables along with the methodology and sequencing that will be needed for a successful implementation. The Implementation Plan will also include known due dates, constraints or assumptions that will be necessary for detailed implementation planning and scheduling.
- 37) **Implementation Schedule:** Comprehensive list of milestones, deliverables, and tasks along with the associated due dates, durations and resources required for implementation.
- 38) **Incident Management Plan:** Clearly defined and documented plan of action for use at the time of an incident, typically covering the key personnel, resources, services, and actions needed to implement the incident management process.
- 39) **Integration Testing:** This is performed when two or more units have been tested and are integrated into a single structure. It includes testing on the interfaces between the components and the larger structure. This level of testing is used to identify defects prior to SIT.
- 40) **Interface Testing:** Interface testing is performed by the selected Vendor to ensure Providers, EDI service centers, business partners, and other Department Vendors can submit transactions over appropriate channels and can send and receive proper acknowledgements and negative responses, including the testing of timeframes between the receipt of a transaction and the notification/response to the submitter for all modes of transmission. This includes any interfaces relating to external systems.
- 41) **iServer:** A software platform from Orbus Software which the State uses to manage, govern, and visualize its Enterprise Architecture information and associated artifacts.
- 42) **Information Technology Service Management (ITSM):** The processes used to manage IT services within an organization.
- 43) **Key Personnel:** Any person performing under the Contract whose absence would cause an immediate and substantial risk to Vendor's ability to perform its obligation in the Contract as specified in the Vendor's offer.
- 44) **Medicaid Program:** The joint federal-state health insurance program for low-income individuals and families who cannot afford healthcare costs. Medicaid serves low-income parents, children, seniors, and people with disabilities.

- 45) **Member:** Synonymous with Recipient or Beneficiary. Person enrolled in a participating Medicaid program.
- 46) **Medicaid Enterprise System (MES):** The current approach to Medicaid management systems that promotes the use of COTS and SaaS products along with modularity and a higher degree of interoperability among systems.
- 47) **MES PMO:** Technology Program Management Organization comprised of engineers, architects, specialists, analysts, project managers, program managers, and the Program Director for the MES project.
- 48) **Managed File Transfer (MFT):** A technology platform that allows organizations to reliably exchange electronic data between systems and people in a secure way to meet compliance needs.
- 49) **Medicaid Information Technology Architecture (MITA):** An initiative sponsored by CMS, intended to foster integrated business and IT transformation across the Medicaid enterprise to improve the administration of the Medicaid program.
- 50) **Medicaid Management Information System (MMIS):** An integrated group of procedures and computer processing operations (subsystems) developed to help automate the management of a Medicaid program.
- 51) **Monthly Status Report:** Please see Weekly Status Report definition. Monthly Status Report is a high-level summary produced at the end of every month as described in the Communications Plan.
- 52) **Master Services Agreement (MSA) –** the agreement made with qualified vendors resulting from this RFQ.
- 53) **Master Test Quality Assurance Plan MTQAP:**
- 54) **NC Department of Information Technology (NC DIT):** Formerly Office of Information Technology Services
- 55) **NCAalytics:** The current North Carolina Medicaid data warehouse and data analytics system
- 56) **NCTracks:** The current North Carolina MMIS System
- 57) **National Institute of Standards and Technology (NIST)**
- 58) **National Provider Identifier (NPI):** Standard unique health identifier for Providers adopted by the Secretary.
- 59) **Operational Change Management Plan (OCMP)**
- 60) **Offeror:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Qualifications.
- 61) **OpenID Connect (OIDC):** An open authentication identity layer that works on top of the OAuth 2.0 framework.
- 62) **O&M:** Operations and Maintenance phase of the project.
- 63) **OMP:** Operations Management Plan
- 64) **Office of Rural Health (ORH):** A Division in the Department that assists underserved communities by providing support to improve healthcare access, quality, and cost.
- 65) **Operational Readiness Review (ORR)**
- 66) **Operational Readiness Testing (ORT):** Ensures the application and infrastructure have been installed and configured for successful operation in the production environment prior to Go-Live.
- 67) **OWASP TOP 10:** Open Web Application Security Project. A standards awareness document for developers and web application security. It represents a broad consensus about the most critical security risks to web applications.
- 68) **Payer:** Organizations — such as health plan Providers, Medicare, and Medicaid — that set service rates, collect payments, process claims, and pay Provider claims
- 69) **Prepaid Health Plan (PHP):** Term as defined in Session Law 2015-245, as amended.
- 70) **Plan of Action and Milestones (POA&M)**
- 71) **Program Management:** The process of managing several related projects.
- 72) **Project Change Management Plan (PCMP)**
- 73) **Project Management Plan (PMP):** The primary source of information on the project and project activities. It is a formal document that specifies how the project will be planned, performed, tracked, controlled, and closed. It should also contain a detailed implementation schedule.

- 74) **Project Implementation Schedule:** A comprehensive list of planned dates for performing schedule activities and/or tasks with the associated planned due dates, resources, and durations for meeting schedule milestones required for implementation.
- 75) **Proposal:** The response to the Task Order solicitations submitted to NCDHHS by the Qualified Vendor. This is also referred to as the Response or Offer
- 76) **Provider:** The umbrella term used to refer to individual practitioners and facilities, entities, organizations, and atypical organizations or institutions
- 77) **Production Simulation Test (PST)**
- 78) **Quality Management Plan:** Describes how quality will be managed throughout the lifecycle of the project.
- 79) **Real-time:** Real-time refers to the synchronous exchange of data between IT systems resulting in immediate access to or update of data on which resides in another IT system.
- 80) **Requirements Management:** The process of documenting, analyzing, tracing, prioritizing, and agreeing on requirements and then controlling change and communicating to relevant stakeholders. It is a continuous process throughout a project.
- 81) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- 82) **Recipient:** Synonymous with Beneficiary or Member. Person enrolled in a participating Medicaid program.
- 83) **Regression Testing:** The objective of regression testing is to retest important functionality of the solution/system after changes have been made. This test is often performed after each build. Regression testing allows a consistent, repeatable validation of each new release of a modified system component or an MES component or COTS solution. This testing ensures reported defects have been resolved for each new release and that no new quality issues have been introduced in the maintenance process.
- 84) **Release Management Plan:** Managing, planning, scheduling, and controlling a software build through different stages and environments; including testing and deploying software releases.
- 85) **Runtime Application Self Protection (RASP)**
- 86) **Role-Based Access Control (RBAC):** Restricts network access based on a user's role within an organization.
- 87) **Software as a Service (SaaS):** A software licensing model which allows access to software on a subscription basis using external servers.
- 88) **Software Development Life Cycle (SDLC):** Documents the collection, analysis, and escalating indication warnings to detect and respond to security intrusions.
- 89) **Static Application Security Testing (SAST)**
- 90) **Task Order:** A solicitation for specific services issued to qualified vendors.

## 3.0 PREQUALIFICATION AND RESPONSE EVALUATION PROCESS

### 3.1 PREQUALIFICATION SELECTION

All responses will be evaluated, and Offeror(s) meeting the RFQ requirements and demonstrating the capability to provide the services described within will be qualified to be considered for work on specific projects in the future.

The Department will accept responses to this RFQ on an ongoing basis as outlined in Section 5.0. Responses will be reviewed consistent with the timeline contained in each RFQ iteration and Qualified Offerors notified by the Department.

Offerors deemed qualified by DHHS through this RFQ will establish a pool of Offerors that DHHS can engage for specific tasks. DHHS will seek competitive bids for specific tasks through the task order process unless only one Offeror is qualified through this RFQ process that can provide the service or there is an urgent and immediate need for a service such that the delay in issuing a task order would not be in the best interest of the State. The determination of an urgent or immediate need is at the sole discretion of DHHS. If no qualified Offeror bids on a task order issued by DHHS, DHHS reserves the right to negotiate a contract for needed services with any known qualified Offeror or other known provider of the service.

Task Orders for specific projects may be issued to qualified vendors under the MSA at a later date and awarded

based on the requirements specifically stated in the Task Order. Per SL 2015-245, DHHS will award Task Orders based on acceptance of the most advantageous offer to the State and evaluation shall include best value, as the term is defined in G.S. 143-135.9(a)(1).

While the intent of this RFQ is to qualify multiple Offerors, the State reserves the right to make separate awards to different qualified Offerors for one or more Task Order, to not award one or more Task Order or to cancel this RFQ in its entirety without prequalifying any Offerors, if it is considered to be most advantageous to the State to do so.

The State reserves the right to waive any minor informality or technicality in responses received.

### **3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION**

During the evaluation period—from the date responses are opened through the date the qualification notification issued—each Offeror submitting a response (including its representatives, sub-contractors and/or suppliers) 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/or governor's office), or private entity, if the communication refers to the content of Offeror's response or qualifications, the contents of another Offeror's response, 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 responses and/or the qualification of Offerors. An Offeror not in compliance with this provision shall be disqualified from being prequalified, unless it is determined in the State's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the State would not be served by the disqualification. An Offeror's response may be disqualified if its sub-contractor 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 to the date of prequalification notification). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFQ, or general inquiries directed to the purchaser regarding requirements of the RFQ (prior to response submission) or the status of the prequalification process (after submission) are excepted from this provision.

### **3.3 RESPONSE EVALUATION PROCESS**

The State shall review all Offeror responses to this RFQ to confirm that they meet the requirements of the RFQ.

#### **The State will conduct a One-Step evaluation of Responses:**

1. Responses will be received from each responsive Offeror as outlined in Section 2.5 and 4.1.
2. All responses must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFQ.
3. Offerors are cautioned, that, all responses should be complete and reflect the most favorable terms available from the Offeror.
4. Responses will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Offeror and its staff, and fully burdened labor rates. Specific evaluation criteria are listed in 3.4 Qualification CRITERIA, below.
5. Offerors are cautioned that this is a request for qualifications, not an offer or request to contract, and the State reserves the unqualified right to reject any and all responses at any time if such rejection is deemed to be in the best interest of the State.

Upon completion of the evaluation process, the State will qualify Vendors based on the evaluation and post the qualification notification to Ariba under the RFQ number for this solicitation.

Pursuant to North Carolina General Statute (NCGS) 143-58, it is state policy to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in purchasing goods and services. The Department will give preference in awarding task orders to those qualified Offerors that meet these criteria or have a diverse workforce. The Department is committed to reserve a portion of the contemplated work for qualified certified Historically Underutilized Businesses (HUB) and strongly encourages vendors to partner or subcontract with qualified HUB vendors.



The RFQ, any addenda or other documents issued pursuant to this RFQ and the issuance and acceptance of any subsequent task orders by the Department creates a binding contract between the Department and Offeror.

### **3.4 QUALIFICATION CRITERIA**

All Offeror responses will be evaluated, and qualification will be made based on consideration of the following criteria:

- a. Demonstrated ability to provide consulting services regarding or to develop automated solutions for manual businesses processes – provide up to three examples of experience with the type of use cases specified in the RFQ.
- b. Proven capacity to deliver the project requirements on time and on budget. Provide three examples.
- c. In order to be included in the Qualified Vendor Pool, an offeror's response must be assessed as relevant in a minimum of ten (10) of the Questions outlined in Paragraph 4.1 below.

### **3.5 PERFORMANCE OUTSIDE THE UNITED STATES**

Offeror shall complete ATTACHMENT D: LOCATION OF WORKERS UTILIZED BY OFFEROR. In addition to any other evaluation criteria identified in this RFQ, the State may also consider, for purposes of evaluating proposed or actual contract performance outside of the United States, how that performance may affect the following factors to ensure that any award will be in the best interest of the State:

- a. Total cost to the State
- b. Level of quality provided by the Offeror
- c. Process and performance capability across multiple jurisdictions
- d. Protection of the State's information and intellectual property
- e. Availability of pertinent skills
- f. Ability to understand the State's business requirements and internal operational culture
- g. Particular risk factors such as the security of the State's information technology
- h. Relations with citizens and employees
- i. Contract enforcement jurisdictional issues

### **3.6 INTERPRETATION OF TERMS AND PHRASES**

This RFQ serves two functions: (1) to advise potential Offerors of the parameters of the solution being sought by the Department; and (2) to provide (together with other specified documents) the terms of any Master Services Agreement resulting from this procurement. As such, all terms in the RFQ (upon acceptance of task order proposal) shall be enforceable as contract terms in accordance with the General Contract Terms and Conditions. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether responses should be evaluated or rejected, the Department will take into consideration the degree to which Offerors have demonstrated or failed to demonstrate experience that will satisfy DHHS' needs as described in the Request for Qualifications. Except as specifically stated in the RFQ, no one requirement shall automatically disqualify an Offeror from consideration. However, failure to comply with any single requirement may result in the Department exercising its discretion to reject a response in its entirety.

## **4.0 DESCRIPTION OF RELEVANT EXPERIENCE**

### **4.1 OFFEROR RESPONSE**

DHHS is seeking information and qualifications from organizations that have relevant experience in developing automated solutions for manual processes to increase operational efficiencies.

DHHS recognizes that Offerors may wish to partner with other Offerors and requests that Offerors indicate their desire for partnering in their RFQ response in the cover letter.

DHHS is seeking concise responses from Offerors who have relevant experience in providing support in leading, designing, and implementing similar efforts.

Provide the following information as applicable for the questions below to demonstrate your experience for successfully developing and implementing automated processes. Responses to each question are not to exceed 2

pages each.

- a) Qualification statements must include the following:
  - The name of the state/agency/client engaged.
  - The name of the project/engagement.
  - The primary role(s) the Offeror performed on the project.
  - The project start and end date.
  - The solution provided by the Offeror.
  - The project outcome.
  - Any potential conflicts of interest, with explanation.
- b) Fully burdened labor categories used in delivering projects of similar size and scope as desired by the Department.
- c) Responses to each question below are to be provided (no more than 2 pages each). Each response should specifically highlight how one or more of the following areas of technology were provided: Machine Learning (ML), Data Mining, Robotic Process Automation (RPA), Artificial Intelligence (AI) and automation.

**Questions:**

1. Provide an example and explain how you utilized technology to assist customer with achieving a desired business outcome.
2. Provide an example and explain how you utilized technology to deliver innovation which produced results.
3. Provide an example and explain how you utilized technology to deliver explainable and trustworthy AI decisions and outcomes.
4. Provide an example and explain how you have created high quality data sets for and pipelines for technology model training.
5. Provide an example and explain how you utilized technology to deliver functional insights and competency.
6. Provide an example and explain how you utilized technology to deliver technology insights and competency.
7. Provide an example and explain how you have transferred knowledge to enable internal team to manage technology solution.
8. Provide an example of a ROI/cost benefit analysis provided to customer to support business case for technology services.
9. Provide an example and explain how you delivered technology-enabled automated services.
10. Provide a list of software you have experience supporting from the technologies listed above.
11. Describe how your solution could address each of the use cases provided in Attachment B.
12. Describe additional automation functionality available through your solution that could be used in future use cases.
13. Describe your solution's ability to import universe reports, assign cases, re-assign cases, allow for PEER review of staff's work and create/export reports, as needed.
14. Describe your solution's ability to allow for various user roles with different permissions based on the user's designated responsibilities.
15. Describe your solution's ability to allow for concurrent users within the system platform and the capabilities to work online, offline, or both. Address if there are system limitations for the number of users.
16. Describe your solution's ability to allow for email transmission of audit results to external email recipients.
17. Describe your solution's ability to allow for internal tracking of audit activities, audit staff performance, audit progress, and to generate reports of such.
18. Describe your solution's ability to perform text analysis on descriptive data contained in various files such as Microsoft Word, Adobe, Microsoft Excel, scanned documents with typed text, scanned documents with handwritten text, scanned documents in multiple languages.
19. Describe your solution's ability to allow Business Stakeholders to define/modify criteria via a portal

demonstrating the user experience.

20. Describe your solution's ability to allow business stakeholders to set weighted scores on the various rules and criteria used during the systematic analysis and generate reports based on these scores.
21. Describe your solution's ability to perform data profiling and data quality.
22. Describe your quality control process and the ability for the State to monitor the solution deliverables, compliance, and governance.
23. Describe the features and capabilities of the tools you use to build, operate, and automate solutions.
24. Describe the level of IT resources the Department will need to implement, support, and maintain the solution.
25. Describe the level of business resources the Department will need to implement, support, and maintain the solution.
26. Describe the portals, including user interface and user experience to set parameters for the solution.
27. Describe the portals, including technologies, available to the department stakeholders to perform administrative maintenance.
28. Describe your company's approach to complex authorization including role and group-based security.
29. Describe how your portal solution interacts with other systems like Oracle.
30. Describe how your organization has automated Change Management, Incident Management, and Problem Management along with how you could integrate this information with a centralized ITIL tool.
31. Describe how your organization has automated Release and Defect Management, and how you could integrate this information with a centralized tracking tool. Describe which tools you have used.
32. Describe your company's initial system support and maintenance, as well as availability of ongoing support and maintenance of an audit management platform.
33. When describing the portal that users will access, indicate what features, such as Online Chat, or standards, such as 508 compliance are supported.
34. Describe what kind of API (connectors) to other software products you utilize/support (i.e., ServiceNow, Oracle, Jira, MS Tools etc.)
35. Provide information as to any subcontractors used in implementation and operations, if applicable.
36. Describe your experience and/or approach to following CMS guidelines.
37. Describe your solution's approach in handling Protected Health Information (PHI) and implementing specific policies, controls, risk management, and security protocols to meet HIPAA compliant standards.
38. Describe your solution's approach to meet the HIPAA privacy rule while obtaining, storing, handling and disposing of PHI data.
39. Use ATTACHMENT K: SUPPLEMENTAL OFFEROR INFORMATION – HISTORICALLY UNDERUTILIZED BUSINESSES to identify whether the Offeror or any subcontractors are HUB Certified Offerors.

## **4.2 PRICING**

Complete the rate card provided and include as Attachment J as part of response. An excel version of Attachment J is also required to be provided upon Proposal submission. Rates provided will be used to set a "not to exceed" pricing for future task orders. Fully burdened labor rates are requested for each labor category for a three-year period. The Department reserves the right to negotiate lower rates for specific task orders.

## **4.3 ACCEPTANCE OF WORK**

Unless otherwise specified in a Task Order for a specific project:

Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, the State may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

## **4.4 INVOICES**

Unless otherwise specified in a Task Order for a specific project:

- a. Invoices must be submitted to the department as follows:
  - i. Electronically to: [Medicaid.FinanceAP@dhhs.nc.gov](mailto:Medicaid.FinanceAP@dhhs.nc.gov) and assigned Contract Administrator for day-to-day activities.
  - ii. A hard copy to:  
Department of Health and Human Services  
Division of Health Benefits  
ATTENTION: Accounting  
Contract: #30-2024-003-DHB  
1985 Umstead Drive  
2501 Mail Service Center  
Raleigh, NC 27699-2501
- b. Invoices must be submitted on the Contractor's official letterhead, include a unique invoice number and bear a purchase order number to ensure prompt payment. The Contractor's failure to include the correct purchase order number may cause delay in payment.
- c. Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period covered, the amount of fees due to the Contractor and the original signature of the Contractor's project manager. All invoice backup reports and spreadsheets must be provided in electronic format and attached with the invoice.
- d. Medicaid accounting staff may be reached at 919-855-4114 for questions regarding invoices.
- e. 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.
- f. The Department reserves the right to dispute an invoice after payment and requires the Contractor to include a credit on the subsequent month's invoice to resolve disputes.
- g. 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 then (10) Calendar Days, upon Department's request.

#### **4.5 PAYMENT TERMS**

Unless otherwise specified in a Task Order for a specific project:

- a. The Contractor will be compensated at the rates negotiated for each Task Order.
- b. The Contractor will be paid net thirty (30) Calendar days after receipt of a correct invoice verified by the Department.
- c. Payment will only be made for services and/or deliverables accepted by the Department in accordance with the Contract and Task Order requirements and specifications.
- d. The Contractor is responsible for all payments to subcontractors under the Contract.

#### **4.6 FINANCIAL STABILITY**

Each Offeror shall certify it is financially stable by completing the ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from Contracting with an Offeror that is financially unstable. From the date of the Certification to the expiration of the Contract, the Contractor shall notify the State within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

#### **4.7 BACKGROUND CHECKS – RESERVED**

#### **4.8 PERSONNEL**

Vendor shall not substitute key personnel assigned to the performance of an awarded Task Order without prior written approval of the Department. Vendor shall notify the Department within seven (7) State Business Days of any vacancy in key personnel and shall recommend a replacement, including the name(s) and references of Vendor's recommended substitute personnel, within fifteen (15) State Business Days unless another timeframe is approved by the Department. The State will approve or disapprove the requested substitution within fifteen (15) State Business Days of request. The State may, in its sole discretion, direct the termination of any person providing services under this Contract. Upon such termination, the State may request acceptable substitute personnel or terminate the contract services provided by such personnel.

The Parties will work in good faith to timely fill key personnel position that becomes vacant during the term of the Task Order and not unreasonable withhold or delay approval.

#### **4.9 OFFEROR'S REPRESENTATIONS**

- a. Offeror warrants that qualified personnel shall provide services under any resultant Task Order in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Offeror agrees that it will not enter into any agreement with a third party that may abridge any rights of the State under this Contract. Vendor will serve as the prime contractor under any resultant Task Order and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the State. Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Offeror's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- b. If any services, deliverables, functions, or responsibilities not specifically described in any resultant Task Order are required for Vendor's proper performance, provision and delivery of the service and deliverables under a Task Order or are an inherent part of or necessary sub-task included within such service, 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 herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
- c. At the task order level Offerors are expected to warrant that it has the financial capacity to perform and to continue perform its obligations under the contract; that Offeror has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Offeror that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

#### **5.0 SCOPE OF WORK**

The Department performs many manual tasks that limit the ability of employees to perform more strategic, high value work. The Department is looking for automated solutions that support multiple use cases to increase operational efficiencies. The Department is seeking automated solutions with flexibility for business users to configure use cases for continuous improvement. Examples of potential use cases are listed in Paragraph 1.0, Background and Purpose.

The Department seeks to establish a qualified vendor pool and will complete task orders for specific cases among qualified Vendors.

The Department may issue multiple rounds of this RFQ to expand the qualified Vendor pool, as needed to support the Department's operations. Offerors can seek qualification by submitting responses as stipulated in Section 2.0, General Information.

Any response must be submitted in the same format and in compliance with all the required terms and conditions of this RFQ.

Applicable to Task Orders for specific use cases:

1. Vendor must provide qualified personnel to conduct all activities specified in the Task Orders
2. Vendor must provide all required reporting as specifically defined by each Task Order to be issued
3. Vendor must provide specific pricing as required in the Task Order

## **6.0 CONTRACT ADMINISTRATION**

### **6.1 PROJECT MANAGER AND CUSTOMER SERVICE**

Upon award of a Task Order for a specific project, the Vendor shall designate and make available to the State a project manager. The project manager shall be the State's point of contact for contract-related issues and issues concerning performance, progress review, scheduling, and service.

### **6.2 POST AWARD MANAGEMENT REVIEW MEETINGS**

Upon the award of a Task Order for a specific project, the Vendor, at the request of the State, shall meet periodically with the State for Project Review meetings. The purpose of these meetings will be to review project progress reports, discuss Vendor and State performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

### **6.3 CONTRACT CHANGES**

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by the State and Vendor.

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**Attachments to this RFQ begin on the next page.**

# ATTACHMENT A: INSTRUCTIONS TO OFFERORS

1. **READ, REVIEW AND COMPLY:** It shall be the Offeror's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Offerors or elsewhere in this RFQ document.
2. **LATE PROPOSALS:** Late proposals or responses to task orders, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Offeror's sole responsibility to ensure delivery at the designated office by the designated time.
3. **BASIS FOR REJECTION:** Pursuant to 09 NCAC06B.0401, the State reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.
4. **EXECUTION:** Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
5. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract, the order of precedence shall be (high to low) (1) Task Order and any supporting documentation; (2) any special terms and conditions specific to this RFQ, including any negotiated terms; (3) requirements and specifications of this RFQ; (4) Federal Terms and Conditions in ATTACHMENT I; (5) North Carolina Contract Terms and Conditions in ATTACHMENT D; (6) Instructions in ATTACHMENT A: INSTRUCTIONS TO OFFERORS; and (7) Offeror's Proposal.
6. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute §143-48 and Executive Order #25 (2017), the Department invites and strongly encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Contractor agrees to make a good faith effort to seek out and pursue opportunities to utilize HUBs, as defined in NCGS § 143-128.4, within the scope of services of the Task Order, including the use of subcontractors owned by Hubs. Offerors must complete Attachment K in responding to this RFQ.
7. **RECIPROCAL PREFERENCE:** G.S. §143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any proposal from a North Carolina resident Vendors. The "Principal Place of Business" is defined as that principal place from which the trade or business of the Vendors is directed or managed.
8. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S.  
  
§132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. §132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.
9. **PROTEST PROCEDURES:**
  - a. When an Offeror that is not qualified by DHHS for the Qualified Vendor Pool wishes to protest the DHHS determination, Offeror shall submit a written request (protest letter) for a protest meeting to the Department head or designee to [Medicaid.Procurement@dhhs.nc.gov](mailto:Medicaid.Procurement@dhhs.nc.gov) and include RFQ PROTEST (placeholder for number) in the subject line. The protest letter must be received at the specified email address no later than 5:00 pm EST on the fifteenth (15<sup>th</sup>) Calendar Day of notification to qualified Offerors established through the RFQ process. The Department is not responsible for delays in the sending or receiving of emails containing 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 Offer and refuse the protest meeting request. **Note:** Qualification notices are sent only to the Vendor actually qualified, and not to every person or firm responding to a solicitation. Proposal status and Award notices are posted at <https://evp.nc.gov>.
- 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 qualified Vendor. 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. When a Vendor protests a Task Order awarded by the Department, the Department and Vendor shall comply with the following:
  - i. The Vendor shall deliver a written request for a protest meeting to the agency head or the agency head's designee within fifteen (15) calendar days from the date of Contract award. The Vendor's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the agency head determines that a meeting would serve no purpose, then the agency head, within ten (10) calendar days from the date of receipt may respond in writing to the offeror and refuse the protest meeting request.
  - ii. If the protest meeting is granted, the agency head 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 agency. The agency shall provide written notice of the date and time of the protest meeting to any awarded vendor. Within ten (10) calendar days from the date of the protest meeting, the agency head shall respond to the protesting Vendor in writing with a final agency decision.
  - iii. If a protest is determined by the agency head to be valid then the following outcomes may occur:
    - 1) The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;
    - 2) The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid;
    - 3) The award and issued purchase order shall be canceled and the contract shall be awarded to the next lowest priced, technically competent, qualified Vendor, if that Vendor agrees to still honor its submitted bid.
  - iv. If the Vendor desires further administrative review after receiving a decision under paragraphs a. or b., the protesting party may, within sixty (60) days from the date such decision is received, file a contested case petition with the Office of Administrative Hearings (OAH) in accordance with N.C.G.S. §150B-23.

**10. MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.

**11. COMMUNICATIONS BY OFFERORS:** In submitting its proposal, the Offeror agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFQ. All Offerors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the State directly contacts the Offeror(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Offeror shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Offeror to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Offeror's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFQ. Offerors not in compliance with this provision may be disqualified, at the option of the State, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFQ are permitted.

**12. VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current



procurement opportunities for goods and Services available on the at the following website: <https://evp.nc.gov>.

This RFP is available electronically on the electronic Vendor Portal (eVP) at the following website:

<https://evp.nc.gov>.

13. **INFORMAL COMMENTS**: The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in this RFQ and in formal Addenda issued through Ariba.
14. **COST FOR PROPOSAL PREPARATION**: Any costs incurred by Offeror in preparing or submitting offers are the Offeror's sole responsibility; the State of North Carolina will not reimburse any Offeror for any costs related to proposal preparation and submission.
15. **OFFEROR'S REPRESENTATIVE**: Each Offeror shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
16. **SUBCONTRACTING**: Reserved.
17. **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.
18. **INSPECTION AT VENDOR'S SITE**: The State 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 State determination 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.

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## **ATTACHMENT B: AUTOMATED USE CASE DESCRIPTION (INFORMATIONAL ONLY)**

### **I. OCPI Reports and Sample Selection:**

- 1) Obtain Excel reports via NC Fast for sample selection.
- 2) Randomly select eligibility cases from the universe reports.
- 3) Perform a preliminary review of identified sample cases using the defined criteria.
- 4) Once the required cases are identified, create manual notifications, per County DSS, indicating the eligibility cases selected for testing.
- 5) Email each County DSS their applicable notification letter for the coming month's audit.

DHB-OCPI is looking for solutions that have capabilities to perform steps 1 through 5 systematically and within a case management system platform with minimal manual effort. Note: An ideal and comprehensive solution for OCPI's needs would eliminate the need for external documents and workbooks.

### **II. OCPI Eligibility Determination Auditing/Testing:**

- 1) Review eligibility criteria (evidence) within the NC Fast system.
- 2) Manually document the eligibility criteria onto Excel-based audit tools.
- 3) Compare the NC Fast eligibility criteria (evidence) and all verifications reviewed/obtained from NC Fast against Medicaid eligibility policy to determine if the original determination was appropriate.
- 4) Update all Excel-based tracking worksheets to register error trends and receipt of corrective action.

Steps 1 through 4 are performed per audit case (**600-700 cases per month**). DHB-OCPI is looking for solutions that have capabilities to perform steps 1 through 4 systematically with integration with NC Fast as well as automation and AI capabilities to read eligibility criteria (evidence) obtained from NC Fast. The automation and AI capability would also allow for extraction of data from various document formats, integration within the audit platform, and allow for rules-based comparison of data against Medicaid policy. Note: An ideal and comprehensive solution for OCPI's needs would eliminate the need for external documents and workbooks when capturing and recording eligibility criteria and audit outcomes.

### **III. OCPI Audit Finding Notifications:**

- 1) Manually create individual finding notification documents for each case tested using an RStudio application that generates PDF documents from data manually input on the Excel-based audit tools.
- 2) Email each individual notification/findings document as each case is audited to allow the County DSS to initiate corrective actions for cases cited in error.

DHB-OCPI is looking for solutions that have the capability to extract data elements from within the audit management platform, compose finding notification documents on a standardized template (with editing capabilities), and forward audit findings to external County DSS agencies as prompted within the software platform.

### **IV. OCPI Corrective Action Tracking/Validation:**

- 1) Receive, track, review, and validate County DSS corrective action measures for eligibility cases cited in error.
- 2) The above processes in step 1 are conducted manually on Excel-based worksheets and require extensive manual re-review of evidence and assessment actions within the NC Fast system.

DHB-OCPI is looking for solutions that have the capability to house corrective action review, validation, and results within the audit management platform. Additionally, automation and AI capabilities should assist in retrieval of updated correction evidence from NC Fast and perform a rules-based comparison of the updated data/evidence extracted from NC Fast.

### **V. OCPI Reporting:**

- 1) Manual retrieval of data from Excel-based worksheets to extract data, determine trends, and compute accuracy rates.
- 2) Manually prepare reports in Excel, Word, Adobe, Tableau, or other external software programs.

DHB-OCPI is looking for solutions with the capability to create and generate reports from within the audit management platform. Reporting needs include but are not limited to audit management/tracking, staff performance, audit/County performance, County-specific and/or Statewide reporting, error trends, dashboards, and overpayment reporting.

**VI. Overpayment Computation, Notification, Collection, and Tracking:**

- 1) Manually review identified error cases for determination of potential overpayment/ recoupment from the County DSS.
- 2) Extract and review claims from the NC Tracks system to compute erroneous claim amounts.
- 3) Manually record calculated overpayment/recoupment amounts on an Excel-based worksheet.
- 4) Prepare notification documents to each County DSS with final audit performance rates and any applicable overpayment/recoupment amounts.
- 5) Forward, via email, recoupment amounts to the Office of the Controller (OOC) to issue invoices to County DSS agencies who are impacted.
- 6) Manually track collection of recouped funds and/or follow up with the OOC for outstanding charges.

Steps 1 through 3 are conducted individually for each erroneous eligibility case identified with overpayment implications. Step 4 is conducted for each individual County DSS under audit. DHB-OCPI is looking for solutions that have the capability to integrate with NC Tracks to extract claims data, as well as provide automation to compute erroneous claim amounts based on rules-based criteria. Note: An ideal and comprehensive solution for OCPI's needs would eliminate the need for external documents and workbooks.

**VII. Claim Reviews:** In July 2020, legislation authorized NC Medicaid Managed Care to begin July 1, 2021, for Standard Plans. DHB North Carolina performs reviews of healthcare claims to proactively analyze and ensure Standard Plans follow the terms of service agreement and continue to pay the providers timely according to the provisions in the contract. This involves the below steps.

- 1) Meet with subject matter experts based on business area being analyzed and define the criteria for analysis.
- 2) Extracting the encounter data from the data warehouse
- 3) Randomly select encounters from the data set.
- 4) Perform claim review using the defined criteria.
- 5) Generate detailed report with the results of the claim review, and a summary score card.
- 6) Review the results with Subject matter experts and make decisions appropriately.

DHB is looking for solutions that have capabilities to perform steps 2 through 5 systematically ingesting large amount of data while connecting to an existing database/file and review healthcare claims data based on a pre-set criterion, parameters and generate a summary and a detail report along with a score card.

**VIII. Comparative Claims Testing:** In July 2020, legislation authorized NC Medicaid Managed Care to begin July 1, 2021, for Standard Plans and a date in the future, for Behavioral Health I/DD Tailored Plans. As part of this launch DHB North Carolina performs testing to compare the outcome of healthcare claims processed by the Fee-For-Service Medicaid program to the outcome of healthcare claims processed by the Tailored plans before launch to ensure the plans have incorporated all the business rules accurately. This involves the following steps.

- 1) Retrieving claim outcome data from Fee-For-Service program via either MS Excel or industry standard 837
- 2) Receiving claim outcome data from Tailored Plans via either MS Excel or industry standard 837
- 3) Compare the outcome of the claims processed between the 2 systems focusing on claim status and paid amount.
- 4) Validate the results and generate a report/score card.
- 5) Review the results with Subject matter experts and make decisions appropriately.

DHB is looking for solutions that have capabilities to perform steps 1 through 4 systematically ingesting large amount of data while connecting with an existing database/file or in Accredited Standards Committee (ASC) X12 industry wide formats specifically 837/835 and compare the data sets based on a pre-set criterion and generate a summary and a detail report along with a score card.

**IX. ServiceNow Helpdesk Ticket Analysis:** DHB analyzes Medicaid Help Center Tickets in ServiceNow logged by providers or health plans to identify the top claim issues providers are facing. This analysis requires subject matter expertise and detailed manual reviews to ensure that we consider all the information in a ticket to categorize the problem(s).

DHB is looking for solutions which can do Textual and Sentiment Analysis on descriptive data contained in Help Center Tickets captured in ServiceNow. The solution should have the ability to set parameters, weighted scores, generate insights, categorize these tickets appropriately and have the business take the necessary actions improving analytical outcomes through reduced effort/increased scope and prioritizing focus.

**X. Researching Healthcare Claim Issues:** As NC Medicaid Managed Care launched in July 2021, there have been updates to contracts, billing guides and system documentation periodically. This requires DHB to parse

through contracts + policies + billing guides + health plan deliverables and any other system documentation to research claim issues and respond to questions by executive leadership and Legislature within a short period of time.

DHB is looking for solutions which can do Textual analysis that can search descriptive data contained in flat files like Microsoft Word, Adobe, Microsoft Excel. The solution should have the ability to set parameters, weighted scores, generate insights, categorize these tickets appropriately and have the business take the necessary actions improving analytical outcomes through reduced effort/increased scope and prioritizing focus.

- XI. AP Workflow Automation and Tracking:** Each State Fiscal Year DHB Finance processes just under 20,000 vendor invoices, inter-agency payments, employee expense reimbursements, conference and travel authorizations valued all together over \$2.1B. These processes are labor intensive, and currently use Excel, Access, Word, DocuSign, and data queries from other systems. The Division seeks a solution to:
- a. Intelligently route incoming documents to the appropriate actors while tracking the status on dashboards and reports
  - b. Recommend accounting coding to the reviewer based upon a business rules engine
  - c. Perform duplicate checks and funds availability
  - d. Measure elapsed time and inventory at various gates in the workflow
  - e. Provide acknowledgements and approved documents to original requestors
  - f. Assign unique tracking numbers to work items and memorialize actions taken by each actor
  - g. Deliver approved payables in a format acceptable by the NC Financial System (Oracle G/L).
  - h. Identify overdue or missing items according to the expected business cadence.

NOTE: The above listed use cases are provided for informational purposes only to demonstrate the scope of the work to be completed via Task Orders for qualified vendors. Task orders will include the specific scope, deliverables and pricing information needed to select a vendor.

## ATTACHMENT C: LOCATION OF WORKERS UTILIZED BY VENDOR

In accordance with NC General Statute §143-59.4, the Vendor 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 this Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Please complete items a, b, and c below.

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

If the Vendor answered "YES" above, Vendor must complete items 1 and 2 below:

1. List the location(s) outside the United States where work under this Contract will be performed by the Vendor, any sub-Contractors, employees, or other persons performing work under the Contract:
  
  
  
  
  
  
  
  
  
2. Describe the corporate structure and location of corporate employees and activities of the Vendor, its affiliates or any other sub-Contractors that will perform work outside the U.S.:

b) **The Vendor agrees to provide notice, in writing to the State, of the relocation of the Vendor, employees of the Vendor, sub-Contractors of the Vendor, or other persons performing services under the Contract outside of the United States** ☐ YES ☐ NO

NOTE: All Vendor or sub-Contractor personnel providing call or contact center services to the State of North Carolina under the Contract **shall** disclose to inbound callers the location from which the call or contact center services are being provided.

**Identify all U.S. locations at which performance will occur:**

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# ATTACHMENT D: DEPARTMENT OF INFORMATION TECHNOLOGY TERMS AND CONDITIONS

## Section 1. General Terms and Conditions Applicable to All Purchases

### 1) **DEFINITIONS: AS USED HEREIN:**

Agreement means the Master Service Agreement in conjunction with any task order.

Deliverable/Product Warranties shall mean and include the warranties provided for products or deliverables licensed to the State in Section 2, Paragraph 2 of these Terms and Conditions unless superseded by a Vendor's Warranties pursuant to Vendor's License or Support Agreements.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or Services.

Services shall mean the duties and obligations undertaken by the Vendor under, and to fulfill, the specifications, requirements, terms and conditions of the Agreement, including, without limitation, providing web browser access by authorized users to certain Vendor databases, Support, documentation, and other functionalities, all as a Software as a Service ("SaaS") solution.

State shall mean the State of North Carolina, the Department of Information Technology (DIT), or the Purchasing State Agency in its capacity as the Contracting Agency, as appropriate.

2) **STANDARDS:** Any Deliverables shall meet all applicable State and federal requirements, such as State or Federal Regulation, and NC State Chief Information Officer's (CIO) policy or regulation. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender or provide to the State only those Deliverables that have been inspected and found to conform to the RFQ specifications. All Deliverables are subject to operation, certification, testing and inspection, and any accessibility specifications.

3) **WARRANTIES:** Unless otherwise expressly provided, any goods Deliverables provided by the Vendor shall be warranted for a period of 90 days after acceptance.

4) **SUBCONTRACTING:** Reserved.

5) **TRAVEL EXPENSES: All travel expenses should be included in the Vendor's proposed hourly costs. Separately stated travel expenses will not be reimbursed.** In the event that the Vendor, upon specific request in writing by the State, is deemed eligible to be reimbursed for travel expenses arising under the performance of the Agreement, reimbursement will be at the out-of-state rates set forth in N.C.G.S. §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing Services under the Agreement.

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

7) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Reserved.

8) **AVAILABILITY OF FUNDS:** Reserved.

9) **ACCEPTANCE PROCESS:**

- The State shall have the obligation to notify Vendor, in writing ten calendar days following provision, performance (under a provided milestone or otherwise as agreed) or delivery of any Services or other Deliverables described in the Agreement that are not acceptable.
- Acceptance testing is required for all Vendor supplied software and software or platform services unless provided otherwise in the solicitation documents or a Statement of Work. The State may define such processes and procedures as may be necessary or proper, in its opinion and discretion, to ensure compliance with the State's specifications, and Vendor's Product Warranties and technical representations. The State shall have the obligation to notify Vendor, in writing and within thirty (30) days following installation of any software deliverable if it is not acceptable. Acceptance of Services or other Deliverables including software or platform services may be controlled by an amendment hereto, or additional terms as agreed by the Parties consistent with IT Project management under GS §143B-1340.

The notice of non-acceptance shall specify in reasonable detail the reason(s) a Service or given Deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of any applicable inspection and testing procedures. Should a Service or Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. Services or Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors contained in the Services or Deliverables or non-compliance with the specifications were not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Services or Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.

- 10) **PAYMENT TERMS:** Monthly Payment terms are Net thirty (30) days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. Seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:
  - Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
  - In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.
- 11) **EQUAL EMPLOYMENT OPPORTUNITY:** Reserved.
- 12) **ADVERTISING/PRESS RELEASE:** Reserved
- 13) **LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.
- 14) **ACCESS TO PERSONS AND RECORDS:** Reserved
- 15) **ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.
- 16) **INSURANCE COVERAGE:** Reserved.
- 17) **DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good

faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**18) CONFIDENTIALITY:** In accordance with N.C.G.S. §143B-1350I and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S.

§66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type “**CONFIDENTIAL**”. By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State may serve as custodian of Vendor’s confidential information and not as an arbiter of claims against Vendor’s assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys’ fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor’s confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor’s confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

- a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure. Vendor agrees to abide by all facilities and security requirements and policies of the agency where work is to be performed. Any Vendor personnel shall abide by such facilities and security requirements and shall agree to be bound by the terms and conditions of the Agreement.
- b) Vendor warrants that all its employees and any approved third-party Vendor or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in N.C.G.S. §132-1 *et seq.* The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor’s execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Department of Information Technology or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of the Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.
- d) The Vendor shall protect the confidentiality of all information, data, instruments, studies, reports, records and other materials provided to it by the Agency or maintained or created in accordance with this Agreement. No such information, data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written consent of the State Agency. The Vendor will have written policies governing access to and duplication and dissemination of all such information, data, instruments, studies, reports, records and other materials.
- e) All project materials, including software, data, and documentation created during the performance or provision of Services hereunder that are not licensed to the State or are not proprietary to the Vendor are the property of the State of North Carolina and must be kept confidential or returned to the State, or destroyed. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and



shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance of provision of Services hereunder shall be subject to a perpetual, royalty free, nonexclusive license to the State.

**19) DEFAULT:** In the event Services or other Deliverable furnished or performed by the Vendor during performance of any Contract term fail to conform to any material requirement(s) of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 9) herein, the State may cancel the contract. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences resulting from the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor offer documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) Vendor shall provide a plan to cure any delay or default if requested by the State. The plan shall state the nature of the delay or default, the time required for cure, any mitigating factors causing or tending to cause the delay or default, and such other information as the Vendor may deem necessary or proper to provide.
- d) If the prescribed acceptance testing stated in the Solicitation Documents or performed pursuant to Paragraph 9 of the DIT Terms and Conditions is not completed successfully, the State may request substitute Software, cancel the portion of the Contract that relates to the unaccepted Software, or continue the acceptance testing with or without the assistance of Vendor. These options shall remain in effect until such time as the testing is successful or the expiration of any time specified for completion of the testing. If the testing is not completed after exercise of any of the State's options, the State may cancel any portion of the contract related to the failed Software and take action to procure substitute software. If the failed software (or the substituted software) is an integral and critical part of the proper completion of the work for which the Deliverables identified in the solicitation documents or statement of work were acquired, the State may terminate the entire contract.

**20) WAIVER OF DEFAULT:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of the Agreement, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor and made as an amendment to the Agreement pursuant to Paragraph 40) herein below.

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

- a) The parties may mutually terminate the Agreement by written agreement at any time.
- b) The State may terminate the Agreement, in whole or in part, pursuant to Paragraph 19), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
  - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or Services from other sources; holding Vendor liable for any excess costs occasioned thereby, as provided for in 9 NCAC 6B .1030 subject only to the limitations provided in Paragraphs 22) and 23) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of the Agreement; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
  - ii) Termination for Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part, by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and Services performed in conformance

with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

- iii) Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Agreement.

## **22) LIMITATION OF VENDOR'S LIABILITY:**

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables. Vendor shall not be responsible for any damages that arise from (i) misuse or modification of Vendor's Software by or on behalf of the State, (ii) the State's failure to use corrections or enhancements made available by Vendor, (iii) the quality or integrity of data from other automated or manual systems with which the Vendor's Software interfaces, (iv) errors in or changes to third party software or hardware implemented by the State or a third party (including the vendors of such software or hardware) that is not a subcontractor of Vendor or that is not supported by the Deliverables, or (v) the operation or use of the Vendor's Software not in accordance with the operating procedures developed for the Vendor's Software or otherwise in a manner not contemplated by this Agreement.
- b) The Vendor's liability for damages to the State arising under the contract shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to claims covered by other specific provisions including but not limited to Service Level Agreement or Deliverable/Product Warranties pursuant to Section II, 2) of these Terms and Conditions, or to claims for injury to persons or damage to tangible personal property, gross negligence or willful or wanton conduct. This limitation of liability does not apply to contributions among joint tortfeasors under N.C.G.S. 1B-1 *et seq.*, the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on the Agreement. For avoidance of doubt, the Parties agree that the Service Level Agreement and Deliverable/Product Warranty Terms in the Contract are intended to provide the sole and exclusive remedies available to the State under the Contract for the Vendor's failure to comply with the requirements stated therein.

## **23) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

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

## **24) TIME IS OF THE ESSENCE:** Reserved.

## **25) DATE AND TIME WARRANTY:** The Vendor warrants that any Deliverable, whether Services, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs, modifies or affects any date and/or time data recognition function, calculation, or sequencing, will still enable the modified function to perform accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

- 26) INDEPENDENT CONTRACTORS:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Contractors and not employees or agents of the State. The Agreement shall not operate as a joint venture, partnership, trust, agency or any other similar business relationship.
- 27) TRANSPORTATION:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 28) NOTICES:** Reserved.
- 29) TITLES AND HEADINGS:** Titles and Headings in the Agreement are used for convenience only and do not define, limit, or proscribe the language of terms identified by such Titles and Headings.
- 30) AMENDMENT:** The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 36) herein.
- 31) TAXES:** Reserved.
- 32) GOVERNING LAWS, JURISDICTION, AND VENUE:**
- a) The Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters.
  - b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.
- 33) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.
- 34) COMPLIANCE WITH LAWS:** Reserved.
- 35) SEVERABILITY:** In the event that a court of competent jurisdiction holds that a provision or requirement of the Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
- 36) CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.
- 37) FEDERAL INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**38) ELECTRONIC PROCUREMENT: (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Services. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Services. The Vendor shall register for the Statewide E-Procurement Services within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of the Agreement.

- a) **The successful Vendor(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E- Procurement Service.** This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. The transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the Vendor for the Services rendered by the Supplier Manager under the Agreement. Vendor 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 Vendor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the contract.
- b) Vendor, or its authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives written notice from the Vendor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Vendor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Vendor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, Vendor may request in writing an extension of the invoice payment due date for that portion of the transaction fee invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Vendor. If payment of the transaction fee invoice is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the Vendor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.
- c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Services. 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, offers received, evaluation of offers received, award of Contract, and the payment for goods delivered.
- d) Vendor agrees at all times to maintain the confidentiality of its username and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership, or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the Security Breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any Security Breach.

**39) PATENT, COPYRIGHT, AND TRADE SECRET PROTECTION:**

- e) Vendor has created, acquired, or otherwise has rights in, and may, in connection with the performance of Services for the State, employ, provide, create, acquire, or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general-purpose consulting and software tools, utilities and routines (collectively, the "Vendor technology"). To the extent that any Vendor technology is contained in any of the Services or Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor technology in connection with the Services or Deliverables for the State's purposes.
- b) Vendor shall not acquire any right, title, and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data, or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential deliverables first originated and prepared by the Vendor for delivery to the State.

- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the Services or other Deliverables supplied by the Vendor, or the operation of such pursuant to a current version of vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action; damages shall be limited as provided in N.C.G.S. 143B-1350(h1). Such defense and payment shall be conditioned on the following:
  - i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any Services or other Deliverables supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the Services or Deliverables, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such Services or Deliverables by the State shall be prevented by injunction, the Vendor agrees to take back any goods/hardware or software and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the state in procuring substitute Services or Deliverables. If, in the sole opinion of the State, the return of such infringing Services or Deliverables makes the retention of other Services or Deliverables acquired from the Vendor under the agreement impractical, the State shall then have the option of terminating the contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back Services or Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.
- e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded Service or Deliverable, or (ii) results from the continued use of the good(s) or services and other Services or Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

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

- a) It is understood and agreed by both parties that all of the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.
- b) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by the Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to the Vendor's personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.
- c) All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the State prior to beginning work.
- d) The State has the right to require the Vendor to stop or suspend performance under the "Stop Work" provision of the North Carolina Department of Information Technology Terms and Conditions.
- e) The Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:

- i) Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
- ii) Terminate the work authorization, or
- iii) Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
- iv) The State will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services

**41) STOP WORK ORDER:** The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under the Agreement for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.

- a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:
  - i) Cancel the Stop Work Order, or
  - ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:
  - i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of the Agreement, and
  - ii) The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon an offer submitted at any time before final payment under the Agreement.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
- d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

#### **42) TRANSITION ASSISTANCE**

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

## **Section 2: Terms and Conditions Applicable to Information Technology Goods and Services**

- 1) **SOFTWARE LICENSE FOR HARDWARE, EMBEDDED SOFTWARE AND FIRMWARE:** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as a CD-ROM or other media, or may be included within the hardware at or

prior to delivery. Such software is proprietary, copyrighted, and may also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (or any replacement provided) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, non-sublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however, that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of all equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

**2) LICENSE GRANT FOR APPLICATION SOFTWARE, (COTS):** This paragraph recites the scope of license granted, if not superseded by a mutually agreed and separate licensing agreement, as follows:

- a) Vendor grants to the State, its Agencies and lawful customers a non-exclusive, non-transferable and non-sublicensable license to use, in object code format, Vendor's software identified in the solicitation documents, Vendor's Statement of Work (SOW), or an Exhibit thereto executed by the parties ("Software"), subject to the restrictions set forth therein, such as the authorized computer system, the data source type(s), the number of target instance(s) and the installation site. Use of the Software shall be limited to the data processing and computing needs of the State, its Agencies and lawful customers. This license shall be perpetual or for the term of the contract (pick one, delete the other), unless terminated as provided herein. The State agrees not to distribute, sell, sublicense or otherwise transfer copies of the Software or any portion thereof. For purposes of this Agreement, a State Entity shall be defined as any Department or agency of the State of North Carolina, which is controlled by or under common control of the State or who is a lawful customer of the State pursuant to Article 3D of Chapter 147 of the General Statutes.
- b) Vendor shall provide all encryption or identification codes or authorizations that are necessary or proper for the operation of the licensed Software.
- c) The State shall have the right to copy the Software, in whole or in part, for use in conducting benchmark or acceptance tests, for business recovery and disaster recovery testing or operations, for archival or emergency purposes, for back up purposes, for use in preparing derivative works if allowed by the solicitation documents or statements of work, or to replace a worn copy.
- d) The State may modify non-personal Software in machine-readable form for its internal use in merging the same with other software program material. Any action hereunder shall be subject to uses described in this paragraph, the restrictions imposed by Paragraph 3), and applicable terms in the solicitation documents or statements of work.

**3) WARRANTY TERMS:** Notwithstanding anything in the Agreement or Exhibit hereto to the contrary, Vendor shall assign warranties for any Deliverable supplied by a third party to the State.

- a. Vendor warrants that any Software or Deliverable will operate substantially in conformity with prevailing specifications as defined by the current standard documentation (except for minor defects or errors which are not material to the State) for a period of ninety (90) days from the date of acceptance ("Warranty Period"), unless otherwise specified in the Solicitation Documents. If the Software does not perform in accordance with such specifications during the Warranty Period, Vendor will use reasonable efforts to correct any deficiencies in the Software so that it will perform in accordance with or substantially in accordance with such specifications.
- b. Vendor warrants to the best of its knowledge that:
  - i) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;
  - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;

- iii) The licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the State's information systems.
- iv) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by Customer in the Specifications) that inhibits or in any way limits the Software's ability to operate.
- c. UNLESS MODIFIED BY AMENDMENT OR THE SOLICITATION DOCUMENTS, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER.

**4) RESTRICTIONS:** State's use of the Software is restricted as follows:

- a) The license granted herein is granted to the State and to any political subdivision or other entity permitted or authorized to procure Information Technology through the Department of Information Technology. If the License Grant and License Fees are based upon the number of Users, the number of Users may be increased at any time, subject to the restrictions on the maximum number of Users specified in the solicitation documents.
- b) No right is granted hereunder to use the Software to perform Services for commercial third parties (so-called "service bureau" uses). Services provided to other State Departments, Agencies or political subdivisions of the State is permitted.
- c) The State may not copy, distribute, reproduce, use, lease, rent or allow access to the Software except as explicitly permitted under this Agreement, and State will not modify, adapt, translate, prepare derivative works (unless allowed by the solicitation documents or statements of work,) decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Software or any internal data files generated by the Software.
- d) State shall not remove, obscure or alter Vendor's copyright notice, trademarks, or other proprietary rights notices affixed to or contained within the Software.

**5) SUPPORT OR MAINTENANCE SERVICES:** This paragraph recites the scope of maintenance Services due under the license granted, if not superseded by a separate licensing and maintenance agreement or as may be stated in the solicitation documents. Subject to payment of a Support Service or Maintenance Fee stated in the solicitation documents for the first year and all subsequent years, if requested by the State, Vendor agrees to provide the following support Services ("Support Services") for the current version and one previous version of the Software commencing upon delivery of the Software:

- a) **Error Correction:** If the error conditions reported by the State pursuant to the General Terms and Conditions are not corrected in a timely manner, the State may request a replacement copy of the licensed Software from Vendor. In such event, Vendor shall then deliver a replacement copy, together with corrections and updates, of the licensed Software within 24 hours of the State's request at no added expense to the State.
- b) **Other Agreement:** This Paragraph 5 may be superseded by written mutual agreement provided that: Support and maintenance Services shall be fully described in such a separate agreement annexed hereto and incorporated herein
- c) **Temporary Extension of License:** If any licensed Software or CPU/computing system on which the Software is installed fails to operate or malfunctions, the term of the license granted shall be temporarily extended to another CPU selected by the State and continue until the earlier of:
  - i) Return of the inoperative CPU to full operation, or
  - ii) Termination of the license.
- d) **Encryption Code:** Vendor shall provide any temporary encryption code or authorization necessary or proper for operation of the licensed Software under the foregoing temporary license. The State will provide notice by expedient means, whether by telephone, e-mail or facsimile of any failure under this paragraph. On receipt of such notice, Vendor shall issue any temporary encryption code or authorization to the State within twenty-four (24) hours; unless otherwise agreed.
- e) **Updates:** Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Updates") for any Software Deliverable developed or published by Vendor and made generally



available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of the Agreement.

- f) **Telephone Assistance:** Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 8:00 AM - 5:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four (4) hours or eight (8) hours or next business day, etc. *(edit this time to what you want your response time to be)*, for calls made at any time.

- 6) **STATE PROPERTY AND INTANGIBLES RIGHTS:** The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all software, technical information, specifications, drawings, records, documentation, data, and other work products first originated and prepared by the Vendor for delivery to the State (the "Deliverables"). To the extent that any Vendor Technology is contained in any of the Deliverables, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

### **Section 3: Terms and Conditions Applicable to Personnel and Personal Services**

- 1) **VENDOR'S REPRESENTATION:** Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Such third-party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).
- a) Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
  - b) Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, 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.
  - c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.
- 2) **SERVICES PROVIDED BY VENDOR:** Vendor shall provide the State with implementation Services as specified in a Statement of Work ("SOW") executed by the parties. This Agreement in combination with each SOW individually comprises a separate and independent contractual obligation from any other SOW. A breach by Vendor under one SOW will not be considered a breach under any other SOW. The Services intended hereunder are related to the State's implementation and/or use of one or more Software Deliverables licensed hereunder or in a separate software license agreement between the parties ("License Agreement"). (Reserve if not needed).
- 3) **PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be notified to the Agency's Contract Administrator in writing accompanied by the names, *roles*, *resume* and references of Vendor's recommended substitute personnel. *Within ten (10) calendar days of the request for a substitution, the State will notify the Vendor if the recommended substitute is acceptable. If the State does not accept the recommended*

*substitute, the Vendor will have ten (10) calendar days to make another recommendation.* The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.

- a) Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
- b) Vendor personnel shall perform their duties on the premises of the State, during the State's regular workdays and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
- c) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
  - i) Such use does not conflict with the terms, specifications, or any amendments to the Agreement, or
  - ii) Such use does not conflict with any procurement law, regulation or policy, or
  - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.
- d) At no time may the Key Personnel Role be vacant. It is the Vendor's responsibility to keep the role filled until the Department approves a substitution.

**4) PERSONAL SERVICES:** Reserved

## **Section 4: Software as a Service (SaaS) Terms and Conditions (Only Applies to Proposed SaaS Solutions)**

**1) DEFINITIONS:**

Data means information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the Services pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.

Support includes provision of ongoing updates and maintenance for the Vendor online software applications, and as may be specified herein, consulting, training and other support Services as provided by the Vendor for SaaS tenants receiving similar SaaS Services.

**2) ACCESS AND USE OF SAAS SERVICES:**

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein and in accordance with any mutually agreed Acceptable Use Policy. The State is authorized to access State Data and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement. Subject to an agreed limitation on the number of users, the State may use the Services with any computer, computer system, server, or desktop workstation owned or utilized by the State or other authorized users. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. The State shall notify the Vendor of any unauthorized use of any password or account, or any other known or suspected breach of security access. The State also agrees to refrain from taking any steps, such as reverse engineering, reverse assembly or reverse compilation to derive a source code equivalent to the Services or any portion thereof. Use of the Services to perform services for commercial third parties (so- called "service bureau" uses) is not permitted, but the State may utilize the Services to perform its governmental functions. If the Services fees are based upon the number of Users and/or hosted instances, the number of Users/hosted instances available may be adjusted at any time (subject to the restrictions on the maximum number of Users specified in the Furnish and Deliver Table herein above) by mutual agreement and State Procurement approval. All Services and information designated as "confidential" or "proprietary" shall be kept in confidence except as may be required by the North Carolina Public Records Act: N.C.G.S. § 132-1, *et seq.*

- b) The State's access license for the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this license transfer, vest, or infer any title or other ownership right in any source code associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use the State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- c) Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's SaaS tenants for similar Services. Vendor's right to a new use agreement for new version releases of the Services shall not be abridged by the foregoing. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- d) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated users or tenants of the Services, but minimally as provided for and specified herein. Unless otherwise agreed in writing, Support will also be provided for any other (e.g., third-party) software provided by the Vendor in connection with the Vendor's solution herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to certain State users for the fees or costs as set forth herein or in an SLA.
- e) Services provided pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.
- f) The Vendor may utilize partners and/or subcontractors to assist in the provision of the Services, so long as the State Data is not removed from the United States unless the terms of storage of the State Data are clearly disclosed, the security provisions referenced herein can still be complied with, and such removal is done with the prior express written permission of the State. The Vendor shall identify all of its strategic business partners related to Services provided under this contract, including but not limited to, all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Vendor, who will be involved in any application development and/or operations.
- g) Vendor warrants that all Services will be performed with professional care and skill, in a workmanlike manner and in accordance with the Services documentation and this Agreement.
- h) An SLA or other agreed writing shall contain provisions for scalability of Services and any variation in fees or costs as a result of any such scaling.
- i) Professional services provided by the Vendor at the request by the State in writing in addition to agreed Services shall be at the then-existing Vendor hourly rates when provided, unless otherwise agreed in writing by the parties.

### **3) WARRANTY OF NON-INFRINGEMENT; REMEDIES:**

- a) Vendor warrants to the best of its knowledge that:
  - i) The services do not infringe any intellectual property rights of any third party; and
  - ii) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party;
- b) Reserved
- c) Reserved
- d) Reserved

### **4) ACCESS AVAILABILITY; REMEDIES**

- a) The Vendor warrants that the Services will be in good working order, and operating in conformance with Vendor's standard specifications and functions as well as any other specifications agreed to by the parties in writing, and shall remain accessible 24/7, with the exception of scheduled outages for maintenance and of other service level provisions agreed in writing, e.g., in an SLA. Vendor does not warrant that the operation of the Services will be completely uninterrupted or error free, or that the Services functions will meet all the State's requirements, unless developed as Customized Services. The State shall notify the Vendor if the Services are

not in good working order or inaccessible during the term of the Agreement. Vendor shall, at its option, either repair, replace or reperform any Services reported or discovered as not being in good working order and accessible during the applicable contract term without cost to the State.

b) Reserved

**5) EXCLUSIONS:**

- c) Except as stated above in Paragraphs 3 and 4, Vendor and its parent, subsidiaries and affiliates, subcontractors and suppliers make no warranties, express or implied, as to the Services.
- d) The warranties provided in Paragraphs 3 and 4 above do not cover repair for damages, malfunctions or services failures substantially caused by:
  - i) Actions of non-Vendor personnel;
  - ii) Failure to follow Vendor's written instructions relating to the Services provided to the State; or
  - iii) Force Majeure conditions set forth hereinbelow.
  - iv) The State's sole misuse of, or its own inability to use, the Services

**6) PERFORMANCE REVIEW AND ACCOUNTABILITY:** N.C.G.S. § 143B-1340(f) and 09 NCAC 06B.1207 require provisions for performance review and accountability in State IT contracts. For this procurement, these shall include the holding a retainage of 10% of the contract value and withholding the final payment contingent on final acceptance by the State as provided in 09 NCAC 06B.1207(3) and (4), unless waived or otherwise agreed, in writing. The Services herein will be provided consistent with and under these Services performance review and accountability guarantees.

**7) LIMITATION OF LIABILITY: LIMITATION OF VENDOR'S CONTRACT DAMAGES LIABILITY:** Reserved

**8) VENDOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:** Reserved

**9) MODIFICATION OF SERVICES:** If Vendor modifies or replaces the Services provided to the State and other tenants, and if the State has paid all applicable Subscription Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.

**10) TRANSITION PERIOD:**

- a) For ninety (90) days, either prior to the expiration date of this Agreement, or upon notice of termination of this Agreement, Vendor shall assist the State, upon written request, in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in an SLA or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, Services access shall continue to be made available to the State without alteration.
- d) Vendor agrees to compensate the State for damages or losses the State incurs as a result of Vendor's failure to comply with this Transition Period section in accordance with the Limitation of Liability provisions above.
- e) Upon termination, and unless otherwise stated in an SLA, and after providing the State Data to the State as indicated above in this section with acknowledged receipt by the State in writing, the Vendor shall permanently destroy or render inaccessible any portion of the State Data in Vendor's and/or subcontractor's possession or control following the completion and expiration of all obligations in this section. Within thirty (30) days, Vendor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
- f) The State at its option, may purchase additional Transition services as may be agreed upon in a supplemental agreement.

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

**12) TRAVEL EXPENSES:** Reserved

**13) PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Reserved

**14) AVAILABILITY OF FUNDS:** Reserved

**15) PAYMENT TERMS (APPLICABLE TO SAAS):**

- a) Payment may be made by the State in advance of or in anticipation of subscription Services to be actually performed under the Agreement or upon proper invoice for other Services rendered. Payment terms are Net 30 days after receipt of correct invoice. Initial payments are to be made after final acceptance of the Services. Payments are subject to any retainage requirements herein. The Purchasing State Agency is responsible for all payments under the Agreement. Subscription fees for term years after the initial year shall be as quoted under State options herein but shall not increase more than 5% over the prior term, except as the parties may have agreed to an alternate formula to determine such increases in writing. No additional charges to the State will be permitted based upon, or arising from, the State's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et seq.* of the N.C. General Statutes and applicable Administrative Rules.
- b) Upon Vendor's written request of not less than 30 days and approval by the State, the State may:
  - i) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
  - ii) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however,
  - iii) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Agreement obligations.
- c) For any third-party software licensed by Vendor or its subcontractors for use by the State, a copy of the software license including terms acceptable to the State, an assignment acceptable to the State, and documentation of license fees paid by the Vendor must be provided to the State before any related license fees or costs may be billed to the State.
- d) An undisputed invoice is an invoice for which the State and/or the Purchasing State Agency has not disputed in writing within thirty (30) days from the invoice date, unless the agency requests more time for review of the invoice. Upon Vendor's receipt of a disputed invoice notice, Vendor will work to correct the applicable invoice error, provided that such dispute notice shall not relieve the State or the applicable Purchasing State Agency from its payment obligations for the undisputed items on the invoice or for any disputed items that are ultimately corrected. The Purchasing State Agency is not required to pay the Vendor for any Software or Services provided without a written purchase order from the appropriate Purchasing State Agency. In addition, all such Services provided must meet all terms, conditions, and specifications of this Agreement and purchase order and be accepted as satisfactory by the Purchasing State Agency before payment will be issued.
- e) The Purchasing State Agency shall release any amounts held as retainages for Services completed within a reasonable period after the end of the period(s) or term(s) for which the retainage was withheld. Payment retainage shall apply to all invoiced items, excepting only such items as Vendor obtains from Third Parties and for which costs are chargeable to the State by agreement of the Parties. The Purchasing State Agency, in its sole discretion, may release retainages withheld from any invoice upon acceptance of the Services identified or associated with such invoices.

**16) ACCEPTANCE CRITERIA:** Reserved

**17) CONFIDENTIALITY:** Reserved

**18) SECURITY OF STATE DATA:**

- a) All materials, including software, Data, information and documentation provided by the State to the Vendor (State Data) during the performance or provision of Services hereunder are the property of the State of North Carolina and must be kept secure and returned to the State. The Vendor will protect State Data in its hands from unauthorized disclosure, loss, damage, destruction by natural event, or other eventuality. Proprietary Vendor materials shall be identified to the State by Vendor prior to use or provision of Services hereunder and shall remain the property of the Vendor. Derivative works of any Vendor proprietary materials prepared or created during the performance or provision of Services hereunder shall be provided to the State as part of the Services. The Vendor shall not access State User accounts, or State Data, except (i) during data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State's written request. The Vendor shall protect the confidentiality of all information, Data, instruments, studies, reports, records and other materials provided to it by the State or maintained or created in accordance with this Agreement. No such information, Data, instruments, studies, reports, records and other materials in the possession of Vendor shall be disclosed in any form without the prior written agreement with the State. The Vendor will have written policies governing access to and duplication and dissemination of all such information, Data, instruments, studies, reports, records and other materials.
- b) The Vendor shall not store or transfer non-public State data outside of the United States. This includes backup data and Disaster Recovery locations. The service provider will permit its personnel and contractors to access State of North Carolina data remotely only as required to provide technical support.
- c) Protection of personal privacy and sensitive data. The Vendor acknowledges its responsibility for securing any restricted or highly restricted data, as defined by the Statewide Data Classification and Handling Policy

(<https://it.nc.gov/document/statewide-data-classification-and-handling-policy>) that is collected by the State and stored in any Vendor site or other Vendor housing systems including, but not limited to, computer systems, networks, servers, or databases, maintained by Vendor or its agents or subcontractors in connection with the provision of the Services. The Vendor warrants, at its sole cost and expense, that it shall implement processes and maintain the security of data classified as restricted or highly restricted; provide reasonable care and efforts to detect fraudulent activity involving the data; and promptly notify the State of any Security Breaches within 24 hours of confirmation as required by N.C.G.S. § 143B-1379.

- d) The Vendor will provide and maintain secure backup of the State Data. The Vendor shall implement and maintain secure passwords for its online system providing the Services, as well as all appropriate administrative, physical, technical and procedural safeguards at all times during the term of this Agreement to secure such Data from Data Breach, protect the Data and the Services from loss, corruption, unauthorized disclosure, and the introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data and the Services. The Vendor will allow periodic back-up of State Data by the State to the State's infrastructure as the State requires or as may be provided by law.
- e) The Vendor shall certify to the State:
  - i) The sufficiency of its security standards, tools, technologies and procedures in providing Services under this Agreement;
  - ii) That the system used to provide the Subscription Services under this Contract has and will maintain a valid 3rd party security certification not to exceed 1 year and is consistent with the data classification level and a security control appropriate for low or moderate information system(s) per the National Institute of Standards and Technology NIST 800-53 revision 4. The State reserves the right to independently evaluate, audit, and verify such requirements.
  - iii) That the Services will comply with the following:
    - (1) Any DIT security policy regarding Cloud Computing, and the DIT Statewide Information Security Policy Manual; to include encryption requirements as defined below:
      - (a) The Vendor shall encrypt all non-public data in transit regardless of the transit mechanism.
      - (b) For engagements where the Vendor stores sensitive personally identifiable or otherwise confidential information, this data shall be encrypted at rest. Examples are social security number, date of birth, driver's license number, financial data, federal/state tax information, and hashed passwords. The Vendor's encryption shall be consistent with validated cryptography standards as specified in National Institute of Standards and Technology FIPS140-2, Security Requirements. The key location and other key management details will be discussed and negotiated by both parties. When the service provider cannot offer encryption at rest, it must maintain, for the duration of the contract, cyber security liability insurance coverage for any loss resulting from a data breach. Additionally, where encryption of data at rest is not possible, the Vendor must describe existing security measures that provide a similar level of protection;
    - (2) Privacy provisions of the Federal Privacy Act of 1974;
    - (3) The North Carolina Identity Theft Protection Act, N.C.G.S. Chapter 75, Article 2A (e.g., N.C.G.S. § 75- 65 and -66);
    - (4) The North Carolina Public Records Act, N.C.G.S. Chapter 132; and
    - (5) Applicable Federal, State and industry standards and guidelines including, but not limited to, relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines, Criminal Justice Information, The Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA);
    - (6) Any requirements implemented by the State under N.C.G.S. §§ 143B-1376 and -1377.
- f) Security Breach. "Security Breach" under the NC Identity Theft Protection Act (N.C.G.S. § 75- 60ff) means (1) any circumstance pursuant to which applicable Law requires notification of such breach to be given to affected parties or other activity in response to such circumstance (e.g., N.C.G.S. § 75-65); or (2) any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance that compromises, or could reasonably be expected to compromise, either Physical Security or Systems Security (as such terms are defined below) in a fashion that either does or could reasonably be expected to permit unauthorized Processing (as defined below), use, disclosure or acquisition of or access to any the State Data or state confidential information. "Physical Security" means physical security at any site or other location housing systems maintained by Vendor or its agents or subcontractors in connection with the Services. "Systems Security" means security of computer, electronic or telecommunications systems of any variety (including data bases, hardware, software, storage, switching and interconnection devices and mechanisms), and networks of which such systems are a part or communicate with, used directly or indirectly by Vendor or its agents or subcontractors in connection with the Services. "Processing" means any operation or set of operations performed upon the State Data or State confidential information, whether by automatic means, such as creating, collecting, procuring, obtaining, accessing, recording, organizing, storing, adapting, altering, retrieving, consulting, using, disclosing, or destroying.

- g) Breach Notification. In the event Vendor becomes aware of any Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall, at its own expense, (1) immediately notify the State's Agreement Administrator of such Security Breach and perform a root cause analysis thereon, (2) investigate such Security Breach, (3) provide a remediation plan, acceptable to the State, to address the Security Breach and prevent any further incidents, (4) conduct a forensic investigation to determine what systems, data and information have been affected by such event; and (5) cooperate with the State, and any law enforcement or regulatory officials, credit reporting companies, and credit card associations investigating such Security Breach. The State shall make the final decision on notifying the State's persons, entities, employees, service providers and/or the public of such Security Breach, and the implementation of the remediation plan. If a notification to a customer is required under any Law or pursuant to any of the State's privacy or security policies, then notifications to all persons and entities who are affected by the same event (as reasonably determined by the State) shall be considered legally required.
- h) Notification Related Costs. Vendor shall reimburse the State for all Notification Related Costs incurred by the State arising out of or in connection with any such Security Breach due to Vendor acts or omissions other than in accordance with the terms of the Agreement resulting in a requirement for legally required notifications. "Notification Related Costs" shall include the State's internal and external costs associated with addressing and responding to the Security Breach, including but not limited to: (1) preparation and mailing or other transmission of legally required notifications; (2) preparation and mailing or other transmission of such other communications to customers, agents or others as the State deems reasonably appropriate; (3) establishment of a call center or other communications procedures in response to such Security Breach (e.g., customer service FAQs, talking points and training); (4) public relations and other similar crisis management services; (5) legal and accounting fees and expenses associated with the State's investigation of and response to such event; and (6) costs for credit reporting services that are associated with legally required notifications or are advisable, in the State's opinion, under the circumstances. If the Vendor becomes aware of any Security Breach which is not due to Vendor acts or omissions other than in accordance with the terms of the Agreement, Vendor shall immediately notify the State of such Security Breach, and the parties shall reasonably cooperate regarding which of the foregoing or other activities may be appropriate under the circumstances, including any applicable Charges for the same.
- i) Vendor shall allow the State reasonable access to Services security logs, latency statistics, another related Services security data that affect this Agreement and the State's Data, at no cost to the State.
- j) In the course of normal operations, it may become necessary for Vendor to copy or move Data to another storage destination on its online system, and delete the Data found in the original location. In any such event, the Vendor shall preserve and maintain the content and integrity of the Data, except by prior written notice to, and prior written approval by, the State.
- k) Remote access to Data from outside the continental United States, including, without limitation, remote access to Data by authorized Services support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Officer or the Using Agency.
- l) In the event of temporary loss of access to Services, Vendor shall promptly restore continuity of Services, restore Data in accordance with this Agreement and as may be set forth in an SLA, restore accessibility of Data and the Services to meet the performance requirements stated herein or in an SLA. As a result, Service Level remedies will become available to the State as provided herein, in the SLA or other agreed and relevant documents. Failure to promptly remedy any such temporary loss of access may result in the State exercising its options for assessing damages under this Agreement.
- m) In the event of disaster or catastrophic failure that results in significant State Data loss or extended loss of access to Data or Services, Vendor shall notify the State by the fastest means available and in writing, with additional notification provided to the State Chief Information Officer or designee of the contracting agency. Vendor shall provide such notification within twenty-four (24) hours after Vendor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Vendor shall inform the State of:
- i) The scale and quantity of the State Data loss;
  - ii) What Vendor has done or will do to recover the State Data from backups and mitigate any deleterious effect of the State Data and Services loss; and
  - iii) What corrective action Vendor has taken or will take to prevent future State Data and Services loss.
  - iv) If Vendor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Agreement.
- Vendor shall investigate the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Vendor shall cooperate fully with the State, its agents and law enforcement.
- n) In the event of termination of this contract, cessation of business by the Vendor or other event preventing Vendor from continuing to provide the Services, Vendor shall not withhold the State Data or any other State confidential information or refuse for any reason, to promptly return to the State the State Data and any other

State confidential information (including copies thereof) if requested to do so on such media as reasonably requested by the State, even if the State is then or is alleged to be in breach of the Agreement. As a part of Vendor's obligation to provide the State Data pursuant to this Paragraph 18) n), Vendor will also provide the State any data maps, documentation, software, or other materials necessary, including, without limitation, handwritten notes, materials, working papers or documentation, for the State to use, translate, interpret, extract and convert the State Data.

- o) Secure Data Disposal: When requested by the State, the Vendor shall destroy all requested data in all of its forms, for example: disk, CD/DVD, backup tape, and paper. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards Technology (NIST) approved methods and certificates of destruction shall be provided to the State.



## ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

Name of Vendor: \_\_\_\_\_

The undersigned hereby certifies that: [check all applicable boxes]

☐ The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: \_\_\_\_\_

☐ The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.

☐ The Vendor is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.

☐ The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.

☐ The Vendor 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.

☐ He or she is authorized to make the foregoing statements on behalf of the Vendor.

**Note:** This is a continuing certification and Vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

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

---

Signature

Click or tap here to enter text.

---

Printed Name

Click or tap here to enter text.

---

Title

Click or tap here to enter text.

---

Date

**[This Certification must be signed by an individual authorized to speak for the Offeror]**

## ATTACHMENT F: FEDERAL CERTIFICATIONS

### The undersigned states that:

1. He or she is the duly authorized representative of the Provider named below;
2. He or she is authorized to make, and does hereby make, the following certifications on behalf of the Provider, 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 Provider **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 Provider **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 Provider shall require its subcontractors, if any, to make the same certifications and disclosure.

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**Signature**

**Provider Name**

**Title**

**Date**

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

## I. Certification Regarding Nondiscrimination

**The Provider 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 Provider 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 Provider'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 Provider'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:

City, State, Zip Code:

Street:

City, State, Zip Code:

3. Provider 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 Provider certifies** that it will comply with the requirements of the Act. The Provider 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 Provider.]

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 originate 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, 45 CFR Part 76. 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 any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.



## V. Certification Regarding Lobbying

**The Provider 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.

### Disclosure of Lobbying Activities

#### **Instructions**

This disclosure form shall be completed by the reporting entity, whether sub awardee 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 sub awardee, e.g., the first sub awardee 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 "Sub awardee", 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 Qualifications (RFQ) 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., "RFQ -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**

**Complete the form on the following two pages 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  <b>For Material Change Only:</b> Year _____ Quarter _____ Date Of Last Report: _____
4. Name and Address of Reporting Entity:  _____ <input type="checkbox"/> Prime <input type="checkbox"/> Sub awardee    Tier (if known) _____  Congressional District (if known) _____		5. If Reporting Entity in No. 4 is Sub awardee, Enter Name and Address of Prime:  _____  Congressional District (if known) _____
6. Federal Department/Agency:  _____	7. Federal Program Name/Description:  _____ CFDA Number (if applicable) _____	
8. Federal Action Number (if known)  _____	9. Award Amount (if known) \$  _____	
10. a. Name and Address of Lobbying Entity <i>(if individual, last name, first name, MI):</i>  _____   <i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i>	b. Individuals Performing Services <i>(including address if different from No. 10a.) (last name, first name, MI):</i>  _____   <i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i>	
11. Amount of Payment <i>(check all that apply)</i> : \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment <i>(check all that apply)</i> : <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee	

<p>12. Form of Payment (<i>check all that apply</i>):</p> <p><input type="checkbox"/> a. cash</p> <p><input type="checkbox"/> b. In-kind; specify: Nature _____ Value _____</p>		<p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> f. other; specify: _____</p>
<p>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(<i>attach Continuation Sheet(s) SF-LLL-A, if necessary</i>):</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached:</p>		<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>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.</p>		<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No: _____</p> <p>Date: _____</p>
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction</p> <p>Standard Form - LLL</p>

# ATTACHMENT G: BUSINESS ASSOCIATE ADDENDUM FOR AWARDED TASK ORDERS\*

## NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES BUSINESS ASSOCIATE ADDENDUM

This Agreement is made effective the \_\_\_\_\_, by and between the North Carolina Department of Health and Human Services ("Covered Entity") and \_\_\_\_\_. ("Business Associate") (collectively the "Parties").

### 1. BACKGROUND

- a. Covered Entity and Business Associate are parties to a contract entitled 30-DHB-20160613, NC Medicaid Transformation Support, 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 Business Associate Addendum to the Contract 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. This Agreement amends and is part of the Contract.
- b. Except as provided in this Agreement, all terms and conditions of the Contract shall remain in force and shall apply to this Agreement as if set forth fully herein.
- c. 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.
- d. A breach of this Agreement by Business Associate shall be considered sufficient basis for Covered Entity to terminate the Contract for cause.

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**PLEASE PRINT NAME**

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SIGNATURE

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Date



## **ATTACHMENT H: SUPPLEMENTAL VENDOR INFORMATION HISTORICALLY UNDERUTILIZED BUSINESSES**

- A. Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled. Vendor shall remain in compliance with State HUB good faith efforts to share opportunities with minority/HUB communities for the duration of the project.

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this IFB. Any questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330. The Vendor shall respond to question #1 and #2 below.

- a) Is Vendor a Historically Underutilized Business? ☐ **Yes** ☐ **No**
- b) Is Vendor Certified with North Carolina as a Historically Underutilized Business? ☐ **Yes** ☐ **No**

If so, state HUB classification: [Click or tap here to enter text.](#)

- c) Both Non-HUB Prime Vendors and HUB Prime Vendors submitting an offer to this solicitation are to disclose the following information. In an effort for the State to meet and/or exceed the goal of 10% NC HUB Certified Vendor utilization, please provide the list of any NC HUB Certified Vendors to be used as subcontractors in the scope of work under this contract. Prime Vendor is to list name of NC HUB Certified Vendors and the amount of total contract cost that will be distributed to those Vendors.

NC HUB Certified Vendor Name: \_\_\_\_\_

Amount of total contract cost distributed: \$ \_\_\_\_\_

NC HUB Certified Vendor Name: \_\_\_\_\_

Amount of total contract cost distributed: \$ \_\_\_\_\_

NC HUB Certified Vendor Name: \_\_\_\_\_

Amount of total contract cost distributed: \$ \_\_\_\_\_

# **ATTACHMENT I: TERMS AND CONDITIONS – FEDERALLY FUNDED CONTRACTS –**

*Contracts Partially or Wholly Federally Funded.*

1. RESERVED

To the extent federal funding is involved in this procurement, in whole or in part, compliance with the following is required:

2. The Vendor shall comply with all Federal Funds Provisions requirements (below) and not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

3. The Vendor shall, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin:
4. The Vendor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Vendor's legal duty to furnish information.
5. The Vendor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Vendor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
6. The Vendor shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
7. The Vendor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
8. In the event of the Vendor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts or federally assisted construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

9. The Vendor shall include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Vendor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Vendor (or herein "applicant," as applicable in context within these Federal Funds Provisions) becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Vendor may request the United States to enter into such litigation to protect the interests of the United States.
10. The Vendor further agrees that it shall be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the Vendor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.
11. The Vendor agrees that it shall assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Vendors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it shall furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
12. The Vendor further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Vendor debarred from, or who has not demonstrated eligibility for, Government Contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Vendors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Vendor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part any relevant grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Vendor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Vendor; and refer the case to the Department of Justice for appropriate legal proceedings.

## **2. FEDERAL FUNDS PROVISIONS**

***Where federal funds are utilized in connection with this procurement, and to the extent applicable and absent stricter or controlling State provisions, the following federal provisions (in addition to the North Carolina General Terms and Conditions above) may apply consistent with Uniform Guidance in 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, and its Appendix II. Relevant federal authorities may require additional provisions depending on the scope and context of the Contract.*** Failure or unwillingness of the Vendor to continually meet any of these requirements, as applicable, may result in Contract termination.

- a) **No governmental non-competes.** Vendor shall not impose or enforce any non-competition agreement upon the employees included in Vendor's bid that would prevent those employees from accepting any offer of employment from the State of North Carolina outside of the first Term of the Contract. By executing this Contract, the Vendor affirms this condition. This affirmation is a material condition for the State's award of any work under this Contract.
- b) **Program Monitoring.** Vendor agrees to assist and cooperate with the Federal grantor or funding agency and the relevant Purchasing Agency or their duly designated representatives in the monitoring of the project or projects to which this Contract relates, and to provide in form and manner approved by the Purchasing Agency such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

- c) **Remedies and Termination**, For purposes of this section the State Remedies and Termination provisions above apply as written.
- d) **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).**

Compliance with the Contract Work Hours and Safety Standards Act.

1. *Overtime requirements.* No Vendor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in 29 C.F.R. §5.5(b)(1) the Vendor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 C.F.R. §5.5(b)(1), in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 C.F.R. §5.5(b)(1).
3. *Withholding for unpaid wages and liquidated damages.* The Purchasing Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 C.F.R. §5.5(b)(2).
4. *SubContracts.* The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of 29 C.F.R. §5.5 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 C.F.R. §5.5(b)(2) through (4).

- e) **CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.**

Clean Air Act

1. The Vendor 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.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees that the Purchasing Agency 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.
3. The Vendor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

1. The Vendor 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.
2. The Vendor agrees to report each violation to the Purchasing Agency and understands and agrees

that the Purchasing Agency 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.

3. The Vendor agrees that these requirements will be included in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

### **Debarment and Suspension.**

1. This Contract, if federal funding is used, is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Vendor is required to verify that none of the Vendor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. The Vendor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
3. This certification is a material representation of fact relied upon by a federal agency providing federal funds herein and the Purchasing Agency. If it is later determined that the Vendor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to federal agency providing federal funds herein and the Purchasing Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
4. The Vendor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of the Contract resulting from a relevant solicitation herein. The Vendor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **f) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (as Amended).**

To the extent applicable, Vendors that apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Required Certification. If applicable, Vendors must sign and submit to the Purchasing Agency the certification. See "Certification Regarding Lobbying"

### **Procurement of Recovered Materials.**

- i. Unless specified otherwise in the Contract, in the performance of this Contract, the Vendor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
  - Competitively within a timeframe providing for compliance with the Contract performance schedule;
  - Meeting Contract performance requirements; or
  - At a reasonable price.
- ii. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site:  
<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- iii. The Vendor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

**g) Access to Records.** In addition to the North Carolina General Contract Terms & Conditions section entitled “**ACCESS TO PERSONS AND RECORDS**” included in this Contract, the following access to records requirements apply to this Contract:

1. The Vendor agrees to provide the Purchasing Agency, the Administrator of the federal agency providing funds hereunder, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Vendor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
2. The Vendor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The Vendor agrees to provide the Administrator of the federal agency providing funds hereunder or his authorized representative access to construction or other work sites pertaining to the work being completed under the Contract.
4. In compliance with the Disaster Recovery Act of 2018, the Purchasing Agency and the Vendor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the Administrator of the federal agency providing funds hereunder or the Comptroller General of the United States.

**h) Modifications to Contract.** Modifications to the Contract are governed by the North Carolina General Contract Terms & Conditions section above entitled “**AMENDMENTS**,” except as approval and signature by any federal official may also be required.

**i) Records Retention.** All records required to be kept on the project shall be maintained for at least five (5) years after final payments and until all other pending matters under the grant for this project have been closed. However, if any audit, litigation or other action arising out of or related in any way to this project is commenced before the end of the five (5) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the five (5) year period, whichever is later.

**j) Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

**k) Program Fraud and False or Fraudulent Statements or Related Acts.** Vendor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the Contract.

**l) No Obligation by Federal Government.** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Vendor, or any other party pertaining to any matter resulting from the Contract.

**m) Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the Contract. The Vendor will comply with all applicable Federal law, regulations, executive orders, the policies of the federal agency(ies) providing funding, procedures, and directives.

**n) Federal Seals, Logos, and Flags.** In addition to the prohibitions of Attachment M section below entitled “**ADVERTISING**,” the Vendor shall not use the seal(s), logos, crests, or reproductions of flags of a federal agency providing funding herein, or likenesses of federal agency officials without specific pre-approval of the relevant federal agency.

**o) System for Awards Management.** Vendor shall be responsible to ensure that it has checked the federal System for Awards Management (SAM) <https://www.sam.gov/portal/SAM> and the State Debarred Vendors

Listing, <http://www.pandc.nc.gov/actions.asp> to verify that Contractors or sub-Recipients have not been suspended or debarred from doing business with federal or State government".

## **ATTACHMENT J: RATE CARD**

Below insert your three-year Rate Card for the roles provided within the “Attachment J – Rate Card” excel file provided. As part of your submission the completed excel file is also required.



## **ATTACHMENT K: REQUEST FOR PROPOSED MODIFICATIONS TO THE TERMS AND CONDITIONS**

As provided in Section 2.2, Vendors may submit proposed modifications to the terms and conditions of the RFQ for consideration by the Department. The proposed modifications do not alter the terms and conditions of the RFQ and have no force or effect on the RFQ or any resulting Contract unless accepted by the Department and incorporated through a BAFO, negotiation document, addenda to the RFQ 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 RFQ:**

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

	<b>RFQ Citation</b> (i.e., section & page number)	<b>Redline of Proposed Modification</b> (i.e., include text as published in RFQ and strikethrough words, phrases or sentences proposed to be deleted and underline words, phases, or sentences proposed to be added)
1.		
2.		

## **ATTACHMENT L: AGENCY 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 **RECORD RETENTION** of this Attachment L 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 MFP 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 and legislative employees 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) 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 TERMINATION of this Section 21 of Attachment. 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.

4) **Background Checks and Disclosure of Litigation and Criminal Conviction and Adverse Financial Condition**

The Contractor's failure to fully and timely comply with the terms of this *Attachment P: Disclosure Of Litigation and Criminal Convictions*, and *Attachment E: Certification of Financial Condition* 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 **RECORD RETENTION** of this *Attachment L*. of the Contract.

5) **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.

**6) Change in Corporate Structure**

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.

**7) 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.

8) **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 NOTICES of this Attachment L of the Contract.

9) **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 **NOTICES** of this Attachment L. of the Contract.

10) **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.

11) **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.

12) **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.

13) **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:

- i. 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.
- ii. 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.
- iii. 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.

- iv. All notices required by this subsection must be provided to the Department within thirty (30) Calendar Days of Contractor becoming aware of the conflict.

**14) 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.

**15) Equity Diversity and Inclusion (EDI)**

Contractor shall make a good faith effort to recruit, develop and retain a diverse workforce and encourage and promote an inclusive and equitable workplace, in accordance with applicable federal and state law.

**16) Indemnification**

- b. 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.
- c. 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.
- d. 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.
- e. 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.

**17) 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.

#### 18) **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.

#### 19) **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.

#### 20) **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.

#### 21) **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 or 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.

- a. Reserved.

**22) 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.

**23) 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.
- 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.

**24) Response to State Inquiries 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.

**25) 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.



**26) 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.

**27) Sovereign & 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.

**28) State Contract Review**

This RFQ and subsequent contracts are exempt from the State contract review and approval requirements pursuant to NCGS § 143B-216.80(b)(4).

**29) 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 **NOTICES** of this Attachment L 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 *Attachment N: 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 to agree 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.

**30) Substance Use Data (42 C.F.R. Part 2)**

Contractor is fully bound by the provisions of 42 C.F.R. Part 2 upon receipt of data from DHB that includes Patient Identifying Information (PII) regarding substance use disorder, as those terms are defined by 42 C.F.R. 2.11. Contractor shall implement appropriate safeguards to prevent the unauthorized uses and disclosures of data protected under 42 C.F.R. Part 2. Contractor shall report any unauthorized uses, disclosures, or breaches of data subject to this term and condition, to the Contract Administrators for DHB within three (3) Calendar Days of the unauthorized use, disclosure, or breach. This notice is in addition to any other notice requirement regarding unauthorized disclosure of PII or PHI required by the Contract. Information disclosed to Contractor is limited to that which is necessary for the Contractor to perform its duties under the Contract. Contractor shall not re-disclose information to a third party unless that third party is a contract agent of the Contractor or subcontractor, helping to provide services described in the contract and only if the subcontractor only further discloses the information back to the contractor or lawful holder from which the information originated.

**31) 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.

**32) 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.

**33) 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.

## **ATTACHMENT M: LEGAL GROUNDS FOR MARKING INFORMATION**

### **CONFIDENTIAL**

Pursuant to *Section II.F. 1*, 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.

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

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: SUBCONTRACTOR IDENTIFICATION FORM**

The Offeror must complete a *Subcontractor Identification Form* for each known Subcontractor, as defined in Contract Section II. Definitions and Abbreviations, 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).

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

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.

<b>A: Subcontractor Identification</b>	
<b>1. Business Information.</b> 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.
<b>2. Scope of Subcontracted Services.</b> 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.	
<b>3. Is Subcontractor a government entity?</b> If no, complete Section B: Historically Underutilized Businesses below.	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

<b>B: Historically Underutilized Businesses (HUB)</b>
1. Is proposed non-government entity Subcontractor <b>owned</b> by a HUB?

- ☐ **Yes** (if yes, complete Question 2)
- ☐ **No** (if no, skip to Question 3)
- ☐ **Unknown** (if unknown, skip to Question 3)

**Owned** means at least fifty-one percent (51%) of the business is owned by one or more citizens or lawful permanent residents of the United States who are members of at least one of the groups listed in question b. below, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more citizens or lawful permanent residents of the United States who are members of at least one of the groups listed in Question 2. below.

2. Identify the Type of minority business group(s). Check all that apply.

- ☐ **Black** A person having origins in any of the black racial groups of Africa.
- ☐ **Hispanic** A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.
- ☐ **Asian American** A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.
- ☐ **American Indian** A person having origins in any of the original Indian peoples of North America.
- ☐ **Female**
- ☐ **Disabled** A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
- ☐ **Disadvantaged** A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

3. Is the proposed non-government Subcontractor **operated** by a HUB?

- ☐ **Yes** (if yes, complete Question 4)
- ☐ **No** (if no, skip to Question 5)
- ☐ **Unknown** (if unknown, skip to Question 5)

**Operated** means the management and daily business operations are controlled by one or more owners of the business who are citizens or lawful permanent residents of the United States of at least one of the groups listed in Question 4. below

4. Identify the type of minority business group(s). Check all that apply.

- ☐ **Black** A person having origins in any of the black racial groups of Africa.
- ☐ **Hispanic** A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.
- ☐ **Asian American** A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.
- ☐ **American Indian** A person having origins in any of the original Indian peoples of North America.
- ☐ **Female**
- ☐ **Disabled** A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
- ☐ **Disadvantaged** A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

5. 6Is the proposed non-government Subcontractor Certified with North Carolina as a HUB?

- ☐ Yes      ☐ No      ☐ Unknown

# **ATTACHMENT O: 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](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](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](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](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](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](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](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143B/GS_143B-139.6C.pdf)

### **Certifications**

**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.

- 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/>
- 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:
  - 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**
  - [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.
- 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.
- 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.
- The undersigned hereby certifies further that:
  - He or she is a duly authorized representative of the Contractor named below;
  - He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; and
  - 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 P: 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 Attachment.

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

☐ Offeror has information to disclose as follows:

Click or tap here to enter text.

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

☐ Offeror has information to disclose as follows:

Click or tap here to enter text.

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

☐ Offeror has information to disclose as follows:

Click or tap here to enter text.

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 confirms and agrees

☐ Offeror does not confirm or agree for the following reason:

Click or tap here to enter text.



5. The Offeror shall disclose in the *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      ☐ Offeror has information to disclose in Attachment E

**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.**