

## **STATE OF NORTH CAROLINA**

### **STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES**

**Request for Proposal #: 270-20250414MCA**

### **MEDICAL CLAIMS AUDIT – OPERATION SERVICES**

**Date of Issue: April 14, 2025**

**Proposal Opening Date: May 16, 2025**

**At 10:00 AM ET**

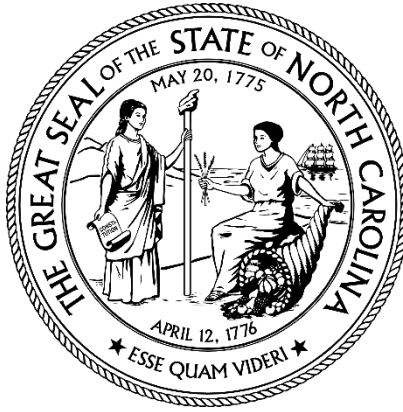
**Direct all inquiries concerning this RFP to:**

Email: [Kimberly.Alston@nctreasurer.com](mailto:Kimberly.Alston@nctreasurer.com)  
[SHPCContracting@nctreasurer.com](mailto:SHPCContracting@nctreasurer.com)

Phone: 919-814-4429

*Sealed, mailed responses ONLY will be accepted for this solicitation*

**Ariba System Generated Solicitation #: 1534198159**



## STATE OF NORTH CAROLINA

### Request for Proposal #

**270-20250414MCA**

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For internal State agency processing, including tabulation of Proposals, provide Your company's Electronic Vendor Portal (eVP) Number. Pursuant to G.S. 132-1.10(b), this identification number shall not be released to the public. To prevent such release, Vendor shall ensure confidential information on this page is redacted when submitting redacted versions of this document in accordance with the instructions herein.

**This page shall be filled out and returned with Your Proposal.  
Failure to do so may subject Your proposal to rejection.**

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Vendor Name

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Vendor eVP#

**Note:** For a Contract to be awarded to You, Your company (You) must be a North Carolina registered Vendor in good standing. You must enter the vendor number assigned through eVP. If You do not have a vendor number, register at <https://evp.nc.gov/>

***Sealed, mailed responses ONLY will be accepted for this solicitation.***

<b>STATE OF NORTH CAROLINA</b> <b>Department of State Treasurer, State Health Plan Division</b>	
Refer <u>ALL</u> Inquiries regarding this RFP to: <b>Kimberly Alston, Contracting Agent</b> <b>Kimberly.Alston@nctreasurer.com</b>	<b>Request for Proposal #: 270-20250414MCA</b>
<b>Using Agency: The North Carolina State Health Plan for Teachers and State Employees</b>	<b>Proposals will be publicly opened: May 16, 2025, 10:00 AM ET</b>
<b>Requisition No.: N/A</b>	<b>Commodity No. and Description:</b> <b>841116 – Medical Claims Audit Services</b>

**EXECUTION**

In compliance with this RFP, 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.

By executing this Proposal, the undersigned Vendor understands that false certification is a Class I felony and certifies that:

- this Proposal is submitted competitively and without collusion,
- none of its officers, directors, or owners of an unincorporated business entity have been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934, and
- it is not an ineligible Vendor as set forth in G.S. 143-59.1.

Furthermore, by executing this Proposal, the undersigned certifies to the best of Vendor’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 Vendor certifies that it, and each of its subcontractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

As required by Executive Order 24 (2017), the undersigned Vendor certifies will comply with all federal and state requirements concerning fair employment and that it does not and will not discriminate, harass, or retaliate against any employee in connection with performance of any Contract arising from this solicitation.

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 contracts; 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 RFP, the undersigned certifies, for the Vendor’s entire organization and its employees or agents, that the Vendor is not aware that any such gift has been offered, accepted, or promised by any employees of Your organization.

By executing this proposal, the Vendor certifies that it has read and agreed to the **INSTRUCTION TO VENDORS** and the **GENERAL TERMS AND CONDITIONS** incorporated herein. These documents can be accessed from the ATTACHMENTS section within this document.

**Failure to execute/sign proposal prior to submittal may render proposal invalid and it MAY BE REJECTED. Late proposals shall not be accepted.**

COMPLETE/FORMAL NAME OF VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #21):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:	FAX NUMBER:	
<b>VENDOR’S AUTHORIZED SIGNATURE*</b> :	<b>DATE:</b>	EMAIL:

Proposal Number: 270-20250414MCA

Vendor: \_\_\_\_\_

**VALIDITY PERIOD**

Offer shall be valid for at least 180 days from date of bid opening, unless otherwise stated here: \_\_\_\_\_ days, or if extended by mutual agreement of the Parties in writing. Any withdrawal of this offer shall be made in writing in accordance with the instructions herein.

**ACCEPTANCE OF PROPOSAL**

If Your Proposal is accepted, as described in more detail in Section 4.14 Contract Documents, all provisions of this RFP, along with the written results of any negotiations, shall constitute the written agreement between the Parties. This Contract is not binding until the Plan's Executive Administrator has signed this Acceptance of Proposal.

**FOR STATE USE ONLY:** Offer accepted and Contract awarded this \_\_\_\_\_ day of \_\_\_\_\_, 2025, as indicated on the attached certification, by

\_\_\_\_\_  
**(Authorized Representative of the NC Department of State Treasurer, State Health Plan Division).**

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## 1.0 PURPOSE AND BACKGROUND

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### PURPOSE

Through this competitive bidding process, the Plan is soliciting Proposals from qualified companies to perform medical claims audits. This RFP has one component of services that will be awarded to one vendor.

#### Goal and Mission

The goal of this RFP is to procure a Vendor to provide Medical Claims Audit Services to include the following:

1. Standard Medical Claims Audits
2. Focused Medical Claims Audits
3. Additional Medical Claims Audits

The Plan requires a Vendor that brings best in class Services and expertise in medical claims auditing with a proven track record of auditing self-funded plans of similar size and complexity. Vendor must be capable of performing a comprehensive and objective review of the claims processed by the Plan's TPA to determine if claims were adjudicated according to contractual standards, Plan benefits and policies, and industry standards, such as those associated with cost containment and refund procedures.

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

### BACKGROUND

#### State Health Plan

The Plan provides health benefits coverage to more than 750,000 teachers and school personnel, State employees, retirees, current and former lawmakers, State university and community college personnel, and eligible dependents. The Services outlined in this RFP are focused on the approximately 578,000 self-funded Members. The mission of the State Health Plan is to improve the health and health care of North Carolina teachers, State employees, retirees, and their dependents, in a financially sustainable manner, thereby serving as a model to the people of North Carolina for improving their health and well-being.

#### Governance

The Treasurer, Executive Administrator, and the Board are designated as fiduciaries for the Plan. The powers and duties of the Treasurer are set forth in statute at N.C.G.S. § 135-48.30(a) and include setting benefits, premium rates, co-pays, deductibles, and coinsurance percentages and maximums subject to approval of the Board. The Board's powers and duties are set forth at N.C.G.S. § 135-22 and include approving large contracts; approving premium rates, copays, and deductibles proposed by the Treasurer; and developing and maintaining a strategic plan. The North Carolina General Assembly determines member eligibility rules and establishes certain premium levels for the Plan.

The Plan is exempt from the Employee Retirement Income Security Act of 1974 pursuant to 29 U.S.C. § 1003 because it is a self-funded nongovernmental health benefit program established for the benefit of State Employees.

#### Plan Designs

The Plan currently offers three self-funded Plan Designs. Two are copay-based PPO plans and one is a HDHP. The Plan Designs are evaluated on an annual basis and are likely to change prior to 2026.

#### Plan Vendors

The Plan contracts with a number of vendors to provide third party administrative, pharmacy benefit management and other related services:

- Aetna Life Insurance Company ("Aetna") is the contracted TPA for Claims and Related Services for the Plan's three self-funded plan options.

- Humana, Inc., currently provides the two fully-insured Medicare Advantage Plans.
- Caremark PCS Health, LLC, a subsidiary of CVS Health, provides Pharmacy Benefit Management (“PBM”) Services.
- Benefitfocus is the Plan’s eligibility and enrollment services (“EES”) vendor.
- iTEDIUM provides COBRA administration and billing services.
- Healthcare Horizons is the Plan’s current vendor for medical claims audit services.

A listing of the Plan’s contracted vendors is available at [www.shpnc.org](http://www.shpnc.org), bottom of the page in the footer section, “SHP Contracted Vendors.”

## 1.1 CONTRACT TERM

The Contract shall have an initial term of forty months, including four months for implementation, beginning September 2, 2025, and lasting through December 31, 2028, with Services commencing on January 1, 2026.

At the end of the Contract’s initial term, the Plan shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of two additional one-year terms beginning January 1, 2029, through December 31, 2029, and January 1, 2030, through December 31, 2030.

The Plan will give the Vendor written notice of its intent to exercise each option no later than thirty days before the end of the Contract’s then-current term. In addition to any optional renewal terms stated herein, and with the Vendor’s concurrence, the State reserves the right to extend the Contract after the last active term; such an extension shall be incorporated into this document through an Amendment.

## 2.0 GENERAL INFORMATION

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### 2.1 REQUEST FOR PROPOSAL DOCUMENT

This RFP document shall govern the procurement process and, pursuant to the terms herein, becomes the binding Contract between a Vendor who submits a Proposal and the Plan.

### 2.2 E-PROCUREMENT FEE

**ATTENTION: The E-Procurement fee does not apply to this solicitation.**

General information on the E-Procurement Services can be found at: <http://eprocmnt.nc.gov/>.

### 2.3 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor’s responsibility to read the Instructions to Vendors, the General Terms and Conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and to comply with all requirements and specifications herein. Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If the Vendors have questions or issues regarding any component of this RFP, those must be submitted as questions in accordance with the instructions in Section 2.5 Proposal Questions and, among others, Section III of Attachment B: Instructions to Vendors. If the Plan determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an Addendum to this RFP. The Plan may also elect to leave open the possibility for later negotiation of specific provisions of the Contract that have been addressed during the question-and-answer period, prior to contract award.

Other than as part of the process of negotiation as outlined by this RFP, the Plan rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor’s proposal or otherwise. This applies to any language appearing in or attached to the document as part of the Vendor’s Proposal that purports to vary any terms and conditions or Vendors’ instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor’s Proposal shall constitute a firm offer that shall be held open for the period required herein (“Validity Period” above).

The Plan may exercise its discretion to consider modifications proposed by Vendors, but only if those modifications are proposed during the question-and-answer period in accordance with Section 2.5 Proposal Questions. By execution and delivery of this RFP Response, Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded, unless expressly agreed upon through negotiation and incorporated by way of a BAFO. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject the Vendor’s proposal as nonresponsive.

## 2.4 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. The State will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time, if Applicable
Issue RFP	State	April 14, 2025
Deadline for Submission of Written Questions	Vendor	April 18, 2025, 11:59 PM ET
Provide Response to Questions	State	April 23, 2025
Deadline for Submission of Proposals (Bid Closes)	Vendor	May 16, 2025, 10:00 AM ET
Evaluation Period (Review of Proposals)	State	May 19-21, 2025
Best and Final Offer (BAFO)	State and Vendor	May 22-27, 2025
Plan seeks approval from the Plan’s Special Deputy Attorney General to award contract	State	May 2025
Award of Contract	State	May-June 2025
Execution of Contract by the Plan and Vendor	State and Vendor	May-June 2025
Implementation Period	State and Vendor	September 2, 2025 – December 31, 2025
Services Begin	Vendor	January 1, 2026

## 2.5 PROPOSAL QUESTIONS

Upon review of the RFP documents, Vendors may have questions to clarify or interpret the RFP to enable Vendors to submit the best proposal possible. To accommodate the Proposal Questions process, the Vendors shall submit any such questions by the due date in Section 2.4 RFP Schedule. Questions received after these dates will not receive a response. Failure to resolve any issues about any ambiguity in this RFP by submitting a question according to this timeline waives a Vendor’s objection to any ambiguity that should have been apparent to a reasonable Vendor during the RFP Process. Written questions shall be emailed to Kimberly.Alston@nctreasurer.com with a copy to [SHPCContracting@nctreasurer.com](mailto:SHPCContracting@nctreasurer.com) by the date and time specified above. Vendors should enter “RFP # 270-20250414MCA: Questions” as the subject for the email. Question submittals should include a reference to the applicable RFP section and be submitted in the table format shown below in sequential order by the section of the RFP to which they relate:

Question #	Reference	Vendor Question
1.	RFP Section, Page Number	Vendor question ...?

Questions received prior to the submission deadline date in Section 2.4 RFP Schedule, the Plan’s response, and any additional terms deemed necessary by the State will be posted in the form of an Addendum to the electronic Vendor Portal, <https://evp.nc.gov>, and shall become an Addendum to this RFP. The Plan may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the RFP that have been addressed during the question period.

No information, instruction or advice provided orally or informally by any Plan personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely *only* on written material contained in the RFP and an Addendum to this RFP.

## 2.6 PROPOSAL SUBMITTAL

**IMPORTANT NOTE:** All Proposals shall be physically delivered to the address listed below on or before the Proposal deadline to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** Late bids, regardless of cause, will not be opened or considered, and will be automatically disqualified from further consideration. The Vendor shall bear the sole risk of late submission due to unintended or unanticipated delay. It is the Vendor’s sole responsibility to ensure its proposal has been received as described in this RFP by the specified time and date of opening. The time and date of receipt will be marked on each proposal when received. Any proposal or portion thereof received after the proposal deadline will be rejected.

The U.S. Postal Service does not deliver mail to a specified street address but to the State’s Mail Service Center. Due to the likelihood of delay in delivery, Vendors are not permitted to utilize the U.S. Postal Service to submit their Proposals. Instead, Vendors must use a different parcel or package delivery service. **Moreover, attempts to submit a proposal via facsimile (FAX) machine, telephone, or email in response to this RFP shall NOT be accepted.**

**Mailing and Office address for delivery of proposal via special delivery, overnight, or any other carrier**

PROPOSAL NUMBER: 270-20250414MCA  
NC Department of State Treasurer  
State Health Plan Division  
3200 Atlantic Avenue  
Raleigh, NC 27604

Attention: Kimberly Alston, Contracting Agent

- a) Submit, simultaneously to the address identified in the table above, the following: **two signed, original executed** Technical Proposal and Cost Proposal responses; five physical copies of each; one physical copy of the Technical Proposal and one physical copy of the Cost Proposal Redacted in accordance with the instructions provided in this RFP; two flash drives, each flash drive having one un-Redacted electronic copy on it; and, if the Vendor desires to provide redactions, one electronic copy on a flash drive, Redacted in accordance with the instructions provided in this RFP. Redacted copies shall exclude any information that is confidential and not subject to disclosure under Chapter 132 of the North Carolina General Statutes, the Public Records Act. All redactions shall be made in **BLACK** and in accordance with Section V, Paragraph 24 of Attachment B: Instructions to Vendors.

At the Vendor’s discretion, individual attachments, exhibits, and/or supporting documentation that are **greater than fifty pages** in length may be submitted in electronic copy instead of being submitted as a physical copy, if the Vendor so chooses. If a Vendor does so choose, such an electronic copy must be submitted on flash drives. The original and physical copy technical responses must specifically identify the file names and location of the individual attachments, exhibits, and/or supporting documentation submitted in this manner.

- b) Submit Your Technical and Cost Proposals in separate sealed packages. Clearly mark each package with: (1) Vendor name; (2) the RFP number; (3) Technical Proposal or Cost Proposal, respectively; and (4) the due date. Address the package(s) for delivery as shown in the table above.
- c) For delivery purposes, separate sealed envelopes from a single Vendor may be included in the same outer package. Proposals are subject to rejection unless submitted with the information above included on the outside of the sealed Proposal package.
- d) The electronic copies of Your Proposal must be provided on separate read-only flash drives. The files on the flash drives **shall NOT** be password protected, shall be in .PDF or .XLS format, and shall be capable of being copied to other media including being readable in Microsoft Word and/or Microsoft Excel.
- e) Flash Drives One and Two must contain the entire Technical and Cost Proposals, including any proprietary information, and must have the following label affixed to the flash drives: (1) Vendor name; (2) the RFP number; (3) the due date; and (4) the words “Technical and Cost Proposals Non-Redacted.”

- f) Flash Drive Three, if required for confidentiality, must contain the Technical and Cost Proposals, excluding any information identified as confidential under the Public Records Act. All redactions shall be made in accordance with Section V, Paragraph 24 of Attachment B: Instructions to Vendors. The Plan, in responding to public records requests, will release the information on this flash drive. The following label must be affixed to the flash drive: (1) Vendor name; (2) the RFP number; (3) the due date; and (4) the words "Technical and Cost Proposal Redacted."

Failure to submit a proposal in strict accordance with these instructions shall constitute sufficient cause to reject a Vendor's proposal(s).

The Plan may include critical updated information in Addenda to this RFP. It is important that all Vendors responding to this RFP periodically check the State's eVP website for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in this RFP and all Addenda thereto.

## 2.7 PROPOSAL CONTENTS

The Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Failure to provide all required items, or the Vendor's submission of incomplete items, may result in the Plan rejecting the Vendor's proposal, in the Plan's sole discretion.

Vendor Proposal responses shall:

- a) Match the order of the RFP;
- b) Include the RFP section and requirement or specification numbers;
- c) Include a Table of Contents;
- d) Include tabs indexing each section;
- e) Be submitted in multiple three (3) ring binders no larger than three (3) inches each; and
- f) Include at a minimum the following information: RFP number, RFP title, Proposal title, and the submitting Vendor's name on the front and side of each binder.

Vendor RFP responses shall include the following items and attachments, which shall be arranged in the following order:

- a) Completed and signed version of Attachment G: Proposal Submission Information;
- b) Completed and signed version of all EXECUTION PAGES, along with the **body of the RFP** and signed receipt pages of any addenda released in conjunction with this RFP, if required to be returned. The document must be signed and dated by an official authorized to bind the company. Proposals submitted without the signed and dated Execution Page will not be considered;
- c) Minimum Requirements Response, Section 5.1;
- d) Technical Requirements Response, Sections 5.3, 5.4, 5.6, and 5.7;
- e) Completed version of Attachment A: Cost Proposal;
- f) Entire copy of Attachment B: Instructions to Vendors
- g) Entire copy of Attachment C: General Terms and Conditions
- h) Completed version of Attachment D: Customer Reference Form;
- i) Completed version of Attachment E: Location of Workers Utilized By Vendor;
- j) Completed and signed version of Attachment F: Certification of Financial Condition;
- k) Completed and signed version of Attachment H: HIPAA Questionnaire. Vendors must respond to all questions and request for documentation in the HIPAA Compliance Questionnaire;
- l) Completed and signed two originals of Attachment I: Business Associate Agreement; and
- m) Completed version of Attachment J: Administrators for the Contract, HIPAA Compliance Officer, and Information Security Officer.

## 2.8 ALTERNATE PROPOSALS - Reserved

## 2.9 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS

- a. **ADDENDUM:** Written Clarification or revision to this RFP issued by the Plan during the procurement process and prior to the close of bid. The terms of an Addendum are incorporated into the resulting Contract. Addendums occur during the procurement process, unlike an Amendment, which occurs once the Contract has been awarded to a Vendor.
- b. **AMENDMENT:** A change to one or more terms of this Contract that is evidenced by a document executed by both Parties. Amendments occur after the Contract has been awarded to a Vendor, unlike an Addendum, which occurs during the procurement process. The terms of an Amendment are incorporated into the Contract.
- c. **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial offer, made in response to a request by the Plan.
- d. **BOARD OF TRUSTEES:** The Board of Trustees of the State Health Plan for Teachers and State Employees, established by N.C.G.S. § 135-48.20 and governs the Plan. The Board's members are appointed by the Governor, the North Carolina General Assembly, and the State Treasurer, and they act as fiduciaries for the Plan in carrying out their duties and responsibilities, which are set forth in law.
- e. **BUSINESS REQUIREMENTS:** The Plan's needs and expectations that will be memorialized in a Business Requirements Document.
- f. **BUSINESS REQUIREMENTS DOCUMENT ("BRD"):** Document that outlines the Business Requirements for a benefit, program, or process and may include requirements for multiple Plan vendors.
- g. **CALENDAR YEAR:** A twelve-month period which runs from January 1 - December 31.
- h. **CLARIFICATION:** A written response from a Vendor that provides an answer or explanation to a Clarification Question posed by the Plan about that Vendor's Proposal. Clarifications are incorporated into Vendor's Proposal response and become a term of the resulting Contract.
- i. **CLARIFICATION QUESTION:** A question from the Plan to a Vendor asking the Vendor to clarify a portion of its response.
- j. **CONFLICT OF INTEREST:** Situations or circumstances through which the Vendor, or entities or individuals closely affiliated with the Vendor, will derive, or reasonably may be perceived as deriving, direct financial or other pecuniary benefit from its performance of this Contract, other than through the compensation received according to the Contract for performance of the Contract, or that might impair, or reasonably be perceived as impairing, the Vendor's ability to perform this Contract in the best interests of the Plan.
- k. **CONTRACT:** The agreement between the Plan and the Vendor to whom the award is made, as evidenced by the documents outlined in Section 4.14 Contract Documents.
- l. **CONTRACT ADMINISTRATOR:** Representative of the Plan who will administer this Contract for the Plan as detailed in Attachment J. This person has authority to execute Administrative Decision Memos and Business Requirements Documents and may delegate that authority to another representative of the Plan.
- m. **CONTRACT MANAGER:** Representative of the Plan, as identified in Attachment J, who corresponds with potential Vendors regarding this RFP and regarding contractual issues after award of the Contract.
- n. **DATA CENTER:** A facility that performs one or more of the following functions:
  - Physically houses various equipment, such as computers, servers (e.g., web servers, application servers, and database servers), switches, routers, data storage devices, load balances, wire cages or closets, vaults, racks, and related equipment;
  - Stores, manages, processes, and exchanges digital data and information; or
  - Provides application services or management for various data processing, such as web hosting internet, intranet, or tele-communication and information technology.
- o. **DATA FILE:** An electronic file containing data.
- p. **DATA WAREHOUSE:** A Data Warehouse is a merged repository that stores data from multiple sources from an enterprise's various operational systems, that is constructed with predefined schemas designed for data analytics and reporting, for current and historical decision support information. Essential components of a Data Warehouse include the means to (1) retrieve, extract, transform, and load data from different sources for access and analysis, (2) processes to cleanse the data from the operational systems to ensure data quality before it is used for analytics and reporting, (3)

maintain, catalogue, and utilize associated metadata including the data dictionary and reference code sets, (4) analyze data, and (5) operate across very large amounts of data. A Data Warehouse differs from a database. A database is used to capture and store data from a limited set of transactional systems (or one), its schema is normalized, and it is not designed to run across very large data sets. A Data Warehouse differs from a data lake. A data lake is a central repository for all types of raw data, whether structured or unstructured, from multiple sources, and its schema is undefined.

- q. **DEDUCTIBLE:** A fixed amount of health care dollars required to be paid by the Member under a health benefit contract before benefits become payable.
- r. **DELIVERABLE:** Refers to any service, duty, performance or other contractual obligation of the Vendor.
- s. **DEPARTMENT:** Refers to the North Carolina Department of State Treasurer.
- t. **DEPENDENT:** An eligible Plan Member other than the Subscriber.
- u. **EMPLOYEE OR STATE EMPLOYEE:** Any individual eligible for coverage pursuant to their employment with a qualifying Employing Unit as described in Article 3B of Chapter 135 of the North Carolina General Statutes, as may be amended from time to time.
- v. **E-PROCUREMENT SERVICES:** The program, system, and associated Services through which the State conducts electronic procurement.
- w. **ERROR:** The overpayment or underpayment of a claim; payment to the incorrect payee or an incorrect address that occurs due to the fault of the Vendor or its Subcontractor(s) or agent(s).
- x. **EVALUATION PERIOD:** The Evaluation Period begins upon the time set by this RFP for receipt of the Vendor's Proposals and closes either when the Contract is awarded to a Vendor, or, if no proposals are received, when the Plan cancels the RFP.
- y. **FOCUS AUDITS:** Audits that are targeted on certain types of claims or services. Focus Audits may include, but are not limited to, coordination of benefits (COB) audits, duplicate claims audits, eligibility audits.
- z. **GO-LIVE:** The first time a system or service can be used after all tests have been completed and the functionality has been implemented. There shall be a Go-Live date in every Implementation Plan.
- aa. **HIGH DEDUCTIBLE HEALTH PLAN ("HDHP"):** The Plan's ACA-compliant benefit offering that features a high deductible and lower monthly premiums.
- bb. **HIPAA:** The Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191. Among other things, the law provides uniform federal privacy protection standards for healthcare consumers across the country. The standards protect patients' medical records and other health information provided to health plans, doctors, hospitals, and other health care providers. Developed by the United States Department of Health and Human Services, these standards provide patients with access to their medical records and more control over how their PHI is used and disclosed. The term HIPAA also includes the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH"), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("ARRA"), Pub. L. No. 11-5, and implementing regulations issued by the United States Department of Health and Human Services, most of which are codified at 45 C.F.R. Parts 160, 162, and 164.
- cc. **IMPLEMENTATION PLAN:** Documentation of the agreed-upon target dates for meeting milestones and Deliverables that must be completed for the provision of Services to Go-Live. Implementation Plans shall be utilized for the initial implementation and Go-Live of the Contract and for any subsequent Amendments or activities that require Vendor system development or Plan vendor integration. Implementation Plans shall include a description of the co-dependencies and Tasks, identification of business, and/or Deliverable owner(s).
- dd. **INITIAL CONTRACT TERM:** A period of time specified by the Plan as the effective date and expiration date of the Contract.
- ee. **MEMBER:** Any active Employee or retiree enrolled in the North Carolina State Health Plan for Teachers and State Employees, or a Dependent currently enrolled in the health benefit plan for which a premium is paid.
- ff. **N.C.G.S:** North Carolina General Statute(s).
- gg. **OPTIONAL SERVICE:** A service or project the Vendor must be prepared to provide if requested by the Plan. The Plan will communicate which Optional Services that the Plan will require the Vendor to provide.

- hh. **PARTIES TO THE CONTRACT:** The Parties (Parties) to this Contract are (1) the Plan; and (2) the Vendor, or if multiple awards are made, Vendors, selected through the RFP process and to whom the Contract is awarded.
- ii. **PERFORMANCE GUARANTEE:** A contractual obligation or performance standard with which the Vendor must comply or be subject to contractual fee reductions, payments to the Plan, or legal remedies.
- ll. **PLAN:** Refers to the North Carolina State Health Plan for Teachers and State Employees established and governed by Article 3B of Chapter 135 of the General Statutes of North Carolina.
- mm. **PLAN DATA:** Any information used, created, received, maintained, or transmitted by the Vendor for the purpose of providing the Services under this Contract. Plan Data does not include information owned by the Vendor as described in Section 1. b) of Attachment C: General Terms and Conditions.
- nn. **PLAN DESIGN:** Each version of the health benefit Product is known as the Plan Design. For example, the Plan currently has three (3) PPO Plan Designs for Active Members: the Enhanced PPO Plan (80/20), the Base PPO Plan (70/30), and the HDHP.
- oo. **PRODUCT:** An individual healthcare benefit plan or offering that can include medical and/or pharmacy benefits. Products may vary by provider network and discounts, fully insured or self-insured status, provider payment structure, Member availability, and/or region.
- pp. **PROTECTED HEALTH INFORMATION (“PHI”):** 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 the Business Associate from or on behalf of the Covered Entity.
- qq. **PROPOSAL:** The firm offer submitted by the Vendor in response to this RFP. The terms Bid and Proposal are used interchangeably with Offer in this document.
- rr. **PUBLIC RECORDS ACT:** The North Carolina Public Records Act, N.C.G.S. § 132-1, *et seq.*, which contains certain requirements regarding the public’s right of access to documents and other information held by certain government entities. The Plan is subject to the Public Records Act.
- ss. **QUALIFIED BID/PROPOSAL:** A Responsive bid submitted by a Responsible Vendor.
- tt. **REDACT(ED):** For purposes of this RFP, to edit a document by obscuring or removing information that is considered confidential or proprietary as defined by N.C.G.S. § 132-1.2. All redactions shall be made in accordance with Section V, Paragraph 24 of Attachment B: Instructions to Vendors.
- uu. **REQUEST FOR PROPOSAL (“RFP”):** The document which establishes the bidding and contract requirements and solicits bid Proposals to meet the purchase needs of the Plan as identified herein.
- vv. **RESPONSIBLE:** Refers to a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
- ww. **RESPONSIVE:** Refers to a Proposal that conforms to the requirements of this RFP in all respects to be considered by the State for award.
- xx. **SECURITY BREACH:** An incident of unauthorized access to and acquisition of unencrypted and un-Redacted records or data containing personal information where illegal use of the personal information has occurred or is reasonably likely to occur or that creates a material risk of harm to a Member. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process key shall constitute a Security Breach. Good faith acquisition of personal information by an employee or agent of the Vendor for a legitimate purpose is not a Security Breach, provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure. When used for purposes of HIPAA, this term shall have the same meaning as that given to it under 45 C.F.R. § 164.402.
- yy. **SERVICE PERIOD:** The initial service period begins upon the Plan’s acceptance of all implementation Deliverables for which all TPA services are in effect. The Service Periods for this Contract equate to the Plan Year.
- zz. **SERVICES:** The Tasks and duties undertaken by the Vendor to fulfill the requirements and specifications of this solicitation.
- aaa. **STANDARD AUDITS:** Audits performed on an ongoing quarterly basis by the Plan’s Auditors and/or the North Carolina Office of the State Auditor. Standard Audits are used to measure claims accuracy, generally, and associated with Performance Guarantees and identify overpayments
- bbb. **SILENT PERIOD:** The Silent Period begins when this RFP is issued and shall be lifted by the Plan after the time for a

Vendor to file a protest has expired or when the RFP is canceled.

ccc. **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.

ddd. **STATE BUSINESS DAY:** Monday through Friday 8:00 a.m. through 5:00 p.m., Eastern Time (ET), except for North Carolina State holidays as defined by the Office of State Human Resources, <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>

eee. **SUBCONTRACTOR:** An entity having an arrangement with a vendor of the Plan, where the Plan’s vendor uses the Products and/or services of that entity to fulfill some of its obligations under its contract with the Plan, while the Plan’s vendor retains full responsibility for the performance of all of said vendor's obligations under the contract, including payment to the Subcontractor. The Subcontractor has no contractual relationship with the Plan, only with the Plan’s vendor.

fff. **SUBSCRIBER:** The primary health benefit plan contract holder.

ggg. **TASK:** A discrete unit of work to be performed.

hhh. **THIRD PARTY ADMINISTRATOR (“TPA”):** A vendor that provides administrative services and assumes responsibility for administering health benefit plans, including claims processing, without assuming any financial risk.

iii. **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual, or other entity submitting a response to this RFP.

jjj. **YOU and YOUR:** The Vendor.

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### **3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS**

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#### **3.1 METHOD OF AWARD**

All Qualified Proposals will be evaluated, and awards will be made to the Vendor(s) meeting the specifications of this RFP and achieving the highest and best final evaluation, based on the criteria described below.

While the intent of this RFP is to award a Contract to a single Vendor, the Plan reserves the right to make separate awards to different Vendors for one or more line-items, to not award one or more line-items or to cancel this RFP in its entirety without awarding a Contract if it is considered to be most advantageous to the Plan to do so.

The Plan reserves the right to waive any minor informality or technicality in Proposals received.

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

While this RFP is under evaluation, the responding Vendor, including any Subcontractors and suppliers, is prohibited from engaging in conversations intended to influence the outcome of the evaluation. For more specific information on prohibited communications, see Section V, Paragraph 25 of Attachment B: Instructions to Vendors.

#### **3.3 PROPOSAL EVALUATION PROCESS**

The Plan shall review all Vendor responses to this RFP to confirm that they meet the specifications and requirements of the RFP. Only Responsive submissions will be evaluated.

**a) The Plan will conduct a One-Step evaluation of Proposals:**

Proposals will be received according to the method stated in Section 2.6 Proposal Submittal above.

All Proposals must be received by the issuing agency not later than the date and time specified in Section 2.4 RFP Schedule above, unless modified by an Addendum. Vendors are cautioned that this is a request for offers, not an offer or request to contract, and the Plan reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the Plan, as described in, among others, Section V, Paragraph 11 of Attachment B: Instructions to Vendors.

At their option, the evaluators may request oral presentations or discussions with any or all of the Vendors for Clarification or to amplify the materials presented in any part of the Proposal. The Vendors are cautioned, however, that the evaluators are not required to request presentations or other Clarification—and often do not. Therefore, all Proposals should be complete and reflect the most favorable terms available from the Vendor.

The Plan shall conduct a comprehensive, fair, and impartial evaluation of the Proposals received in response to this request. Specific evaluation criteria are listed in Section 3.4 Evaluation Criteria below.

Upon completion of the evaluation process, including all necessary approvals, the Plan will make award(s) based on the evaluation and post the award(s) to eVP under the RFP number for this solicitation. Award of a Contract to one Vendor does not mean that the other Proposals lacked merit, but that, all factors considered, the selected Proposal was deemed most advantageous and represented the best value to the Plan.

The Plan reserves the right to negotiate with one or more Vendors, or to reject all original offers and negotiate with one or more sources of supply that may be capable of satisfying the requirement, and in either case to require the Vendor to submit

a BAFO based on discussions and negotiations with the Plan. If a BAFO is requested, then, once the Vendors’ BAFOs are received, the Plan will recalculate the score as appropriate.

**b) Evaluation Committee**

An Evaluation Committee (“Committee”) will be established to review each Proposal and recommend to the Executive Administrator a Vendor to be awarded the Contract. The Plan may engage the professional services of a different Plan vendor to assist in the evaluation process. The Plan reserves the right to alter the composition of the Committee or to designate other staff to assist in the process. Other designated staff and senior management from the Department of State Treasurer may attend any oral presentations that may occur during the evaluation process. However, all decisions regarding scoring and the final award recommendation will be made solely by Committee members.

The Committee will review and evaluate all Proposals that were submitted by the deadline specified in this RFP. This Committee will be responsible for the entire evaluation process and the evaluation will be conducted in accordance with the steps outlined below. Committee participants are obligated to keep information identified as trade secret and proprietary confidential.

Technical Proposals meeting the Minimum Requirements described in Section 5.1 will be considered and evaluated as follows:

**1: Evaluation of Technical Proposal**

- Written Technical Proposal (Sections 5.3 Standard Audits, 5.4 Focused Audits, 5.6 Audit Reports, Meetings and Communication, and 5.7 Implementation)

**2: Evaluation of Cost Proposal**

**3: Determination of Successful Proposal Based on the Combination of Technical & Cost**

**4: Adjustment of Score After BAFO, if Applicable**

**c) Approval for Contract Award**

After approval by the Board, if applicable, and the Attorney General’s Office, if applicable, the Plan’s Executive Administrator will award the Contract to the bidder with the highest score. A Contract is not binding until the Plan’s Executive Administrator has signed the Acceptance of Proposal.

**3.4 EVALUATION CRITERIA**

Proposals meeting the Minimum Requirements described in Section 5.1 will be evaluated under the Points-Based Evaluation methodology, and awarded based on the following criteria, to result in an award most advantageous to the Plan. The Technical Proposal and the Cost Proposal will be scored separately based on the overall point scale described below.

The total points scale will reflect the following weights:

Technical Proposal	50%
Cost Proposal	50%
<b>Total:</b>	<b>100%</b>

Both the Technical Proposal and Cost Proposal will be based upon a maximum of 30 points each. Each item to be confirmed in the Technical Requirements shall be assigned one point. The following example will include the technical requirements to be evaluated.

TECHNICAL AREAS	Maximum Points
Section 5.3.B. Standard Audit	10
Section 5.4.B. Focused Audit	4
Section 5.6.A. Audit Reports, Meetings and Communication	13
Section 5.7.A. Implementation	3
<b>Total</b>	<b>30</b>

The State will evaluate Cost Proposals submitted in accordance with Attachment A. The State will determine low cost by normalizing the scores as follows:

The Proposal with the lowest cost will receive a score of 30. All other competing Proposals will be assigned a portion of the maximum score using the formula:

$$30 \times [2 - (\text{The cost of the Cost Proposal being evaluated} / \text{The cost of the lowest Cost Proposal})]$$

Cost proposals in which the cost is expected to be more than twice the lowest cost Proposal will receive 0 point.

Vendors are cautioned that this is a request for offers, not a request to contract, and the State reserves the unqualified right to reject any and all offers when such rejection is deemed to be in the best interest of the State.

### 3.5 PERFORMANCE OUTSIDE THE UNITED STATES

The Vendor shall complete ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR. In addition to any other evaluation criteria identified in this RFP, the Plan 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 Plan:

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

### 4.0 REQUIREMENTS

This Section lists the requirements related to this RFP. By submitting a proposal, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements, and terms and conditions stated in this RFP. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would result in a better Proposal for the Plan to consider, the Vendor is urged to submit these items in the form of a question during the question-and-answer period in accordance with Section 2.5 Proposal Questions above.

## 4.1 PRICING

The Proposal price shall constitute the total cost to the Plan for complete performance in accordance with the requirements and specifications herein. The Vendor shall not invoice for any amounts that are not specifically permitted by this RFP. The Vendor shall be responsible for all travel expenses, including travel mileage, meals, lodging, and other travel expenses incurred in the performance of this Contract. The Vendor shall complete ATTACHMENT A: COST PROPOSAL and include it in the Vendor's proposal. The pricing provided in ATTACHMENT A, or resulting from any negotiations, is incorporated herein and shall become part of any resulting Contract.

**The Vendor shall not include any cost information in the Technical Proposal and shall not include any technical information in the Cost Proposal. Failure to adhere to this requirement may result in the information not being considered, or the entire Proposal being rejected.**

## 4.2 INVOICES

- a) The Vendor shall submit a completed and signed "STATE OF NORTH CAROLINA SUBSTITUTE W-9 FORM, Request for Taxpayer Identification Number" to the Plan's Contracting Section within fifteen days of execution of the Contract. This form can be accessed at the following link: <https://www.osc.nc.gov/state-north-carolina-sub-w-9>
- b) All invoices shall be submitted electronically to: [SHPNCFinance@nctreasurer.com](mailto:SHPNCFinance@nctreasurer.com) to ensure timely receipt and payment.
- c) All invoices shall include an authorized signature and a certification stating, "As an authorized representative of the Vendor, I hereby certify that the units and amounts billed to the North Carolina State Health Plan ("Plan") on this invoice are accurate and true and comply with all laws, regulations, and contractual provisions that are conditions of payment pursuant to the relationship between the Vendor and the Plan."
- d) For all Services outlined in Section 5.0 Specifications and Scope of Work, the Vendor shall submit an invoice for Services rendered in accordance with this section and in compliance with the cost proposed in Attachment A as selected by the Plan, accompanied by a detailed document supporting the charges, by the 15<sup>th</sup> day of the month for Services provided in the previous month. Invoices containing any charges other than those identified in the Cost Proposal will be rejected. The Plan's Contract Administrator for day-to-day activities may establish an invoicing schedule for fees associated with Services to be completed on a quarterly or annual basis, so long as the final payment is not due until after completion of the quarterly or annual Deliverable. The Plan, at its sole discretion, shall determine if the Services on each invoice have been satisfactorily completed. The Plan may withhold payment for incomplete, unsatisfactory, or untimely Deliverables. Payment shall be made within thirty days of receipt of the invoice, provided that the Plan has determined satisfactory completion of a particular Deliverable/Service in accordance with the time schedule established by the Plan.
- e) If the Plan determines an invoice contains an error, the Vendor shall be required to submit a corrected invoice, in which case payment shall be made within thirty days of receipt of the corrected invoice.
- f) The Plan reserves the right to validate any invoice submitted for payment and shall have access to the Vendor's or Subcontractor's supporting documentation necessary to validate the invoice.
- g) The Vendor is responsible for any and all payments to Subcontractors.
- h) Payment of the invoice by the Plan does not constitute a waiver or otherwise prejudice the Plan's right to object to or question any invoice or matter in relation thereto. Such payment shall not be construed as acceptance of any part of the work or service provided or as an approval of any of the amount invoiced therein.

- i) Invoices must bear the correct contract number and purchase order number to ensure prompt payment. The Vendor's failure to include the correct purchase order number may cause delay in payment.
- j) Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Vendor, and the original signature of the Vendor's account manager.

### 4.3 FINANCIAL STABILITY

As a condition of contract award, the Vendor must certify that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that the Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against the Vendor that could materially and 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.

Each Vendor shall certify it is financially stable by completing Attachment F: Certification of Financial Condition. The Plan is requiring this certification to minimize potential issues from contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify the Plan within thirty days of any occurrence or condition that materially alters the truth of any statement made in this Certification. The Contract Manager may require annual recertification of the Vendor's financial stability.

### 4.4 HUB PARTICIPATION – RESERVED

### 4.5 VENDOR EXPERIENCE - RESERVED

### 4.6 REFERENCES

The Vendor shall provide at least three references, using Attachment D: Customer Reference Template, for which it has provided Services of similar size and scope to those proposed herein. The Plan may contact these references to determine whether the Services provided are substantially similar in scope to those proposed herein and whether the Vendor's performance has been satisfactory. The information obtained may be considered in the evaluation of the Proposal.

### 4.7 BACKGROUND CHECKS

The Vendor and its personnel are required to provide or undergo background checks at the Vendor's expense prior to beginning work with the State. As part of the Vendor background, the following details must be provided to the State:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to, fraud, misappropriation, or deception by the Vendor, its officers, or directors, or any of its employees or other personnel to provide Services on this project, of which the Vendor has knowledge, or provide a statement that the Vendor is aware of none;
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against the Vendor of which it has knowledge, or provide a statement the Vendor is aware of none;
- c) Any **regulatory sanctions** levied against the Vendor or any of its officers, directors or its professional employees expected to provide Services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term "regulatory sanctions" includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;
- d) Any **regulatory investigations** pending against the Vendor or any of its officers, directors, or its professional employees expected to provide Services on this project by any state or federal regulatory agencies of which the Vendor has knowledge or a statement that there are none.

- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against the Vendor during the three years preceding submission of its proposal herein or a statement that there are none.

The Vendor’s response to these requests shall be considered a continuing representation, and the Vendor’s failure to notify the State within thirty days of any criminal litigation, other investigation, or proceeding involving the Vendor or its then current officers, directors, or persons providing Services under this Contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any Subcontractor utilized by the Vendor to perform Services under this Contract.

**4.8 PERSONNEL**

The Vendor warrants that qualified personnel shall provide Services under this Contract 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. The Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all Subcontractor(s) that may be approved by the Plan. Names of any third-party Vendors or Subcontractors of the Vendor may appear for purposes of convenience in Contract documents; and shall not limit the Vendor’s obligations hereunder. The Vendor will retain executive representation for functional and technical expertise as needed to incorporate any work by third party Subcontractor(s).

Should the Vendor’s Proposal result in an award, the Vendor shall be required to agree that it will not substitute key personnel assigned to the performance of the Contract without prior written approval by the Contract Administrator. The Vendor shall further agree that it will notify the Contract Administrator of any desired substitution, including the name(s) and references of the Vendor’s recommended substitute personnel. The Plan will approve or disapprove the requested substitution in a timely manner. The Plan may, in its sole discretion, terminate the Services of any person providing Services under this Contract. Upon such termination, the Plan may request acceptable substitute personnel or terminate the contract Services provided by such personnel.

**4.9 VENDOR’S REPRESENTATIONS**

If the Vendor’s Proposal results in an award, the Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of the Plan under the Contract. If any Services, Deliverables, functions, or responsibilities not specifically described in this solicitation are required for the Vendor’s proper performance, provision, and delivery of the Service and Deliverables under a resulting Contract, 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, the 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/or other Deliverables.

**4.10 QUESTIONS TO VENDORS - RESERVED**

**4.11 AGENCY INSURANCE REQUIREMENTS MODIFICATION**

A. Default Insurance Coverage from the General Terms and Conditions applicable to this Solicitation:

- Small Purchases
- Contract value in excess of the Small Purchase threshold, but up to \$1,000,000.00
- Contract value in excess of \$1,000,000.00

**4.12 ADMINISTRATORS FOR THE CONTRACT**

The Vendor shall complete and submit Attachment J: Administrators for the Contract, HIPAA Compliance Officer, and Information Security Officer. Either Party may change its administrator or his or her address and telephone number by written notice to the other Party.

#### **4.13 CONFIDENTIALITY AND PROTECTION OF PROPRIETARY INFORMATION**

Pursuant to N.C.G.S. §§ 135-48.10, 132-1.2, 132-1.10, and 75-65 and in accordance with other applicable state and federal law, including HIPAA and HITECH, the Vendor shall maintain the confidentiality of all Plan Member information, in whatever form, and however it is obtained. The Vendor further agrees that if it receives, stores, processes, has access to, maintains, or otherwise deals with “patient identifying information” or “records” as defined in 42 C.F.R. § 2.11 from a substance use disorder “program,” as defined in 42 C.F.R. § 2.11, that is federally assisted in a manner described in 42 C.F.R. § 2.12(b), then it is fully bound by the federal regulations governing Confidentiality of Substance Use Disorder Patient Records, 42 C.F.R. Part 2, with respect to such information and records, including but not limited to the provisions related to use, disclosure and re-disclosure thereof. For any Security Breach by the Vendor or its Subcontractors or agents, the Plan has a right to require the Vendor to provide notice and to offer credit monitoring for affected Members, all at the Vendor’s sole expense.

a) **Confidentiality Agreements**

Within forty-five calendar days of the execution date of the Contract, the Vendor shall execute a Confidentiality Agreement with the Plan’s Eligibility and Enrollment Services vendor, Third Party Administrative services vendor, Pharmacy Benefit Management services vendor, Medicare Advantage and Prescription Drug services vendor, COBRA Administration and Billing services vendor, and any other vendors the Plan requires.

#### **4.14 CONTRACT DOCUMENTS**

The Contract consists of the following documents, incorporated herein by reference:

- a) This RFP, which includes all Exhibits, Attachments, and Appendices;
- b) The Addenda to this RFP, if any;
- c) The Vendor’s Minimum Requirements Proposal, including Clarifications; and
- d) The Vendor’s Technical and Cost Proposal, including Attachments, Clarifications, and BAFOs completed and submitted by the Vendor.

Supplemental documentation that this RFP requires the Vendors to submit for illustrative purposes, for example, sample reports; or submitted solely for evaluation, for example, security attestation reports or internal company policies, shall be considered as part of the evaluation and maintained in the procurement file but shall not be considered part of the binding terms of the Contract.

#### **4.15 DATA OWNERSHIP**

The Vendor understands and agrees that all data and documents provided by the Plan or by Plan vendors are and shall be owned by the Plan or its vendors and shall be used by the Vendor solely for the purposes described in this Contract. Under no circumstances shall the Vendor share the data with any other entity without the Plan’s prior written authorization except as otherwise authorized by this Contract.

#### **4.16 CONFLICT OF INTEREST**

By signing the Execution Page, the Vendor certifies that it shall not 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.

**The Vendor shall:**

- a) Disclose any relationship to any business or entity with whom the Vendor is currently doing business that creates or may give the appearance of a Conflict of Interest related to this RFP.
- b) Disclose prior to employment or engagement by the Vendor, any firm principal, staff member, or Subcontractor, known by the Vendor to have a Conflict of Interest or potential Conflict of Interest related to this RFP.
- c) Disclose any affiliation, business relationship, or other association with any other Plan vendor. A list of Plan vendors is available at <https://www.shpnc.org/documents/shp-documents/plan-contracted-vendors>.
- d) Provide written notice to the Plan of any actual or imminent legal matters or regulatory compliance actions involving the Vendor and federal, state, or local government entities. Without limitation, notice shall be provided for investigations and legal actions or matters subject to arbitration involving the Vendor and/or its Subcontractors, including key management or executive staff, or any major stakeholder (five percent (5%) or more), brought by a government agency (federal or state) on matters relating to payments from government entities. In providing the notice, the Vendor shall provide the date of initiation, the subject matter, and the parties to the matter, and the resolution if resolved at the time of the notice. Notice must include settlement agreements or corporate integrity agreements, unless otherwise confidential.
- e) Specify any lawsuits or regulatory compliance actions with which the Vendor has been involved within the past five (5) years. If any, please provide a detailed explanation.
- f) Notify the Plan in writing within fifteen calendar days of any material changes in disclosures or certifications made under this section for the duration of the Contract.

#### **4.17 VENDOR'S REPRESENTATIVE**

**The Vendor shall:**

- a) Provide to the Plan in Attachment G: Proposal Submission Information a list of individuals with authority to bind the firm in connection with this Contract, including answering questions, providing Clarifications concerning the Vendor's Proposal, and executing future contractual documents.
- b) Notify the Plan in writing within fifteen calendar days of any changes in those individuals identified as having authority to bind the firm by submitting an amended Attachment G.

## 4.18 DEBARRED, SUSPENDED OR EXCLUDED VENDORS

**The Vendor shall:**

- a) Notify the Plan in writing within fifteen calendar days if any of its principals, Subcontractors, or Subcontractors' principals become debarred, suspended, or in any way excluded from state or federal procurements as reported to the System for Award Management or appears as an excluded provider on the Office of Inspector General List of Excluded Individuals/Entities.
- b) If information contrary to this certification or notification subsequently becomes available, such evidence may be grounds for non-award, or breach of contract should the Vendor be a recipient of the Contract award.

## 4.19 REGISTRATION AND CERTIFICATION

**Vendor shall comply with the following:**

- a) As a condition of Contract award, any Vendor that is a corporation, limited-liability company, or limited-liability partnership shall have received, and shall maintain throughout the term of the Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law.
- b) The Vendor shall notify the Plan in writing within fifteen calendar days of any changes in certifications made in response to this RFP for the duration of the Contract.

## 4.20 PERFORMANCE GUARANTEES

By signing the Execution Page, the Vendor certifies its agreement to adhere to the Performance Guarantees in Section 6.10 Deliverables, Performance Guarantees, and Reduction in Fees.

## 5.0 SPECIFICATIONS AND SCOPE OF WORK

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### 5.1 MINIMUM REQUIREMENTS

This procurement is open to qualifying Vendors that satisfy the Minimum Requirements described in this section. **Vendors must confirm, and only when requested, provide information for all Minimum Requirements. Only those Vendors that meet 100% of the Minimum Requirements** will be fully evaluated for a possible Contract award. The Plan reserves the right to reject proposals deemed incomplete or non-compliant with these Minimum Requirements.

If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the Plan to receive a better Proposal, the Vendor is urged and cautioned to submit these items in the form of a question during the question-and-answer period in accordance with Section 2.5 Proposal Questions.

The Vendors shall duplicate the Minimum Requirements Table below and provide the RFP section number and page number reference to the location within the Vendor's Proposal where the minimum requirement has been satisfied. **DO NOT** provide responses to Minimum Requirements within the Minimum Requirements Table.

The Vendors shall respond to all questions and confirmation/certification/description requests that are described herein in their Minimum Requirements response using the same RFP numbering sequence. The Vendors are cautioned to provide sufficient detail for the Plan to validate their responses.

	<b>Minimum Requirements</b>	<b>RFP Section Numbers and Page Numbers in Vendor's Response</b>
1	Vendor shall provide a description of the company, its operations and ownership along with documentation that it has at least five years of experience providing Medical Claims Audit Services. These services must include medical claims audits for the purpose of measuring financial, payment, and processing accuracy. Include in the description the TPAs for which the vendor has audited. See Sections 5.3 and 5.4 for a full description of the type of Standard and Focused Audits required of this Contract.	
2	Vendor shall have provided services to at least one public or private self-funded client with more than 250,000 covered lives. If confirmed, provide contact information for one such client so that the Plan can complete a reference call related to the services in this RFP.	
3	Vendor shall provide an organizational chart of key executive and operational leaders who will support the Plan's audits. Include biographies for each key leader that includes the individual years of experience, education, and relevant certifications. This should include information about the Vendor's Contract Administrator for Day-to-Day Activities for this Contract.	
4	Vendor shall provide a description of how the Standard Audit would be stratified to meet the Plan's requirements as outlined in Section 5.3.	
5	Vendor shall provide a sample copy of a preliminary final audit report for an audit similar to both a Standard and Focused Audit as outlined in Sections 5.3 and 5.4.	
6	<p>a) The Vendor shall certify without exception the sufficiency of its security standards, tools, technologies, and procedures in providing Services under this Contract.</p> <p>b) All Vendor and/or third-party Data Centers, Business Applications or Systems used under this Contract for the purpose of collecting, storing, processing, transmitting, or exchanging Plan Data shall have, and maintain, valid, favorable third-party security certifications or assessment reports on all related security controls that are consistent with, and can be cross-walked to, the data classification level and security controls appropriate for moderate information system(s) per the National Institute of Standards and Technology ("NIST") SP 800-53 Rev. 5 or the most recent revision. To satisfy this</p>	

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	<b>Minimum Requirements Continued</b>	<b>RFP Section Numbers and Page Numbers in Vendor's Response</b>
6	<p>requirement, such reports must have been issued within twelve months prior to the anticipated Contract award date or be supplemented by bridge letters covering no more than three months subsequent to the report expiration date. The Vendor shall provide a crosswalk document along with full unredacted copies of the third-party security certification or assessment reports, and any necessary bridge letters. The Vendor shall also identify which specific Data Centers, Business Applications or Systems that are covered by the third-party opinions or attestations will be used to provide the Services under this Contract. Opinion letters or security certification attestation letters will not be submitted in lieu of full report(s).</p> <p>c) The Vendor hereby agrees that the Plan has the right to independently evaluate, audit, and verify such requirements as part of its evaluation and during the life of the Contract, including requesting the performance of a penetration test with satisfactory results. The Plan will verify any such third-party security opinions or attestations annually during the life of the Contract, and the Vendor will be required to provide an updated report or bridge letter verifying that there have been no material changes in the controls reported since the issuance of the last report. Bridge letters will only be accepted for three months after the report expiration date to satisfy this requirement.</p> <p>d) Vendor shall agree that the Plan has the right to, based upon its evaluation, require that the Vendor maintain cyber breach liability insurance coverage in an amount specified by the Plan and/or commit to obtaining a favorable third-party opinion or attestation within a time period specified by the Plan as a condition of Contract award. The Vendor shall provide documentation of the amount of cyber breach liability insurance that it currently carries for all Vendor and/or third-party Data Centers and systems used to provide the Services under this Contract that will contain Plan Data. If the Vendor is currently undergoing a third-party security assessment of such Data Centers or information technology systems that complies with NIST SP 800-53 Rev. 5 (or most recent revision), the Vendor shall provide proof of purchase or a copy of its contract with the third party retained to perform the audit, and the expected date for completion.</p> <p>e) Vendor shall accept, and the Plan understands, that security certification, assessment reports, and security information provided to the Plan for the purpose of this Contract may contain confidential information and/or trade secrets. Refer to Section V, Paragraph 24 of Attachment B: Instructions to the Vendors for information regarding the treatment of Confidential Information.</p>	
7	The Vendor shall confirm it agrees to Attachment B: Instructions to Vendors without exception.	
8	The Vendor shall confirm it agrees to Attachment C: General Terms and Conditions without exception.	
9	The Vendor shall complete and submit Attachment D: Customer Reference Template.	
10	The Vendor shall complete and submit, without exception, Attachment E: Location of Workers Utilized by Vendor.	

	<b>Minimum Requirements Continued</b>	<b>RFP Section Numbers and Page Numbers in Vendor's Response</b>
11	The Vendor shall be financially stable; and complete, sign and submit without exception, Attachment F: Certification of Financial Condition.	
12	The Vendor shall complete, sign and submit Attachment G: Proposal Submission Information form.	
13	The Vendor shall be HIPAA compliant; and shall complete, sign, and submit Attachment H: HIPAA Questionnaire and supply copies of the Vendor's HIPAA privacy and security policies. If the Vendor maintains that any information contained in the HIPAA privacy and security policies is proprietary or otherwise confidential, the Vendor may Redact these portions in <b>BLACK</b> and in accordance with the instructions in Section V, Paragraph 24 of Attachment B: Instructions to the Vendors and supply the un-Redacted portions for review.	
14	The Vendor shall complete, sign, and submit Attachment I: Business Associate Agreement (BAA).	
15	The Vendor shall complete and submit Attachment J: Administrators for the Contract, HIPAA Compliance Officer, and Information Security Officer.	
16	The Vendor shall submit two completed and signed originals of Execution Page.	

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## 5.2 TASK AND DELIVERABLES

### 5.2.1 General

The Vendor shall respond to all questions and confirmation/certification/description requests that are described herein in its Proposal response using the same RFP numbering sequence. The Plan does not want generalized responses. The nature of this RFP is detailed, and the Plan’s expectation is to receive detailed and direct responses to all questions and confirmation/certification/description requests. The following directives are used throughout this section:

- **Provide** – The Plan’s expectation is that the Vendor will provide a sample or copy of the requested material or information.
- **Describe** – The Plan’s expectation is that the Vendor will provide a detailed narrative description of the requested information.
- **Confirm** – The Plan’s expectation is that the Vendor will affirm a requirement by inserting the word CONFIRM without providing additional language, unless the Vendor is also asked to Describe or Provide. Additional language inserted in response to a “Confirm” directive shall be void and have no legal effect.
- **Limitations** – The Plan’s expectation is that the Vendor will describe in detail any limitations impacting its ability to perform the applicable requirement(s) or specification(s). If limitations are not requested regarding a specific requirement or specification, or if the Vendor does not identify any limitation in response to a request, then the Vendor shall perform as described in the requirement or specification. Any limitations identified by the Vendor will be considered during evaluation of the Vendor’s Proposal. Failure to agree to any requirement may result in disqualification of the Vendor’s Proposal.

By submitting a Proposal, the Vendor agrees to meet all stated requirements in these Sections as well as any other specifications, requirements, and terms and conditions stated in this RFP. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for the State to receive a better Proposal, the Vendor is urged and cautioned to submit these items in the form of a question during the question-and-answer period in accordance with Section 2.5 Proposal Questions.

The Vendor shall respond to all questions and confirmation/certification/description requests that are described herein in its Proposal response using the same RFP numbering sequence.

## 5.3 STANDARD AUDIT

### A. Overview and Expectations:

The Plan seeks a vendor that will perform Standard Audits on medical claims processed by the Plan’s TPA on an ongoing quarterly basis. Standard Audits are performed on a statistically valid random claims sample which will be used to measure claims accuracy for Performance Guarantees on a quarterly basis. The TPA will share provider contracts and system pricing with the Vendor for review and audit.

### B. The Vendor shall CONFIRM, without exception, that it will:

- 1) Perform a Standard Audit of 1,000 stratified claims per year (“random sample audit”) with a quarterly sample size of 250 stratified claims administered by the Plan’s TPA. The Plan would expect the sample to be stratified using something like a 95% confidence interval and a  $\pm 2\%$  precision rate as illustrated below.

Claims Strata for Random Sample Audits			
Paid	Claim Count	Min Paid	Max Paid
\$4,265.69	50	\$0.00	\$227.74
\$24,215.27	50	\$256.84	\$1,350.00
\$156,492.60	50	\$1,812.92	\$7,815.79
\$738,946.17	50	\$8,443.83	\$27,773.88
\$2,620,934.54	50	\$28,359.44	\$375,12.29

2) Determine claims accuracy results for the Standard Audit as outlined below:

- **Financial Accuracy:** Total dollar amount of claims processed accurately divided by the total dollar amount processed in the audit sample. The total dollar amount processed accurately is calculated by subtracting the absolute values of the dollars processed in Error from the total dollars processed. Underpayments and overpayments are not offset by one another.
- **Payment Accuracy:** The number of claims with the correct benefit dollars paid divided by the total number of claims paid in the audit sample.
- **Processing Accuracy:** The number of claims processed with no procedural Errors divided by the total number of claims processed in the audit sample.

*Note: For purposes of the above definitions, if the TPA has identified and recovered an overpayment or processed an underpayment prior to the audit, it is not an Error. If Vendor has identified but not recovered the overpayment or processed the underpayment, it is an Error.*

- 3) Perform portions of the audit, including reviewing provider contracts, at the TPA’s site to access provider contracts or in a virtual environment as required by the TPA to access provider contracts.
- 4) Participate in screen sharing with TPA for appropriate claims processing documentation or other clarifying documents, when necessary.
- 5) Provide an audit that will be a comprehensive and objective review of the claims processed by the Plan’s TPA to determine if claims were adjudicated appropriately according to provider contracts, Plan benefits and policies, and federal and state requirements. This also includes the following:
  - a) Ensuring the appropriate prior authorizations are in place;
  - b) Validating the reasonableness of allowed charges;
  - c) Validating the provider’s network status;
  - d) Validating that the appropriate coordination of benefits (COB) was made, including commercial and Medicare COB;
  - e) Confirming payments were made to the appropriate party (assignment of benefits);
  - f) Ensuring there are no hidden fees or other charges included in the claim that the Plan did not agree to pay.
- 6) Identify, and include in the Audit report, out-of-sample claim Errors to the Plan on a quarterly basis based on the claim categories selected in the 250-claim sample.
- 7) Apply industry standards, such as those associated with cost containment and recovery procedures, when evaluating the accuracy of the claim’s adjudication.
- 8) Determine that refunds were properly applied and credited to claims.
- 9) Identify the root cause for any Errors noted and provide recommended corrective actions for the TPA.
- 10) Monitor the collections process of overpaid claims that have been identified and placed into recovery by the TPA, to a point of completion that is satisfactory to both the vendor and the SHP.

C. The Vendor shall DESCRIBE any LIMITATIONS and/or issues with meeting requirements B.1)-10) above.

## 5.4 FOCUSED AUDIT

### A. Overview and Expectations.

Vendor shall provide Focused Audits on a quarterly basis as described below. The Plan may request additional types of audits to include in the 750 claims sample.

### B. The Vendor shall CONFIRM, without exception, that it will:

- 1) Perform ongoing quarterly Focused Audits which are based on a targeted sample of 750 claims selected from a comprehensive analysis of 100% of claims processed during the quarter, in addition to performing ongoing, quarterly Standard Audits. The claims included in the audit should be judgmentally selected to target potential Errors on a quarterly basis. Focus Audits may include, but are not limited to, coordination of benefits (COB) audits, duplicate claims audits, and eligibility audits.
- 2) Follow all the same audit protocols as described in Section 5.3.B.2)-10).
- 3) Include in the final Audit Report an analysis of payment and denial Errors by type of Error to identify the number of Errors occurring most frequently, and the dollar amounts associated with each Error type. Vendor shall also prepare a comparison of Error rates to industry norms for similar plans.
- 4) Identify, and include in the Audit report, out-of-sample claim Errors to the Plan on a quarterly basis based on the claim categories selected in the 750-claim sample.

C. The Vendor shall DESCRIBE any LIMITATIONS and/or issues with meeting requirements B.1)-4) above.

## 5.5 ADDITIONAL AUDITS

### A. Overview and Expectations.

The Plan may determine that additional audits may be required. Vendor shall confirm that it will work with the Plan to develop any other type of medical claim audits, as required. For example, the Plan may determine a specific service requires an audit. Any such additional audits shall be agreed to in writing by the State and Vendor in the form of an Amendment in accordance with Section 6.9.

## 5.6 AUDIT REPORTS, MEETINGS AND COMMUNICATION

### A. The Vendor shall CONFIRM, without exception, that it will:

- 1) Produce a Preliminary Medical Claims Audit Report no later than ninety days after the end of each quarter that can be reviewed by the Plan and the TPA. The report must include, at a minimum, an executive summary, audit scope, methodology, results and findings, and recommended corrective actions.
- 2) Produce a Final Medical Claims Audit Report within thirty days of issuing the preliminary report to reflect quarterly results. In addition to the items included in the Preliminary Report, the Final Report must include any comments or corrective action plans from the TPA for each item determined to be an Error.
- 3) Produce an Annual Medical claims Audit Report no later than thirty days after the Final Medical Claims Audit Report for the Calendar Year is issued. The report must include, at a minimum, an executive summary, audit scope, methodology, results and findings, recommendations, and any comments or corrective action plans from the TPA.

- 4) Keep the Plan and the TPA apprised of audit progress throughout the process.
- 5) Provide an electronic portal or dashboard that Plan staff can access to view the status of audits performed and where other audit data may be accessed, such as Recovery status, overpayment data and other data as requested by the Plan.
- 6) Submit all reports electronically using Microsoft Excel and as needed, either Microsoft PowerPoint or Microsoft Word and allow the Plan to review the reports on the vendor's portal. The Plan will coordinate with the Vendor with the appropriate method to submit the reports if the above method is not sufficient.
- 7) Provide an audit plan, if needed, at least thirty days prior to the beginning of each audit period, January 1 through December 31, unless another timeframe is approved by the Plan. The audit plan shall outline, at a minimum, the procedures for the audit, including start and end dates, sampling, and audit methodology, format of the audit report, and any other information required by the Plan. The Plan shall provide either written acceptance of the audit plan or request revisions or clarifications.
- 8) Disclose the methodology used to reach the opinions expressed in the preliminary and final reports and provide details to the Plan.
- 9) Provide work papers to the Plan to Support the opinions expressed in the preliminary and final reports.
- 10) Customize the preliminary and final reports as requested by the Plan.
- 11) Establish routine, ongoing meetings with the Plan and provide the appropriate subject matter experts and decision makers to facilitate the meetings. These meeting may be held at the Plan's offices or held in a virtual environment.
- 12) Meet with the Plan on an "as needed" basis to discuss issues, initiatives, or other items, as requested by the Plan.
- 13) Provide meeting minutes no later than fourteen days after each meeting.

**B. The Vendor shall DESCRIBE any LIMITATIONS and/or issues with meeting requirements A.1)-13) above.**

## 5.7 IMPLEMENTATION

**A. The Vendor shall CONFIRM, without exception, that it will:**

- 1) Work with the Plan to draft an audit engagement letter to be shared with the TPA shortly after award of the Contract.
- 2) Work with the Plan to develop a Business Requirements Document (BRD) that outlines the Business Requirements between the Medical Claims Audit Vendor and the TPA, and the data and file transmission requirements necessary to support this Contract. Claims data will be provided by the Plan's TPA, and enrollment data will come from the Plan's eligibility and enrollment services vendor.
- 3) Work with the Plan to develop an Implementation Plan that meets the timeline outlined in this RFP.

**B. The Vendor shall DESCRIBE any LIMITATIONS and/or issues with meeting requirements A.1)-3) above.**

## 6.0 CONTRACT ADMINISTRATION

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All Contract Administration requirements are conditioned on an award resulting from this solicitation. This information is provided for the Vendor's planning purposes.

### 6.1 RESERVED

### 6.2 POST AWARD MEETINGS CADENCE

Vendor shall meet weekly by virtual teleconference for project review, and shall also meet on-site at the Plan's request, including for events such as State Health Plan Board meetings. The purpose of the weekly meetings will be to review project progress reports, discuss the Vendor and Plan performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

### **6.3 CONTINUOUS IMPROVEMENT**

The Plan encourages the Vendor to identify opportunities to reduce the total cost to the Plan. A continuous improvement effort consists of various ways to enhance business efficiencies as performance progresses.

### **6.4 PERIODIC STATUS REPORTS - RESERVED**

### **6.5 ACCEPTANCE OF WORK**

Performance of the work and/or delivery of Goods shall be conducted and completed at least in accordance with the Contract requirements and recognized and customarily accepted industry practices. Performance shall be considered complete when the Services or Goods are approved as acceptable by the Contract Administrator.

Acceptance of the Vendor's work Product shall be based on the following criteria:

The Plan shall have the obligation to notify the Vendor, in writing ten calendar days following completion of such work or delivery of a Deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation, or testing, as applicable to the work or Deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or Deliverables fail to meet any specifications, acceptance criteria, or otherwise fail to conform to the Contract, the Plan may exercise any and all rights hereunder.

### **6.6 FAITHFUL PERFORMANCE - RESERVED**

### **6.7 TRANSITION ASSISTANCE**

If a Contract results from this solicitation, the Vendor shall cooperate fully with the incumbent, as required by the Plan, in the transition of contract related activities.

If the Contract is not renewed at the end of the last active term, or is canceled prior to its expiration, for any reason, the Vendor shall cooperate fully in the transition of Contract-related activities to the successor vendor and Plan for a period of up to six months if requested by the Plan to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the Plan or its designees.

If the Plan exercises this option, the Parties agree that such transition assistance shall be governed by the terms and conditions of the Contract (notwithstanding this expiration or cancellation), except for those Contract terms or conditions that do not reasonably apply to such transition assistance.

### **6.8 DISPUTE RESOLUTION**

During the performance of the Contract, the Parties agree that it is in their mutual interest to resolve disputes informally. Any claims by the Vendor shall be submitted in writing to the Plan's Contract Administrator regarding day-to-day activities for resolution. Any claims by the Plan shall be submitted in writing to the Vendor's Account Manager for resolution. The Parties shall agree to negotiate in good faith and use all reasonable efforts to resolve such dispute(s).

During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. The Parties will agree on a reasonable amount of time to resolve a dispute. If a dispute cannot be resolved between the Parties within the agreed upon period, either Party may elect to exercise any other remedies available under the Contract, or at law. This provision, when agreed in the Contract, shall not constitute an agreement by either Party to mediate or arbitrate any dispute.

## 6.9 CONTRACT CHANGES

Contract changes, if any, over the life of the Contract shall be implemented by Contract Amendments agreed to in writing by the Plan and the Vendor. Amendments to the Contract can only be through the Contract Administrator.

## 6.10 DELIVERABLES, PERFORMANCE GUARANTEES, AND REDUCTION IN FEES

### a) General Information

- i. Timely and compliant performance of the duties and responsibilities of the Vendor, as described in this RFP, are the essence of the resulting Contract. Vendor shall provide Performance Guarantees as described in subsection d) below. If such guarantees are not met, the Plan and its participants will suffer harm resulting from this failure.
- ii. The Parties agree that calculation of actual damages resulting from failures to meet performance standards is extremely difficult, if not impossible, to calculate accurately, but the Parties also agree that the compensation identified in subsection d) is a reasonable estimate of damages resulting from a failure to meet the performance standard described. Therefore, the Parties agree that the Vendor shall be subject to liquidated damages for each such failure based on performance and delivery of contracted Services outlined in the Scope of Work and the schedules in this section. Unless otherwise specified, the reductions in fees shall be calculated as a flat dollar amount, as described in subsection d) below.
- iii. The Vendor shall remit payment associated with any reductions in fees through the Automated Clearing House ("ACH") and include a copy of the Plan's request for payment letter. Prior to the remittance of payment, the Vendor shall notify the Plan of the forthcoming payment via email. Any such Performance Guarantee payment shall be due to the Plan within thirty (30) days of the request. Credit memo or invoice adjustment is prohibited.
- iv. Failure of the Vendor to accept reductions in fees in accordance with the schedules below for any non-compliant Contract Deliverable listed in this section, following a thirty (30) day opportunity for Vendor to review and identify to the Plan any potential errors in calculating such reductions, shall be grounds for immediate termination of the Contract, in the Plan's sole discretion.
- v. Subject to the requirements in Attachment C.23. "No Waiver," a reduction in fees may be waived by the Plan in a particular instance, if the Plan determines, in its sole discretion, that circumstances outside the Vendor's control were a significant contributing factor to the Vendor's failure to meet the established timeframe or Deliverable. The waiver by the State of a reduction in fees in a particular instance shall not constitute the waiver of such right, breach, or default on any subsequent occasion or instance or any other term or condition herein.
- vi. Any delay in the submission of any Contract Deliverable requires a written explanation and written acknowledgement by the Plan's Contract Administrator. However, such explanation and acknowledgement does not by itself constitute a waiver of any associated reduction in fee.
- vii. The Vendor shall provide a written explanation to the Plan no later than seven (7) calendar days, or as soon as practical, prior to the due date of any Deliverable if such a delay is anticipated. This notice shall not relieve the Vendor of its responsibility, or of any reduction in fees, for untimely completion of Deliverables in accordance with the Contract.
- viii. Optional services that may be agreed upon by the Parties in the future are subject to the following: the Vendor shall pay the Plan ten percent (10%) of the associated professional fee, not to exceed two thousand five hundred dollars (\$2,500.00) for any Task or Deliverable received after the due date. The Plan may require an additional fee

reduction of one percent (1%) of the associated professional fee for each additional calendar day the Vendor fails to meet the Deliverable.

**b) Audits of Records and Performance**

The Plan reserves the right to conduct an audit of the Vendor's records as specified in Section 12 of Attachment C: General Terms and Conditions to validate the results of the Vendor's performance. The Vendor will be required to resolve any material discrepancies identified to the satisfaction of the Plan.

**c) Schedules of Performance Guarantees**

All Performance Guarantees will be assessed quarterly. Performance Guarantees relating to contractual documentation and implementation will be assessed following the first quarter of the Initial Contract Period. Payment is to be made within thirty (30) days of assessment.

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d) Fees at Risk

1. General

Table d.1.a. General Contractual Fees at Risk

Schedule I. Implementation Performance Guarantees		
Measure	Deliverable	Monetary Risk
Timeliness	Within forty-five (45) calendar days of the execution date of the Contract, Vendor shall execute a Confidentiality Agreement with the Plan’s Eligibility and Enrollment Services vendor and TPA vendor.	Vendor shall pay the Plan \$1,000 for each day the Confidentiality Agreement remains unexecuted after the due date.

Schedule II. Medical Claims Audit Services Performance Guarantees All performance targets and results are Plan specific		
Measure	Deliverable	Monetary Risk
Timeliness	Vendor shall provide the Draft Standard Audit Report to the Plan no later than ninety (90) calendar days after the end of each quarter. Any delay shall be reported to the Plan for approval so the Plan can adjust the due dates.	Vendor shall pay the Plan \$500.00 plus \$100.00 per day for each additional day the report is not received by the Plan.
Timeliness	Vendor shall provide the Draft Focus Audit Report to the Plan no later than ninety (90) calendar days after the end of each quarter. Any delay should be reported to the Plan for approval so the Plan can adjust the due dates.	Vendor shall pay the Plan \$500.00 plus \$100.00 per day for each additional day the report is not received by the Plan.
Timeliness	Vendor shall provide the Final Standard Audit Report to the Plan within thirty (30) calendar days after the issuance of the draft report. Any delay shall be reported to the Plan for approval so the Plan can adjust the due dates.	Vendor shall pay the Plan \$500.00 plus \$100.00 per day for each additional day the report is not received by the Plan.
Timeliness	Vendor shall provide the Final Focused Audit Report to the Plan within thirty (30) calendar days after the issuance of the draft report. Any delay shall be reported to the Plan for approval so the Plan can adjust the due dates.	Vendor shall pay the Plan \$500.00 plus \$100.00 per day for each additional day the report is not received by the Plan.
Timeliness	Vendor shall provide the Annual Medical Claims Audit Report to the Plan no later than thirty (30) calendar days after the Final Standard and Focused Audit Reports for the Calendar Year are issued.	Vendor shall pay the Plan \$500.00 plus \$100.00 per day for each additional day the report is not received by the Plan.

**ATTACHMENT A: COST PROPOSAL**

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Vendor shall provide pricing as specified in this Attachment A: COST PROPOSAL. The Pricing provides the total of all inclusive, turn-key costs for Services provided under the Contract and includes all direct and indirect costs, including implementation fees, travel expenses, and any and all other expenses. Invoices containing any charges other than those identified in ATTACHMENT A: COST PROPOSAL will be rejected.

1. Fixed Fee Pricing – Standard Audit Services

In the tables below, Vendor shall provide Fixed Fee pricing for quarterly Medical Claims Audits analyzing 250 stratified claims in the tables below. The Plan and Vendor may agree to revise the allocation of claims or expand the audit scope by executing a Letter of Agreement.

Vendor shall provide an estimate of the number of hours required to conduct an audit of 250 stratified claims. Vendor may explain any factors affecting the estimated number of hours required to conduct the audit.

Table 1 – Standard Audit Services – Initial Contract Term	
Total Estimated Hours to Audit 250 Claims*	Total Fixed Fee for an Audit of 250 Claims
	Initial Contract Term 1/1/2026 – 12/31/2028
_____ hours	\$ _____ Per Quarter
* Explanation of factors that may affect estimated hours:	

<b>Table 2 – Standard Audit Services – 1st Optional Renewal Term</b>	
Total Estimated Hours to Audit 250 Claims*	Total Fixed Fee for an Audit of two 250 Claims Contract Renewal Term 1/1/2029 – 12/31/2029
_____ hours	\$ _____ Per Quarter
*Explanation of factors that may affect estimated hours	

<b>Table 3 – Standard Audit Services – 2nd Optional Renewal Term</b>	
Total Estimated Hours to Audit 250 Claims*	Total Fixed Fee for an Audit of 250 Claims Contract Renewal Term 1/1/2030 – 12/31/2030
_____ hours	\$ _____ Per Quarter
*Explanation of factors that may affect estimated hours:	

2. Fixed Fee Pricing-Focused Audit Services

Vendor shall provide Fixed Fee pricing for quarterly Medical Claims Audits of 750 targeted claims in the tables below. The Plan and Vendor may agree to revise the allocation of claims or expand the audit scope by executing a Letter of Agreement.

Vendor shall provide an estimate of the number of hours required to conduct an audit of 750 targeted claims. Vendor may explain any factors affecting the estimated number of hours required to conduct the audit.

<b>Table 4 – Focused Audit Services – Initial Contract Term</b>	
Total Estimated Hours to Audit 750 Claims*	Total Fixed Fee for an Audit of 750 Claims  Initial Contract Term 1/1/2026 – 12/31/2028
_____ hours	\$ _____  Per Quarter
*Explanation of factors that may affect estimated hours.	

<b>Table 5 — Focused Audit Services -1st Optional Renewal Term</b>	
Total Estimated Hours to Audit 750 Claims*	Total Fixed Fee for an Audit of 750 Claims  Contract Renewal Term 1/1/2029 – 12/31/2029
_____ hours	\$ _____  Per Quarter
*Explanation of factors that may affect estimated hours.	

Table 6 – Focused Audit Services – 2nd Optional Renewal Term	
Total Estimated Hours to Audit 750 Claims*	Total Fixed Fee for an Audit of 750 Claims Contract Renewal Term 1/1/2030 – 12/31/2030
_____ hours	\$ _____ Per Quarter
*Explanation of factors that may affect estimated hours.	

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## **ATTACHMENT B: INSTRUCTIONS TO VENDORS**

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### **I. READ, REVIEW AND COMPLY**

It shall be the Vendor's responsibility to read this entire document; review all enclosures, attachments, and any Addenda; and comply with all requirements specified, whether appearing in these Instructions to the Vendors or elsewhere in the RFP document.

Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.

### **II. NATURE OF PROPOSALS**

The Vendors are cautioned that this is a Request For Proposals, not an offer or request to contract, and the Plan reserves the unqualified right to reject any and all bids at any time if such rejection is deemed to be in the best interest of the Plan.

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Plan.

The Contract is a separate document that represents the Vendor's and the Plan's entire agreement. If Your bid is accepted and results in a Contract, You will be expected to accept the General Terms And Conditions included in this RFP document as part of the Contract. Depending upon the good or service being offered, other terms and conditions may apply.

### **III. DUTY TO INQUIRE**

It is the Vendor's duty to read this RFP document in its entirety. The Vendor represents that it has read and understands the RFP and that its Offer is made in compliance with the RFP. The Vendors are expected to examine the RFP thoroughly and shall request an explanation for any ambiguities, discrepancies, errors, omissions, or conflicting statements identified by the Vendor in the RFP. Failure to do so waives the Vendor's right to contest any such issue at a later date. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the RFP shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by an Addendum. The Vendor assumes responsibility for any patent ambiguity in the RFP that the Vendor does not bring to the State's attention.

### **IV. INTERPRETATION OF TERMS AND PHRASES**

The RFP document serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the Plan; and (2) to provide, together with other documents as specified in Section 4.14, the terms of the Contract resulting from this procurement. The use of phrases such as "shall," "must," and "requirements" are intended to create enforceable contract conditions. In determining whether bids should be evaluated or rejected, the Plan will take into consideration the degree to which the Vendors have proposed or failed to propose solutions that will satisfy the Plan's needs as described in the RFP. Except as specifically stated in the RFP, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the Plan exercising its discretion to reject a Proposal in its entirety.

### **V. BID SUBMISSION**

1. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its bid the name, address, and telephone number of the person(s) with authority to bind the Vendor and answer questions or provide Clarification concerning the Vendor's bid.
2. **SIGNING YOUR PROPOSAL:** Every Proposal must be signed by an individual with actual authority to bind the Vendor.
  - a) If the Vendor is an individual, the Proposal must be signed by that individual. If the Vendor is an individual doing business as a firm, the Proposal must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm.
  - b) If the Vendor is a partnership, the Proposal must be submitted in the partnership name, followed by the words "by its Partner", and signed by a general partner.
  - c) If the Vendor is a corporation, the Proposal must be submitted in the corporate name, followed by the signature and title of the person authorized to sign.
  - d) A Proposal may be submitted by a joint venture involving any combination of individuals, partnerships, or corporations. If the Vendor is a joint venture, the Proposal must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant.

- e) If a Proposal is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Proposal must state that it has been signed by an Agent. Upon request, the Vendor must provide proof of the agent's authorization to bind the principal.
3. **EXECUTION:** Failure to sign the Execution Page (numbered page 1 of the RFP document) in the indicated space may render a Proposal nonresponsive, and it may be rejected.
  4. **STATE OFFICE CLOSINGS:** If an emergency or unanticipated event interrupts normal government processes so that Proposals cannot be received at the State office designated for receipt of bids by the exact time specified in the RFP, the time specified for receipt of Proposals will be deemed to be extended to the same time of day specified in the RFP on the first workday on which normal government processes resume. In lieu of an automatic extension, an Addendum may be issued to reschedule the bid opening. If State offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Addendum will be issued to reschedule the conference.
  5. **BID IN ENGLISH and DOLLARS:** Proposals submitted in response to this RFP shall be in the English language and in US dollars, unless otherwise permitted by the RFP.
  6. **LATE BIDS:** Late bids, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
    - a) The Vendor shall bear the risk for late submission due to unintended or unanticipated delay— whether submitted electronically, delivered by hand, courier, or other delivery service. It is the Vendor's sole responsibility to ensure that its bid has been received by the Plan by the specified time and date of opening. The date and time of submission will be marked on each bid when received, and any bid received after the bid submission deadline will be rejected.
    - b) The U.S. Postal Service does not deliver mail to a specified street address but to the State's Mail Service Center. Due to the likelihood of delay in delivery, the Vendors are not permitted to utilize the U.S. Postal Service to submit their Proposals. Instead, the Vendors must use a different parcel or package delivery service. Moreover, attempts to submit a proposal via facsimile (FAX) machine, telephone, or email in response to this RFP shall NOT be accepted.
  7. **DETERMINATION OF RESPONSIVENESS:** Any Proposal which fails to conform to the material requirements of the RFP may be rejected as nonresponsive. Proposals which impose conditions that modify material requirements of the RFP may be rejected. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Plan.
  8. **CONTENTS OF PROPOSAL:**
    - a) Proposals should be complete and carefully worded and should convey all of the information requested.
    - b) Proposals should be prepared simply and economically, providing a straightforward, concise description of the Vendor's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.
    - c) If Your Proposal includes any comment over and above the specific information requested in the RFP, You are to include this information as a separate appendix to Your Proposal. Proposals which include either modifications to any of the RFP's contractual requirements or a Vendor's standard terms and conditions may be deemed non-responsive and not considered for award at the Plan's discretion.
  9. **MULTIPLE PROPOSALS.** If specifically stated in the RFP document, the Vendors may submit more than one Proposal, provided that each Proposal has significant differences other than price. Each separate Proposal must satisfy all RFP requirements.
  10. **CLARIFICATION:** The Plan may elect to communicate with You after bid opening for the purpose of clarifying either Your Proposal or the requirements of the RFP. Such communications may be conducted only with the Vendors who have submitted a Proposal which obviously conforms in all material aspects to the RFP. Clarification of a Proposal must be documented in writing and included with the Proposal. Clarifications may not be used to revise a Proposal or the RFP.
  11. **ACCEPTANCE AND REJECTION:** The Plan reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the Vendor, to accept any item in the bid. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded. Regardless of error or omission, a Vendor shall not be permitted to increase its pricing after the deadline for submitting bids.
  12. **BASIS FOR REJECTION:** The Plan reserves the right to reject any and all Proposals, in whole or in part, by deeming the Proposal unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this RFP, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous

to the Plan, 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 Plan.

13. **INFORMATION AND DESCRIPTIVE LITERATURE:** The Vendor shall furnish all information requested in the RFP document. Further, if required elsewhere in this bid, each Vendor shall submit with its bid any sketches, descriptive literature, and/or complete specifications covering the goods and services offered. Reference to literature submitted with a previous bid or available elsewhere will not satisfy this provision. **Do not submit bid samples or descriptive literature unless expressly requested.** Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine Responsiveness, and will not be deemed to vary any of the provisions of the RFP. Failure to comply with these requirements shall constitute sufficient cause to reject a bid without further consideration.
14. **WITHDRAWAL OF BID OR PROPOSAL:** Proposals submitted electronically may be withdrawn at any time prior to the date for bid opening identified on the cover page of this RFP document (or such later date included in an Addendum). Proposals that have been delivered by hand, U.S. Postal Service, courier, or other delivery service may be withdrawn **only** in writing and if receipt is acknowledged by the Plan prior to the time for opening identified on the cover page of the RFP document (or such later date included in an Addendum). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after bid opening shall be allowed only for good cause shown and in the sole discretion of the Plan.
15. **COST FOR BID OR PROPOSAL PREPARATION:** Any costs incurred by the Vendor in preparing or submitting Proposals are the Vendor's sole responsibility.
16. **INSPECTION AT VENDOR'S SITE:** The Plan reserves the right to inspect, at a reasonable time, the equipment, item, plant, or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the Plan's 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.
17. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of Contract award, each Vendor that is a corporation, limited-liability company, or limited-liability partnership shall have received, and shall maintain throughout the term of the Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law.
18. **SUSTAINABILITY:** To support the sustainability efforts of the State of North Carolina we solicit Your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
  - a) If paper copies are requested, all copies of the bid are printed double sided. All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
  - b) Unless absolutely necessary, all bids and copies should minimize or eliminate use of non- recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
  - c) Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
19. **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 bid from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the bid of a Vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.

20. **INELIGIBLE VENDORS:** As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State:

- a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and
- b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81.

A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.

21. **VALID TAXPAYER INFORMATION:** All persons or entities desiring to do business with the State must provide correct taxpayer information on North Carolina specified forms.

22. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (“eVP”) allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities available as well as notifications of status changes to those Solicitations. Online registration and other purchasing information is available at the following website: <https://evp.nc.gov>.

The status of a Vendor’s E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a Contract resulting from this RFP document. Any Vendor with an E-Procurement Services account that is in arrears by 91 days or more at the time of bid opening may be suspended or deactivated, at the State’s discretion, and may be disqualified from further evaluation or consideration.

23. **TABULATIONS:** Bid tabulations can be electronically retrieved at the eVP, <https://evp.nc.gov>. Tabulations will normally be available at this web site after the bid opening and prior to award, if applicable. Lengthy or complex tabulations may be summarized, with other details not made available on eVP. Requests for additional details or information concerning such tabulations cannot be honored.

24. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the Plan will maintain the confidentiality of trade secrets that are submitted as part of each Vendor’s Proposal. However, the Plan is subject to the Public Records Act, N.C.G.S. § 132.1, *et seq.* Vendor information that cannot be shown to be, e.g., a trade secret, may be subject to public disclosure under the terms of the Public Records Act. Blanket assertions of confidentiality are not favored, but confidentiality of specific material meeting one or more exceptions in the Public Records Act will be honored.

As a condition to confidential treatment of any documents submitted during the term of this Contract, each page containing trade secret information shall be identified in boldface at the top and bottom as “CONFIDENTIAL” by Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color, or identified by 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 made in accordance with N.C.G.S. § 132-1.2. Any material labeled 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 N.C.G.S. § 132-1.2. Vendors are urged to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked confidential, it is the Vendor’s responsibility to defend the confidential status of its information; the Plan will notify the Vendor of such action and not oppose the Vendor’s effort to defend its information. When redacting portions of the Proposal as permitted by other sections of this RFP, all redactions shall be made in **BLACK** so that the redactions are easily identifiable by the Plan.

25. **COMMUNICATIONS BY VENDORS:** In submitting its bid, the Vendor agrees not to discuss or otherwise reveal the contents of its bid to any source, government or private, outside of the Plan until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the Plan, or any other representative of the Plan concerning the RFP, during the evaluation of the bids (i.e., after the public opening of the bids and before the award of the Contract), unless the Plan directly contacts the Vendor(s) for purposes of seeking Clarification or another reason permitted by the RFP. A Vendor shall not: (a) transmit to the Plan any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, or commodity; (b) identify defects, errors and/or omissions in any other Vendor’s bid 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 or award of a Contract related to this RFP. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the Plan which authorized by this RFP are permitted.

26. **INFORMAL COMMENTS:** The Plan shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the Plan during the competitive process or after award. The Plan is bound only by information provided in writing in this RFP document and in formal Addenda.
27. **PROTEST PROCEDURES:** To protest a contract award, the Vendor shall submit a written request for a protest meeting addressed to: Executive Administrator, North Carolina State Health Plan, 3200 Atlantic Avenue, Raleigh, NC 27604. The request must be received by the Plan within fifteen calendar days from the date of Contract award. The written request shall contain specific reasons for the protest, including a fulsome explanation of those reasons that permits the Plan to properly evaluate the request, and any documentation necessary to support the protest. If the request does not contain this information or if the Executive Administrator determines that a meeting would serve no purpose, then the Executive Administrator may, within thirty State Business Days from the date of receipt of the request, respond in writing to the Vendor and deny the request for a protest meeting.
- If the request for a protest meeting is granted, the Executive Administrator will attempt to schedule the meeting within thirty State Business Days after receipt of the Vendor's written request, or as soon as reasonably possible after receipt. Within ten State Business Days from the date of the protest meeting, the Executive Administrator will respond to the Vendor in writing with the Executive Administrator's decision regarding the Vendor's protest of the Contract award.
- Inclusion of this protest procedure is not intended to, and does not, waive, the Plan's exemption from Article 3 of Chapter 143 of the North Carolina General Statutes or any rules promulgated thereunder.
28. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this RFP or those in any resulting Contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP document, including any negotiated terms, (2) requirements and specifications and administration, (3) General Terms and Conditions, (4) Instructions To Vendors, (5) Pricing, and (6) Vendor's Bid.
29. **ADDENDA:** Critical updated information may be included in Addenda to the RFP. It is important that all Vendors bidding on the RFP periodically check for any Addenda that may be issued prior to the bid opening date. All Vendors shall be deemed to have read and understood all information in the RFP document and all Addenda thereto. The Vendors are also responsible for obtaining and complying with all Addenda and other changes that may be issued concerning the RFP.
30. **ORAL EXPLANATIONS NON-BINDING:** Oral explanations or instructions will not be binding. Any information given to a prospective Vendor concerning a RFP will be furnished promptly to all other prospective Vendors as an Addendum to the RFP, if that information is necessary for submitting Proposals or if the lack of it would be prejudicial to other prospective Vendors. See clause herein entitled "Duty to Inquire." The Plan will not identify You in its answer to Your question.
31. **MAXIMUM COMPETITION:** The Plan seeks to permit the maximum practicable competition. The Vendors are urged to advise the Plan, as soon as possible, regarding any aspect of this procurement, including any aspect of the RFP that unnecessarily or inappropriately limits full and open competition. If the Plan determines that any changes will be made resulting from the questions asked, then such decisions will be communicated in the form of an Addendum.
32. **FIRM PROPOSAL:** The Vendor's bid shall constitute a firm offer. By execution and delivery of a bid in response to a RFP, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposefully or inadvertently, shall have no force or effect, and will be disregarded. Any bid that contains language that indicates the bid is non-binding or subject to further negotiation before a contractual document may be signed shall be rejected.

## **ATTACHMENT C: GENERAL TERMS AND CONDITIONS**

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### **1. PERFORMANCE:**

- a) It is anticipated that the Tasks and duties undertaken by the Vendor under the Contract which results from the solicitation in this matter shall include Services as Deliverables.
- b) The Plan is authorized to access State Data provided by the Plan and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data.
- c) The Plan's right to access the Services and its associated services neither transfers, vests, nor confers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this right of access transfer, vest, or confer any title or other ownership right in any intellectual property 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 the Vendor, or its suppliers or licensors made accessible or furnished to the Plan shall be and remain the property of the Vendor or such other party, respectively. The Vendor has a limited, non-exclusive license to access and use any State Data as provided to the Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein.
- d) Except as provided herein, and unless otherwise mutually agreed in writing prior to award, any Deliverables not subject to an agreed Vendor license and provided by the Vendor in performance of this Contract shall be and remain property of the Plan. During performance, the Vendor may provide proprietary components as part of the Deliverables that are identified in this Contract. The Vendor grants the Plan a personal, permanent, non-transferable license to use such proprietary components of the Deliverables and other functionalities, as provided under this Contract. Any technical and business information owned by the 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. The Vendor agrees to perform under the Contract in at least the same or similar manner provided to comparable users and customers. The State shall notify the Vendor of any defects or deficiencies in performance or failure of Deliverables to conform to the standards and specifications provided in this Contract. The Vendor agrees to timely remedy defective performance or any nonconforming Deliverables on its own or upon such notice provided by the State.
- e) The Vendor has a limited, non-exclusive license to access and use State Data provided to the Vendor, but solely for performing its obligations under and during this Agreement and in confidence as further provided for herein or by law.

### **2. DEFAULT AND TERMINATION:**

- a) In the event of default by the Vendor, the Plan may, as provided by NC law, procure goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. See N.C.G.S. 25-2-712. In addition, and in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the Plan may immediately cease doing business with the Vendor, terminate the Contract for cause, and take action to recover relevant damages, and seek to have the Vendor debarred by the Department of Administration from doing future business with the State. See 01 NCAC 05B.1520.

If, through any cause, the Vendor shall fail to fulfill in a timely and proper manner the obligations under the Contract, including, without limitation, in these General Terms and Conditions, the Plan shall have the right to terminate the Contract by giving thirty days written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished Deliverables that are prepared by the Vendor under the Contract shall, at the option of the Plan, become the property of the Plan (and under any applicable Vendor license to the extent necessary for the Plan to use such property), and the Vendor shall be entitled to receive just and equitable compensation for any acceptable Deliverable completed (or partially completed at the Plan's option) as to which such option is exercised. Notwithstanding, the Vendor shall not be relieved of liability to the Plan for damages sustained by the Plan by virtue of any breach of the Contract, and the Plan may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the Plan from such breach can be determined. The Plan, if insecure as to receiving proper performance or provision of goods Deliverables, or if documented Vendor Services performance

issues exist, under this Contract, may require at any time a performance bond or other alternative performance guarantees from a Vendor without expense to the Plan as provided by applicable law.

- b) If this Contract contemplates deliveries or performance over a period of time, the Plan may terminate this Contract for convenience at any time by providing 60 days' notice in writing from the Plan to the Vendor. In that event, any or all finished or unfinished Deliverables prepared by the Vendor under this Contract shall, at the option of the Plan, become its property, and under any applicable Vendor license to the extent necessary for the Plan to use such property. If the Contract is terminated by the Plan for convenience, the Plan shall pay for those items or Services for which such option is exercised, less any payment or compensation previously made.

**3. INTERPRETATION, CONFLICT OF TERMS: RESERVED.**

**4. GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the goods, material, quality, workmanship, or performance of the Services offered, prior to acceptance, it shall be the responsibility of the Vendor to notify the State Contract Lead or Administrator indicated in the Contract at once, in writing, indicating the specific regulation which requires such alterations. The Plan reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.

**5. AVAILABILITY OF FUNDS:** The Vendor agrees that funding for each applicable fiscal year of the Agreement shall be subject to the General Assembly allocating the necessary funds to the Plan. In the event that the Plan does not receive funding for any subsequent fiscal year, the Plan has the right to terminate the Agreement but shall not be entitled to a refund for any prepaid funds.

**6. TAXES:** Any applicable taxes shall be invoiced as a separate item.

- a) The Plan is exempt from federal Taxes, such as excise and transportation taxes. Exemption forms submitted by the Vendor will be executed and returned by the Plan.
- b) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.

**7. SITUS AND GOVERNING LAWS:**

- a) To the extent not inconsistent with or preempted by federal law, this this Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Agreement, 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, or enforcement shall be determined by courts of the State of North Carolina. Contractor agrees and submits, solely for matters relating to this Agreement, to the jurisdiction of the courts of the State of North Carolina and stipulates that Wake County shall be the proper venue for all matters. The Plan does not consent to be sued in federal courts concerning the Agreement or matters arising therefrom and does not intend to waive its sovereign immunity by any language contained in this Agreement. At the sole discretion of the Plan, the Plan may initiate legal or equitable proceedings in any court that has subject matter jurisdiction over the matter in controversy.
- b) The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority, and including, without limitation, the applicable requirements in the Federal Funds Provisions, below.
- c) Non-resident Vendor corporations not formed under NC law must be domesticated in the Office of the NC Secretary of State in order to contract with the State of North Carolina. G.S. 55A-15-01.

**8. NON-DISCRIMINATION COMPLIANCE:** The Vendor will take necessary action to comply with all federal and state requirements concerning fair employment and employment of people with disabilities and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by federal and State law.

**9. PAYMENT TERMS:** Payment terms are net not later than 30 days after receipt of a correct invoice or acceptance of goods, whichever is later. The Plan is responsible for all payments to the Vendor under the Contract. Payment may be made by

procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor.

The Plan does not agree in advance, in contract, pursuant to Constitutional limitations, to pay costs such as interest, late fees, penalties or attorney's fees. This Contract will not be construed as an agreement by the State to pay such costs and will be paid only as ordered by a court of competent jurisdiction.

**10. INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** The Vendor shall hold and save the Plan, 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 Services or copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

- a) The Vendor warrants to the best of its knowledge that:
  - 1. Performance under the Contract does not infringe upon any intellectual property rights of any third party; and
  - 2. There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) Should any Deliverables supplied by the Vendor become the subject of a claim of infringement of a patent, copyright, trademark or a trade secret in the United States, the Vendor, shall at its option and expense, either procure for the Plan the right to continue using the Deliverables, or replace or modify the same to become non-infringing. If neither of these options can reasonably be taken in the Vendor's judgment, or if further use shall be prevented by injunction, the Vendor agrees to cease provision of any affected Deliverables and refund any sums the Plan has paid the Vendor for such Deliverables and make every reasonable effort to assist the Plan in procuring substitute Deliverables. If, in the sole opinion of the Plan, the cessation of use by the Plan of any such Deliverables due to infringement issues makes the retention of other items acquired from the Vendor under this Agreement impractical, the Plan shall then have the option of terminating the Agreement, or applicable portions thereof, without penalty or termination charge; and the Vendor agrees to refund any sums the Plan paid for unused Services or other Deliverables.
- c) The Vendor, at its own expense, shall defend any action brought against the Plan to the extent that such action is based upon a claim that the Deliverables supplied by the Vendor, their use or operation, infringe on a patent, copyright, trademark or violate a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded or agreed in a settlement against the Plan in any such action. Such defense and payment shall be conditioned on the following:
  - 1. That the Vendor shall be notified within a reasonable time in writing by the Plan of any such claim; and
  - 2. 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 Plan shall have the option to participate in such action at its own expense.
- d) The Vendor will not be required to defend or indemnify the Plan to the extent any claim by a third party against the Plan for infringement or misappropriation results solely from the Plan's material alteration of any Vendor-branded Deliverables or Services, or from the continued use of the Services or other Deliverables after receiving written notice from the Vendor of the claimed infringement.

**11. ADVERTISING:** The Vendor agrees not to use the existence of the Contract, the name of the State of North Carolina, or the name of the Plan as part of any commercial advertising or marketing of Products or Services except as provided in 01 NCAC 05B.1516. A Vendor may inquire whether the Plan is willing to be included on a listing of its existing customers.

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

- (a) During the term of this Contract—and after such term until the expiration of any relevant period required for retention of records by State law—the State Auditor; the Plan's internal auditors; the Joint Legislative Commission on Governmental Operations ("Gov Ops Commission"); and any legislative employees whose primary responsibility is to provide professional or administrative services to the Commission in furtherance of its purposes, shall have access to persons and

records related to the Contract to verify accounts and data affecting fees or performance under the Contract. 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 such retention of records 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 record retentions period, whichever is later.

(b) The Joint Legislative Commission on Governmental Operations has the authority to:

1. Study the efficiency, economy and effectiveness of any non-State entity receiving money from either the Plan or another State entity in connection with this Contract.
2. Evaluate the implementation of public policies, as articulated by enacted law, administrative rule, executive order, policy, or local ordinance, by any non-State entity money from either the Plan or another State entity in connection with this Contract.
3. Investigate possible instances of misfeasance, malfeasance, nonfeasance, mismanagement, waste, abuse, or illegal conduct by officers and employees of a non-State entity receiving, directly or indirectly, money from the Plan or from a state entity in connection with this Contract, as it relates to the officer's or employee's responsibilities regarding the receipt of money from either the Plan or another State entity in connection with this Contract.
4. Receive reports as required by law or as requested by the Commission.
5. Access and review
  - a. Any documents or records related to any contract awarded by a State agency, including the documents and records of the contractor, that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance; and
  - b. Any records related to any subcontract of a contract awarded by a State agency that is utilized to fulfill the contract, including, but not limited to (i) records related to the drafting and approval of the subcontract, and (ii) documents and records of the contractor or subcontractor that the Commission determines will assist in verifying accounts or will contain data affecting fees or performance.

(c) The Joint Legislative Commission on Governmental Operations has the power to:

1. Compel access to any document or system of records held by a non-State entity receiving, directly or indirectly, money from either the Plan or another State entity in connection with this Contract, to the extent the documents relate to the receipt, purpose or implementation of a program or service paid for with money from either the Plan or another State entity in connection with this Contract.
2. Compel attendance of any officer or employee of any non-State entity receiving money from either the Plan or another State entity in connection with this Contract, provided the officer or employee is responsible for implementing a program or providing a service paid for with money from either the Plan or another State entity in connection with this Contract.

(d) Unless prohibited by federal law, the Commission and Commission staff in the discharge of their duties under this Article shall be provided access to any building or facility owned or leased by a non-State entity receiving money from either the Plan or another State entity in connection with this Contract provided (i) the building or facility is used to implement a program or provide a service paid for with funds originating from public sources and (ii) the access is reasonably related to the receipt, purpose, or implementation of a program or service paid for with money from either the Plan or another State entity in connection with this Contract.

(e) Any confidential information obtained by the Commission shall remain confidential and is not a public record as defined in G.S. 132-1.

- (f) Any document or information obtained or produced by Commission staff in furtherance of staff's duties to the Commission is confidential and is not a public record as defined in G.S. 132-1.
- (g) A person who conceals, falsifies, or refuses to provide to the Commission any document, information, or access to any building or facility as required by this Article with the intent to mislead, impede, or interfere with the Commission's discharge of its duties under this Article shall be guilty of a Class 2 misdemeanor.

**13. ASSIGNMENT OR DELEGATION OF DUTIES:**

No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted. However, upon written request approved by the Plan and solely as a convenience to the Vendor, the Plan may:

- a) Forward the Vendor's payment check directly to any person or entity designated by the Vendor; and
- b) Include any person or entity designated by the Vendor as a joint payee on the Vendor's payment check.

In no event shall such approval and action obligate the Plan to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, the Plan may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of the Contract.

**14. INSURANCE:**

- a) **COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:
  - 1. **Worker's Compensation** – The Vendor 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 \$500,000.00, covering all of the Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the Subcontractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
  - 2. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.
  - 3. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired, and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.
- b) **REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the 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 Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

**15. GENERAL INDEMNITY:**

- a) The Vendor shall indemnify, defend and 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 the Contract, and also from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract that are attributable to the negligence or intentionally tortious acts of the Vendor, provided that the Vendor is notified in writing within 30 days from the date that the State has knowledge of such claims.
- b) The Vendor, at its own expense, shall defend any action brought against the State under this section. The State shall have the option to participate in such action at its own expense.
- c) The Vendor 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 the Vendor's deliverables or Services as part of this Contract with the State.
- d) As part of this provision for General indemnity, if federal funds are involved in this procurement, the Vendor warrants that it will comply with all relevant and applicable federal requirements and laws, and will indemnify, defend, and hold and save the State harmless from any claims or losses resulting to the State from the Vendor's noncompliance with such federal requirements or law in the performance of this Contract. The representations and warranties in the preceding two sentences shall survive the termination or expiration of the Contract.
- e) The State is precluded from indemnifying the Vendor due to constitutional restrictions. The State is also precluded from participating in arbitration, which effectively and unacceptably waives jury trial. See N.C.G.S. 22B-3, -10.

**16. ELECTRONIC PROCUREMENT: (G.S. 143-48.3)**

**GENERALLY APPLICABLE TO GOODS AND SERVICES PURCHASES:**

- a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this Contract.
- b) The Supplier Manager will capture an order from a State approved user, including the shipping and payment information, and submit the order in accordance with E-Procurement Service procedures. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State-approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of Contract, and the payment for goods delivered.
- c) The Vendor Shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. The Vendor shall be responsible for all activity and all charges by its agents or employees. The Vendor agrees not to permit a third party to use its E-Procurement Services account. If there is a breach of security through the Vendor's account, the Vendor shall immediately change its password and notify the Supplier Manager of the Security Breach by email. The Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any Security Breach.

**17. SUBCONTRACTING:** Performance under the Contract by the Vendor shall not be subcontracted without prior written approval of the Plan's Contract Administrator. Unless otherwise agreed in writing, acceptance of a Vendor's proposal shall include approval to use the Subcontractor(s) that have been specified therein.

**18. CARE OF STATE DATA AND PROPERTY:** Any State property, information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under the Contract shall be kept as confidential, used only for the purpose(s) required to perform the Contract and not divulged or made available to any individual or organization without the prior written approval of the State.

The State's data and property in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or another eventuality. The Vendor agrees to reimburse the State for loss or damage of State property while in the Vendor's custody. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement, as provided by the Business Associate Agreement executed along with this Contract.

The Vendor shall notify the State of any Security Breaches within 24 hours as required by N.C.G.S. § 143B-1379. For further information, see N.C.G.S. § 75-60 *et seq.* **Notice** is hereby given to the Vendor that the NC Department of Information Technology (DIT) has requirements relating to the security of the State network, and rules relating to the use of the State network, IT software and equipment, that the Vendor must comply with, as applicable. *See, e.g.,* N.C.G.S. § 143B-1376.

19. **OUTSOURCING:** If, after award of a Contract, and consistent with any applicable NC DIT security provisions, the Contractor wishes to relocate or outsource any portion of performance to a location outside 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 Plan in writing, prior written approval must be obtained from the Plan. The Vendor shall give notice to the Plan of any relocation of the Vendor, employees of the Vendor, Subcontractors of the Vendor, or other persons providing performance under a State Contract to a location outside of the United States.
20. **ENTIRE AGREEMENT:** The Contract (including any documents mutually incorporated specifically therein) resulting from this RFP represents the entire agreement between the Parties and supersedes all prior oral or written statements or agreements. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or state law.
21. **ELECTRONIC RECORDS:** The State will digitize all Vendor responses to the relevant solicitation, if not received electronically, as well as any awarded Contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any official electronic copy, printout, or other output readable by sight shown to reflect such record accurately shall constitute an "original."
22. **AMENDMENTS:** This Contract may be amended only by a written amendment duly executed by the Plan and the Vendor. Notwithstanding this requirement, (1) if needed or applicable, the addition of BRDs or Implementation Plans or ADMs not modifying any part of the Technical Proposal or Cost Proposal may be developed or modified in writing and signed by the Vendor's contract administrator for day-to-day activities or other individual authorized to bind the Vendor, and the Plan's Contract Administrator for day-to-day activities or other designee approved by the Plan's Executive Administrator; and (2) due dates referenced in the technical requirements and specifications as "to be determined by the Plan" will be established in writing by the Plan's Contract Administrator for day-to-day activities through either the Implementation Plan, a BRD, or an ADM. Such documents are incorporated into the Contract when signed and are given the precedence as set forth in Section 4.14 Contract Documents.
23. **NO WAIVER:** Notwithstanding any other language or provision in the Contract or in any Vendor-supplied material, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the Plan under applicable law. The waiver by the Plan of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
24. **FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations 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, other catastrophic epidemic or pandemic, natural event or Act of God.
25. **SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law. The Plan does not consent to be sued in federal court.

- 26. SEVERABILITY:** It is the intent of the Parties that the provisions of this Contract shall be enforced to the fullest extent permitted by applicable law. To the extent that the terms set forth in this Contract or any word, phrase, clause, or sentence is found to be illegal or unenforceable for any reason, such word, phrase, clause or sentence shall be modified, deleted, or interpreted in such a manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Contract, as modified, enforceable, and the balance of this Contract shall not be affected thereby, the balance being construed as severable and independent from the illegal or unenforceable provision.
- 27. RECORD RETENTION:** The Vendor shall retain all records for a minimum of six years following completion or termination of the Contract; however, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has begun before expiration of the six year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular six year period described above, whichever is later. Certain records, such as those subject to HIPAA, may have longer retention periods or require destruction sooner; therefore, any such records shall be maintained, destroyed, or disposed of in accordance with applicable law or regulation.
- 28. FALSE CLAIMS ACT:** As an agency of the State, Vendors who receive payment from the Plan are subject to the North Carolina False Claims Act, N.C.G.S. § 1-607, *et seq.* Vendors who knowingly submit false claims or intentionally misrepresent information in order to receive funds from the Plan may be liable under the North Carolina False Claims Act. If it comes to the Plan's attention that a Vendor may have violated the North Carolina False Claims Act to obtain funds from the Plan, the Plan will refer the matter to the North Carolina Department of Justice for investigation and appropriate resolution, including prosecution if necessary to recover any funds wrongly received. The Vendor agrees that by entering this Agreement and receiving payment from the Plan, it is subject to and will comply with the North Carolina False Claims Act. The Vendor also agrees that it will comply with any Civil Investigative Demands properly issued by the Attorney General under N.C.G.S. § 1-614 to investigate any potential violations of the North Carolina False Claims Act.

## ATTACHMENT D: CUSTOMER REFERENCE TEMPLATE

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**Instructions:** The Vendor shall use this template to submit three (3) customer references with its offer.

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

Name of Customer Organization:	
Customer Reference Name:	
Customer Reference Address:	
Customer Reference Email:	
Start Date:	
End Date:	
Explanation of contract, service agreement, or type of products and quantity provided to the organization:	

**ATTACHMENT E: LOCATION OF WORKERS UTILIZED BY VENDOR**

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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 the Contract.

The Vendor shall complete items 1 and 2 below.

**1. Will any work under this Contract be performed outside of the United States?**       YES    NO

If "YES":

a) List the location(s) outside of the United States where work under the Contract will be performed by the Vendor, any Subcontractors, employees, or any other persons performing work under the Contract.

b) Specify the manner in which the resources or workers will be utilized:

**2. Where within the United States will work be performed?**

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**NOTES:**

1. The State will evaluate the additional risks, costs, and other factors associated with the utilization of workers outside of the United States prior to making an award.
2. The Vendor shall provide notice in writing to the State of the relocation of the Vendor, employees of the Vendor, Subcontractors of the Vendor, or other persons performing services under the Contract to a location outside of the United States.
3. All Vendor or Subcontractor 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.

## ATTACHMENT F: CERTIFICATION OF FINANCIAL CONDITION

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: \_\_\_\_\_ (If no audit within past 18 months, explain reason below.)

- 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 shall constitute a continuing certification, and the Vendor shall notify the Plan’s Contract Manager and Contract Administrator within 30 days of any material change to any of the representations made herein.

**If any one or more of the foregoing boxes is NOT checked, the Vendor shall explain the reason(s) in the space below. Failure to include an explanation may result in the Vendor being deemed non-responsive and its submission rejected in its entirety.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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

**ATTACHMENT G: PROPOSAL SUBMISSION INFORMATION**

Vendor Name:

Street Address:

City, State, Zip Code:

Telephone Number:

**AUTHORIZED REPRESENTATIVES TO BIND THE VENDOR:**

List individuals with authority to bind the Vendor in connection with this Contract and future contractual documents.

Name:	Title:	Telephone:	Email:
Name:	Title:	Telephone:	Email:
Name:	Title:	Telephone:	Email:

**AUTHORIZED REPRESENTATIVE TO RESPOND TO QUESTIONS:**

List individual with the authority to answer questions and provide Clarifications concerning the Vendor's Proposal.

Name:	Title:	Telephone:	Email:

By signing below: You hereby certify that You have the authority to sign on behalf of the Vendor named above and acknowledge that if this Contract is awarded to Your entity, the responses included in this Proposal Submission will become a binding portion of the Contract as described herein.

Print name:	Title:
The Vendor's authorized signature:	Date:

## **ATTACHMENT H: HIPAA QUESTIONNAIRE**

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As a covered entity, it is the responsibility of the North Carolina State Health Plan (“Plan”) to ensure its Members’ health information is protected from uses and disclosures not allowed under the Health Insurance Portability and Accountability Act (“HIPAA”), as well as applicable state and federal laws. The Plan takes this responsibility very seriously.

The purpose of this HIPAA Questionnaire is to allow the Plan to evaluate the HIPAA compliance of a prospective or current vendor who may request or require Member data containing Protected Health Information (“PHI”). As a threshold to being considered to do business with the Plan, the Vendor must demonstrate that it meets the Plan’s expectations for HIPAA compliance. The information provided below will be used by the Plan to determine the Vendor’s level of understanding of HIPAA privacy and security rules, as well as its compliance status.

The Vendor is encouraged to thoroughly respond to all questions to the best of its ability and provide copies of all requested documentation. The Plan encourages the Vendor to have its privacy officer or other compliance specialist complete this questionnaire. Any incomplete responses may negatively impact the Plan’s evaluation of the Vendor’s HIPAA compliance, including a determination that the Vendor does not meet the Plan’s expectations.

All responses must be typed. Handwritten responses will not be accepted.

If the Vendor maintains that any information contained in requested documentation is proprietary or otherwise confidential, the Vendor may redact these portions and supply the un-Redacted portions for review.

### **Vendor Information**

Company name:

Address (city, state, and zip code):

Website URL:

Name of person completing form, and role:

Email address:

Phone number:

Fax number:

HIPAA compliance person’s name, title, phone number, and email address, if different than person completing form:

Date You are completing this form:

Proposal Number: 270-20250414MCA

Vendor: \_\_\_\_\_

*\*\* Please note that You must update the contact information provided in this questionnaire within 30 days of any change in personnel. \*\**

**For all questions, if more detail is needed than the space provided allows for, please attach a separate page.**

**Compliance Questionnaire**

1. Details of the individual responsible for HIPAA Compliance (if this designated position does not exist, provide the details of the employee who typically handles HIPAA privacy and security issues within Your company or organization).  
Name:  
Title:  
Address:  
Phone number:  
E-mail address:  
Certification designation (e.g., CHC, CISSP, CIPP, CHP, CHPSE, etc.):  
Date of certification:
  
2. If the person responsible for HIPAA compliance does not have a certification, provide detailed information regarding training that has been provided to this person (e.g., date last received training, name of company or person that provided training, etc.).

**Employee HIPAA Training**

3. Which employees receive HIPAA training? How frequently is this training refreshed?
  
4. Do all the above employees receive comprehensive training (i.e. training which covers the privacy and security of PHI; both physical and technical)? Yes  No 
  - a. If no, provide details of the level of training made available to employees.
  
5. When was HIPAA training last updated? When is the next planned update?
  
6. Are there internal HIPAA privacy policies and procedures in place which govern the privacy practices of the organization and its employees? Yes  No
  
7. Attach a copy of all internal/employee-facing privacy policies and procedures.
  - a. Note when the privacy policies were last reviewed or updated:
  
8. Are employees trained on the privacy policies and procedures? Yes  No
  
9. Are employees required to sign an agreement stating they have read and understand the privacy policies and procedures? Yes  No
  
10. Are there internal HIPAA security policies and procedures in place which govern the security practices of the organization and its employees? Yes  No
  
11. Attach a copy of all internal/employee-facing security policies and procedures.
  - a. Note when the security policies were last reviewed or updated:
  
12. Are employees trained on the security policies and procedures? Yes  No



25. Does the company have in place procedures for the destruction of PHI compliant with the standards set forth in NIST Special Publication 800-88 Revision 1 (or most recent update) located at:

<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf?>

Yes  No

a. If yes, please describe the procedure for that destruction.

**Subcontractor Information**

26. Do You outsource work to Subcontractors who would have access to Plan Data and PHI and who may qualify as Business Associates as defined by HIPAA? Provide the names of the companies, contact information, and details of what they are contracted to do.

27. Have You entered into Business Associate Agreements (BAAs) with all Subcontractors who may qualify as Business Associates to Your company or the Plan for this work? If yes, provide copies of the executed BAA(s).

28. How do You enforce and monitor HIPAA policies with Subcontractors and Business Associates? What penalties or fixes are in place for violations?

29. Have You conducted an audit of any Subcontractors or Business Associates? Can You provide information as to whether they are currently compliant with HIPAA?

**Emergency/Contingency Plans**

30. Describe the company’s disaster recovery plan for data backup, data recovery, and system testing should a disaster occur (e.g., flood, fire, or system failure).

a. Provide the details of any incident that has required activating the disaster recovery plan within the last two years, and any changes to the plan that were made as a result.

31. Describe the company’s business continuity plan in the event of a disaster (e.g., flood, fire, power failure, system failure).

a. Provide the details of any incident that that has required activating the business continuity plan within the last two years.

*I hereby certify that the information provided above and attached hereto is true and correct to the best of my knowledge and belief.*

\_\_\_\_\_  
**Name (Type)**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

## **ATTACHMENT I: BUSINESS ASSOCIATE AGREEMENT**

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This Business Associate Agreement (“BAA”) is entered into between the North Carolina State Health Plan for Teachers and State Employees (“Plan”), a division and Covered Healthcare Component of the North Carolina Department of State Treasurer (“DST”), and [INSERT NAME OF ENTITY] (hereinafter “Contractor”), individually referred to as a “Party” or collectively as the “Parties.” This BAA is effective when signed by the Parties and, except as otherwise required, shall remain in effect for the term of the Contract, including any extensions or renewals.

### **BACKGROUND**

Sections 261 through 264 of the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the United States Department of Health and Human Services (“DHHS”) to develop standards to protect the security, confidentiality, and integrity of health information. 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 (Pub. L. 111-5)) amended the Administrative Simplification provisions. Pursuant to the Administrative Simplification provisions, the Secretary of DHHS (“Secretary”) issued regulations codified at 45 C.F.R. Parts 160 and 164 (the “HIPAA Rules”), which were further amended by the Omnibus Final Rule (78 Fed. Reg. 5566) (hereinafter, the Administrative Simplification provisions, HITECH, such rules, amendments, and modifications, including any that are subsequently adopted, will be collectively referred to as “HIPAA”).

The Plan, a division of DST, is a health benefit plan which, standing alone, would be a covered entity under HIPAA. DST also includes several other divisions that do not qualify as covered entities and whose functions are not regulated by HIPAA; therefore, DST has designated itself as a “Hybrid Entity.” The Parties wish to enter into an agreement through which Contractor will provide certain services and/or Products to the Plan. The Parties believe that pursuant to that agreement, the relationship between Contractor and the Plan is such that Contractor is or may be a Business Associate as defined by the HIPAA Rules.

The Parties therefore enter this BAA to protect Plan Member information in accordance with the HIPAA Privacy and Security Rules. The Parties enter into this BAA with the intent to comply with HIPAA provisions that allow: 1) a Covered Healthcare Component of a Hybrid Entity (the Plan) to disclose Protected Health Information (“PHI”) to a Business Associate; and 2) a Business Associate (i.e., Contractor) to create, maintain, transmit, or receive PHI on behalf of the Plan after the Plan obtains satisfactory assurances that Contractor will appropriately safeguard the information.

The Parties agree as follows:

## I. GENERAL TERMS AND CONDITIONS

- A. **Definitions**: Except as otherwise defined herein, any and all capitalized terms or abbreviations of capitalized terms in this BAA shall have the definitions set forth by HIPAA. In the event of an inconsistency between the provisions of this BAA and mandatory provisions of HIPAA, HIPAA shall control. Where provisions of this BAA are different from those mandated by HIPAA, but are nonetheless permitted by HIPAA, the provisions of this BAA shall control.
- B. **Ambiguous Terms**: In case of ambiguous, inconsistent, or conflicting terms within this BAA, such terms shall be resolved to allow for compliance with HIPAA.
- C. **Application of Civil and Criminal Penalties**: Contractor acknowledges that it is subject to 42 U.S.C. §§ 1320d-5 and 1320d-6 in the same manner as such sections apply to a Hybrid Entity, to the extent that Contractor violates §§ 13401(a), 13404(a), or 13404(b) of the HITECH Act and 45 C.F.R. § 164.502(e) and 164.504(e). Furthermore, Contractor is liable for the acts of its own Business Associates under 45 C.F.R. § 160.402(c), who are considered Subcontractors when they have access to Plan PHI.
- D. **Assignment**: Contractor shall not assign or transfer any right or interest in this BAA. Any attempt by Contractor to assign or transfer any right or interest in this BAA is void and has no effect.
- E. **Forum**: The laws of the State of North Carolina shall govern this BAA and any and all interpretations of this BAA. The venue for any claim, demand, suit, or cause of action shall be in the state and federal courts located in North Carolina.
- F. **Hybrid Entity**: HIPAA defines a Hybrid Entity as one that uses or discloses PHI for only a part of its business operations. DST has taken the designation of a Hybrid Entity because it includes the Plan as a division. In addition to the Plan, the Covered Health Components of DST include: the Office of State Treasurer; the Information Technology Division; and the Financial Operations Division.
- G. **Indemnification**: Any Breaches of HIPAA or this BAA shall be subject to the indemnification clause found in the “General Terms and Conditions” of the Contract.
- H. **Regulatory References**: Any reference in this BAA to a federal or state statute or regulation (whether specifically or generally) means that statute or regulation which is in effect on the date of any action or inaction relating to the BAA section which refers to such statute or regulation.
- I. **Stricken Provisions**: In the event any portion of this BAA is determined by a court or other body of competent jurisdiction to be invalid or unenforceable, that portion alone will be deemed void, and the remainder of the BAA will continue in full force and effect.
- J. **Termination of BAA**: Except as otherwise provided below, either Party shall have the right to terminate the Contract if either Party determines that the other Party has violated any material term of this BAA. Upon either Party’s belief of a material breach of this BAA by the other Party, the non-breaching Party:
1. Shall give written notice of its belief that a material breach has occurred within a reasonable time after forming that belief. The non-breaching Party shall provide a reasonable opportunity for the

breaching Party to cure the breach or end the violation and, if the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party, the non-breaching Party may exercise such rights as are specified in the Contract; or

2. May immediately exercise such rights as are specified in the Contract if the breaching Party has breached a material term of this BAA and cure is not possible; or
3. Shall report the violation to the Secretary of DHHS if neither termination nor cure is possible. The Plan shall abide by federal reporting regulations.

## **II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- A. Contractor acknowledges and agrees that all PHI created, maintained, transmitted, received, or used by Contractor in relation to the Contract shall be subject to this BAA. This obligation to protect Plan Member privacy and to keep such PHI confidential survives the termination, cancellation, expiration, or other conclusion of the BAA as set forth below.
- B. Contractor agrees it is aware of and will comply with all provisions of HIPAA that are directly applicable to Business Associates.
- C. Contractor shall use or disclose any PHI solely as would be permitted by HIPAA if such use or disclosure were made by Covered Entity: (1) for meeting its obligations as set forth in the Contract, or any other agreements between the Parties evidencing their business relationship; or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this BAA, the Contract (if consistent with this BAA and HIPAA), or HIPAA. All such uses and disclosures shall be subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and 45 CFR § 164.502(b) regarding the minimum necessary requirements.
- D. Contractor shall develop, document, implement, maintain, and use appropriate administrative, physical, and technical safeguards to prevent unauthorized use or disclosure of PHI, and to protect the integrity, availability, and confidentiality of that PHI. The safeguards that Contractor implements shall meet the requirements set forth by DHHS including, but not limited to, any requirements set forth in HIPAA and North Carolina state law as applicable.
- E. Contractor shall implement security policies and procedures and provide the Plan’s HIPAA Privacy Officer (“PO”) with a copy of such.
- F. Contractor agrees that if it enters into an agreement with any agent or Subcontractor, under which PHI could or would be disclosed or made available to the agent or Subcontractor, Contractor shall have an appropriate BAA that conforms to applicable law and is consistent with this BAA. The terms of a BAA that Contractor enters into with its agent or Subcontractor shall meet or exceed the protections of this BAA. The BAA shall be in place with the agent or Subcontractor before any PHI is disclosed or otherwise made available to the agent or Subcontractor.
- G. Contractor shall disclose to the Plan a list of any and all agents or Subcontractors who will have access to or use of PHI on behalf of the Contractor for the benefit of the Plan. These disclosures shall be made

prior to or upon signing this BAA. Any subsequent changes or additions to this list must be approved in writing by the Plan prior to any new agent or Subcontractor being provided access to PHI on behalf of the Plan.

- H. If Contractor provides PHI created, maintained, transmitted, or received by the Plan to any agent or Subcontractor, the agent or Subcontractor shall agree that with respect to such information, the same or greater restrictions and conditions that apply through this BAA to Contractor shall also apply to the agent or Subcontractor.
- I. Contractor shall obtain and document “satisfactory assurances” of any agent or Subcontractor to whom it provides PHI on behalf of the Plan through a written contract or other agreement with Contractor that meets the requirements of 45 C.F.R. § 164.504(e).
- J. Contractor agrees that if and to the extent it conducts in whole or part Standard Transactions on behalf of the Plan, Contractor shall comply, and shall require any and all agents or Subcontractors involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Parts 160 and 162 and the HITECH Act as if they were the Plan. Contractor shall not enter into (or permit its agents or Subcontractors to enter into) any trading partner contracts in connection with the conduct of Standard Transactions for or on behalf of the Plan that:
  - 1. Changes the definition, data condition, or use of data element or segment in a Standard Transaction;
  - 2. Adds any data element or segment to the maximum defined data set;
  - 3. Uses any code or data element that is marked “not used” in the Standard Transaction’s implementation specification or is not in the Standard Transaction’s implementation specification;  
or
  - 4. Changes the meaning or intent of the Standard Transaction’s implementation specification.
- K. If Contractor receives a request for access to inspect or obtain a copy of PHI in a Designated Record Set from a Plan Member or representative of the Plan Member, Contractor shall alert the Plan of such request within three business days. At the request of the Plan and in a reasonable time and manner, Contractor shall provide access to PHI in a Designated Record Set (to the extent Contractor maintains PHI in a Designated Record Set) to the Plan, or (as directed by the Plan) to an individual or an individual’s personal representative, for inspection and copy in order to meet obligations under 45 C.F.R. § 164.524. This paragraph applies only to PHI that is in Contractor’s care, custody, or control.
- L. At the request of the Plan or an individual or that individual’s Personal Representative and in the time and manner requested, Contractor shall make any amendment(s) to PHI in a Designated Record Set (to the extent Contractor maintains PHI in a Designated Record Set) that the Plan directs or agrees to pursuant to 45 C.F.R. § 164.526. This paragraph applies only to the PHI that is in Contractor’s care, custody, or control.
- M. Contractor agrees that the Plan shall have the right to audit its policies, procedures, and practices related to the use and disclosure of the Plan’s PHI.

- N. Contractor shall provide the Plan with copies of all policies, procedures, and practices related to the use and disclosure of Plan PHI prior to or upon execution of this BAA.

### **III. BREACH NOTIFICATION REQUIREMENTS**

- A. Upon discovery by Contractor of a suspected or actual Breach of Unsecured PHI, Contractor must notify the Plan's PO, in writing, within three business days. For purposes of this section, "discovery" means having obtained knowledge in any manner from any source and in any form, including from an agent or Subcontractor. This notice does not need to be a final report but must inform the Plan's PO of an approximate number of individuals affected by the Breach, whether there is an ongoing risk of improper disclosure, and what steps are being taken to mitigate the Breach and/or ongoing risk of disclosure. See "Exhibit A" for the contact information for the Plan's PO.
- B. Contractor is not required to report Unsuccessful Security Incidents. For purposes of this BAA, an "Unsuccessful Security Incident" is defined as a ping or other broadcast attack on Contractor's firewall, a port scan, an unsuccessful log-on attempt, a denial of service attack, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, use, or disclosure of PHI.
- C. Upon discovery of an acquisition, access, use, or disclosure of PHI not authorized by the HIPAA Rules, Contractor shall conduct any risk assessment necessary to determine whether such acquisition, access, use, or disclosure was a Breach and whether notification is required. Contractor will maintain any related records in accordance with Contractor's internal policies and procedures and the applicable provisions of the Breach Notification Rule as interpreted by Contractor. The risk assessment must consider the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; the unauthorized person who used the PHI or to whom the disclosure was made; whether the PHI was actually acquired or viewed; and the extent to which the risk to the PHI has been mitigated. The risk assessment must be thorough, conducted in good faith, and reach a reasonable conclusion. Contractor shall provide the Plan with a final signed copy of the risk assessment or report within three business days of its completion, no later than ten business days after discovery of the unauthorized acquisition, access, use, or disclosure (unless otherwise agreed to by the Plan's PO).
- D. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BAA or HIPAA.
- E. Contractor shall submit a formal report to the Plan's PO without unreasonable delay, but no later than ten business days after discovery. The formal report shall include, to the extent possible, the following:
1. A brief description of what happened (identify the nature of the non-permitted use or disclosure), including the date of the Breach, the date of the discovery of the Breach, and the date the Breach was reported to the Contractor's Privacy Officer;
  2. A description of the nature of the Unsecured PHI that was involved in the Breach (e.g., Plan Member's full name, Social Security number, date of birth, home address, account number, etc.);
  3. Identify who made the non-permitted use or disclosure;
  4. Identify the recipient(s) of the non-permitted use or disclosure;

5. A description of what Contractor did or is doing to investigate the Breach;
  6. A description of what Contractor did or will do to mitigate risks, harmful effects, and losses of the non-permitted use or disclosure;
  7. Identify what corrective action Contractor took or will take to prevent and protect against further Breaches;
  8. Identify the steps Plan Members should take to protect themselves from potential harm resulting from the Breach;
  9. Contact procedures for Plan Members to ask questions of or learn additional information from the Contractor, which shall include a toll-free telephone number, e-mail address, Web site, or postal address; and
  10. Provide such other information related to the Breach as the Plan may reasonably request.
- F. If Contractor determines that a Breach of Unsecured PHI has occurred, Contractor shall provide written notice, on behalf of the Plan, without unreasonable delay, but no later than thirty calendar days following the date the Breach of Unsecured PHI is or reasonably should have been discovered by Contractor, or such later date as is authorized under 45 C.F.R. § 164.412, to:
1. each individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed as a result of the Breach;
  2. the media, to the extent required under 45 C.F.R. § 164.406; and
  3. the Secretary, to the extent required under 45 C.F.R. § 164.408.
- G. Contractor shall send notices to individuals using the last known address of the individual on file with Contractor unless the individual has agreed to electronic notice as set forth in 45 C.F.R. § 164.404. If the notice to any individual is returned as undeliverable, Contractor shall alert the Plan, and take such action as is required by the Breach Notification Rule.
- H. Contractor shall be responsible for the drafting, content, form, and method of delivery of each of the notices required to be provided by Contractor under this section. Contractor shall comply, in all respects, with 45 C.F.R. § 164.404 and any other applicable notification provisions of the Breach Notification Rule, including without limitation 45 C.F.R. Part 164 Subpart D, Section 13402 of the HITECH Act, and applicable state law, as interpreted by Contractor.
- I. Contractor's notices must be reviewed and approved by the Plan's PO before being sent to Plan Members, published to the media, or otherwise made public to any person or entity that is not a Party to this BAA.
- J. Any notices required to be delivered by Contractor shall be at the expense of Contractor.
- K. Contractor shall provide to the Plan or an individual, in the reasonable time and manner requested by the PO, information collected in accordance with Section III of this BAA, to permit the Plan to respond

to a request by an individual or that individual's Personal Representative for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

- L. Contractor shall provide the Plan with an annual report of all suspected or actual Breaches of Unsecured PHI by Contractor, and by any agent or Subcontractor of Contractor within sixty days of January 1 of the year following the Breaches.

**IV. ACCOUNTING FOR DISCLOSURES AND SALE OF DATA**

- A. If applicable, Contractor shall comply with the HITECH Act provisions regarding accounting for disclosures of PHI and Electronic Health Records ("EHR").
- B. Contractor shall comply with the prohibition on the sale of PHI and EHR set forth in 42 U.S.C. § 17935(d).
- C. Contractor shall not sell PHI or any derivation thereof, including deidentified data, without the express written approval of the Plan.
- D. Contractor shall use and disclose PHI for Marketing purposes only as expressly directed by the Plan, and in accordance with 42 U.S.C. § 17936(a).
- E. Contractor agrees that the Plan shall review all Marketing materials given to, prepared, or assembled by Contractor prior to its disclosure in order to meet obligations under the HITECH Act, Title XIII, Subtitle D, Section 13406, and 45 C.F.R. §§ 164.501, 164.508, and 164.514.

**V. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

- A. Except as otherwise limited in this BAA, Contractor may use or disclose PHI on behalf of, or to provide services to, the Plan as described in RFP # 270-20250414MCA, Medical Claims Audit – Operation Services.
- B. Except as otherwise limited in this BAA, Contractor may use PHI for the proper management and administration of the Contract or to carry out the legal responsibilities of Contractor. Contractor may use or disclose PHI as required by law.
- C. Including all disclosures permitted or required by law, any use or disclosure of PHI or data derived from PHI (including De-Identified Data and Limited Data Sets) not related to the Contractor fulfilling its obligations to the Plan under the Contract shall be reported to the Plan in writing within thirty days. Such notice shall include information about what data was used or disclosed, for what purpose the data was used or disclosed, the date(s) the data was used or disclosed, and any other information reasonably requested by the Plan.
- D. Except as otherwise limited in this BAA, Contractor may disclose PHI for the proper management and administration of the Contract; if disclosures are required by law; or if Contractor obtains reasonable assurances by means of a written agreement from the person or entity to whom the information is disclosed that it shall remain confidential and be used or further disclosed only as required by law or

for the purpose for which it was disclosed to the entity. The person or entity must notify Contractor of any instances it is aware of that the confidentiality of the information has been Breached.

- E. To the extent provided for under the Contract, and except as otherwise limited in this BAA, Contractor may use PHI to provide Data Aggregation services to the Plan as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- F. Contractor may use PHI to report violations of law to appropriate federal and state authorities, as permitted by 45 C.F.R. § 164.502(j)(1).
- G. Contractor shall make its internal practices, books, and records—including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted, or received by Contractor on behalf of the Plan—available to the Plan, or to the Secretary, in a time and manner requested or designated by the Secretary or the Plan, for purposes of determining the Plan’s and Contractor’s compliance with HIPAA.
- H. If an individual or an individual’s personal representative requests an accounting of disclosures of PHI (in accordance with 45 C.F.R. § 164.528), Contractor shall provide documentation of disclosures of PHI (and information related to such disclosures) in the same manner as would be required of the Plan. Contractor shall alert the Plan of any such request within ten business days of its receipt.
- I. As required by 45 C.F.R. § 164.502(b), Contractor shall limit the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request if performing any function or act on behalf of the Plan.
- J. Contractor shall be in compliance with the HIPAA minimum necessary provision, 45 C.F.R. § 164.502, if it limits its uses, disclosures, or requests of PHI to a limited data set to the extent practicable or, if needed, to the minimum necessary to accomplish an intended purpose.
- K. The Minimum Necessary Standard does not apply to such uses, disclosures, and requests set forth in 45 C.F.R. § 164.502(b)(2).
- L. Contractor is prohibited from receiving direct or indirect remuneration (subject to certain enumerated exceptions) in exchange for any PHI of a Plan Member, unless a valid authorization has been obtained from the Plan Member in accordance with 45 C.F.R. § 164.508. A valid authorization includes, in accordance 45 C.F.R. § 164.508, a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Plan Member.

## **VI. OBLIGATIONS OF THE PLAN**

- A. The Plan shall notify Contractor of any limitation(s) in the Plan’s notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Contractor's use or disclosure of PHI.
- B. The Plan shall notify Contractor of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Contractor's use or disclosure of PHI.

- C. The Plan shall notify Contractor of any restriction to the use or disclosure of PHI that the Plan has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
- D. The Plan shall not request that Contractor use or disclose PHI in any manner that would be impermissible by the Plan under HIPAA, except to the extent that this BAA and the Contract permit Contractor to use PHI to provide Data Aggregation services to the Plan.

**VII. TRANSITION, RETENTION, AND DESTRUCTION OF RECORDS AND DATA**

- A. **Transition of Records and Data:** Upon termination, cancellation, expiration, or other conclusion of the Contract, Contractor shall assist the Plan, upon written request, in transitioning all PHI to the Plan or other entity designated by the Plan in a format determined by the Plan.
- B. **Retention, Destruction, and Return of non-PHI Records and Data:** Contractor and its agents or Subcontractors shall retain all documentation, including documentation in electronic form, required under 45 C.F.R. § 164.530(j)(1) for a minimum of six years from the date of its creation or the date when it last was in effect, whichever is later, as required by 45 C.F.R. § 164.530(j)(2). However, the records may not be destroyed if audits or litigation are pending or reasonably anticipated.
- C. **Return or Destruction of PHI:** Within a reasonable time after termination, cancellation, expiration, or other conclusion of the Contract, Contractor and its agents or Subcontractors shall:
  - 1. Return to the Plan or destroy any and all PHI, in whatever form or medium (including any electronic medium under Contractor's and its agents' or Subcontractors' custody or control), that Contractor and its agents or Subcontractors created or received while carrying out a function on behalf of the Plan. Such return or destruction shall occur within a reasonable time period after the termination, cancellation, expiration, or other conclusion of the Contract as agreed to by the Parties. If the Parties cannot mutually agree upon a reasonable time period for such return or destruction, Contractor and its agents or Subcontractors shall return or securely destroy all Plan PHI no later than 90 days after the termination, cancellation, expiration, or other conclusion of the Contract. The Plan will communicate such time period to Contractor in a Contract closeout letter.
    - a. **Guidelines for Destruction:** Contractor and its agents or Subcontractors shall destroy PHI in accordance with the approved methods outlined by the National Institute of Standards and Technology (NIST) Special Publication 800-88 Revision 1, or the most current subsequent update.
    - b. **Certificate of Data Sanitization:** No later than thirty days after all PHI has been destroyed, an authorized representative of Contractor and its agents or Subcontractors with knowledge of the data destruction shall complete, sign, and return to the Plan an attestation of destruction supplied by the Plan. Contractor shall return the signed attestation by email to the Senior Manager of Contracting, or designee.

**VIII. SECURITY OF PHI**

- A. Contractor shall comply with the provisions of 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 relating to implementation of administrative, physical, and technical safeguards with respect to Electronic PHI in the same manner that such provisions apply to a HIPAA Covered/Hybrid Entity.
- B. Contractor shall obtain security-related written assurances from HIPAA covered Subcontractors by way of business associate agreements conforming to applicable law and consistent with the terms under this BAA.
- C. Contractor shall implement and maintain policies and procedures for compliance with the Security Rule.
- D. Contractor shall follow all documentation and maintenance requirements under the Security Rule.
- E. Contractor shall also comply with any additional security requirements contained in the HITECH Act that are applicable to a HIPAA Covered/Hybrid Entity.

**IX. SURVIVAL OF OBLIGATION TO PROTECT PHI**

- A. If return or destruction of any PHI is not feasible after termination, cancellation, expiration, or other conclusion of the Contract, Contractor shall extend the protections of this BAA to the PHI retained, and limit its further use or disclosure of such PHI to those purposes that make return or destruction of that information infeasible.
- B. Contractor shall Sign an attestation as to why the PHI cannot be returned or destroyed, and affirm in writing that the protections of this BAA will be indefinitely extended to the retained PHI.
- C. If destruction of the retained PHI occurs at any point after Contractor has stated that return or destruction of PHI is not feasible, Contractor shall provide the Plan with an attestation of destruction which will include the date(s) of destruction, method(s) of destruction, and the reason(s) for destruction.

**[SIGNATURE PAGE FOLLOWS]**

The Plan and Contractor have executed this Business Associate Agreement in two originals, one of which is retained by Contractor, and one by the Plan.

**North Carolina State Health Plan for Teachers and State Employees**

By: Thomas Friedman

Signature: \_\_\_\_\_

Title: Executive Administrator

Date: \_\_\_\_\_

**[INSERT NAME OF CONTRACTOR]**

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT J: ADMINISTRATORS FOR THE CONTRACT, HIPAA COMPLIANCE OFFICER, AND INFORMATION SECURITY OFFICER**

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The persons identified below are the persons to whom notices provided for in this Contract shall be given and to whom matters relating to administration or interpretation of this Contract shall be addressed. Either Party may change its administrator or his or her address and telephone number by written notice to the other Party.

**a) The Plan's Contract Administrator for day-to-day activities, Contract Manager for all contractual issues, HIPAA Compliance Officer, and Information Security Officer are listed below:**

North Carolina State Health Plan Contract Administrator regarding day-to-day activities described herein:

Greg Moore, Senior Manager, Plan Operations  
North Carolina State Health Plan for Teachers and State Employees  
3200 Atlantic Avenue  
Raleigh, NC 27604  
Phone: (919) 814-4438  
Email: [Greg.Moore@nctreasurer.com](mailto:Greg.Moore@nctreasurer.com)

North Carolina State Health Plan Contract Manager for all contractual issues listed herein:

Kimberly Alston, Contracting Agent  
North Carolina State Health Plan for Teachers and State Employees  
3200 Atlantic Avenue  
Raleigh, NC 27604  
Phone (919) 814-4429  
Email: [Kimberly.Alston@nctreasurer.com](mailto:Kimberly.Alston@nctreasurer.com)

North Carolina State Health Plan HIPAA Compliance Officer for all privacy related matters herein:

Aaron Vodicka, Director of Contracting and Compliance  
North Carolina State Health Plan for Teachers and State Employees  
3200 Atlantic Avenue  
Raleigh, NC 27604  
Phone (919) 836-6522  
Email: [Aaron.Vodicka@nctreasurer.com](mailto:Aaron.Vodicka@nctreasurer.com)

North Carolina Department of State Treasurer Information Security Officer for all data security related matters herein:

Renee Bourget, Information Security Manager  
North Carolina Information Technology Division  
3200 Atlantic Avenue  
Raleigh, NC 27604  
Phone (919) 266-3925  
Email: [Renee.Bourget@nctreasurer.com](mailto:Renee.Bourget@nctreasurer.com)

**b) Vendor’s contract administrator for day-to-day activities, contract manager for all contractual issues, HIPAA Compliance Officer, and Information Security Officer are listed below:**

Vendor’s contract administrator regarding day-to-day activities herein:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Vendor’s contract manager for all contractual issues listed herein:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Vendor’s HIPAA Compliance Officer for all privacy related matters herein:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Vendor’s Information Security Officer for all data security related matters herein:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_