

**REQUEST FOR APPLICATIONS**

RFA Posted	12/07/2020		
Questions Due	01/11/2021		
Applications Due	02/26/2021		
Anticipated Notice of Award	03/26/2021		
Anticipated Performance Period	07/01/2021-06/30/2023		
Service	State Tobacco Enforcement and Education		
Issuing Agency	NC Department of Health and Human Services (NC DHHS), Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS)		
E-mail Applications and Questions to	Christopher Drew	Email	Christopher.Drew@dhhs.nc.gov

**THIS REQUEST FOR APPLICATIONS (RFA)** advertises the Division’s need for the services described herein and solicits applications offering to provide those services pursuant to the specifications, terms and conditions specified herein. All applications received shall be treated as offers to contract. If the Division decides to accept an application, an authorized representative of the Department will sign in the space provided below. Acceptance shall create a contract that is effective as specified below.

**THE UNDERSIGNED HEREBY SUBMITS THE FOLLOWING APPLICATION AND CERTIFIES THAT:** (1) he or she is authorized to bind the named Contractor to the terms of this RFA and Application; (2) the Contractor hereby offers and agrees to provide services in the manner and at the costs described in this RFA and Application; (3) this Application shall be valid for 60 days after the end of the application period in which it is submitted.

**To Be Completed by Contractor:**

Contractor Name:	Catchment Area # (see p.5):
Contractor’s Street Address:	E-Mail Address:
City, State & Street Address Zip:	Telephone Number:
Name & Title of Authorized Representative:	DUNS Number:
Signature of Authorized Representative:	Date:

**Unsigned or Incomplete Applications Shall Be Returned Without Being Reviewed**

**NOTICE OF AWARD/FOR NC DHHS USE ONLY:** Application accepted and Contract # \_\_\_\_\_ awarded on \_\_\_\_\_. The Contract shall begin on \_\_\_\_\_ and shall terminate on \_\_\_\_\_.

By: \_\_\_\_\_  
 Signature of Authorized Representative      Printed Name of Authorized Representative      Title of Authorized Representative

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## **1.0 INTRODUCTION**

The North Carolina Department of Health and Human Services (DHHS), on behalf of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS), is soliciting applications from organizations (public, private non-profit, or private for-profit) to assist with technical assistance and evaluating state tobacco enforcement processes for the next two years from **07/01/2021-06/30/2022 and 07/01/2022-06/30/2023**.

### **1.1 PURPOSE**

The Contractor will assist with monitoring the annual state tobacco survey and tobacco compliance inspections process. Contract deliverables will be to assist with tracking, monitoring, and maintaining protocols for state compliance inspections. In the survey sample the contractor will need to provide oversight which involves at least 500-800 retailers and an additional 1,000 state compliance checks to be monitored and tracked annually to ensure all survey and inspections follow the required protocols and procedures.

### **1.2 BACKGROUND**

Substance Abuse and Mental Health Services Administration (SAMHSA) requires all states and jurisdictions to implement activities that meet Synar regulations to reduce youth access to tobacco. Currently, all states and jurisdictions must: enact laws that prohibit the sale or delivery of tobacco products to minors under the age of 18 (federally prohibits sell of tobacco under the age of 21 but states does not have to change current law); enforce those laws to a reasonable extent; annually conduct a random sample of inspections that provide a statistically valid measure of youth access (retail violation rate (RVR)); achieve a RVR of 20 percent or less; and submit the Annual Synar Report (ASR) detailing state activities and results of the above mentioned requirements. States that do not comply are subject to a 10 percent penalty to their Substance Abuse Prevention and Treatment block grant (SAPT) funding. North Carolina's FY 2017 SAPT block grant was approximately \$47 million which equates to a potential penalty of \$4.7 million for non-compliance.

## **2.0 ELIGIBILITY**

**For application consideration, applicants must possess the following qualifications:**

1. Applicant must have a demonstrated presence and operations in North Carolina for a minimum of 1 year prior to proposal submission.
2. Applicants must have affiliation with a non-profit organization (e.g., an organization with 501c3 or NC non-profit status) and be able to receive federal funds.
3. Be a public, private non-profit, or private for-profit organization.
4. Successful management and/or oversight of a single state, federal contract with a preference on compliance and enforcement activities within the past 5 years, or a program similar in method.
5. Experience working with federal, state, and local government agencies.
6. Refusal of Funds from Tobacco entities. The applicant and/or its affiliate(s) agree that it shall not accept any grant or anything else of value from any tobacco or electronic vapor product manufacturer, distributor or related entity.

***Failure to meet any of the above eligibility criteria and requirements will cause the application to be deemed ineligible.***

## **3.0 AWARD INFORMATION**

Total Anticipated Available Funding: \$600,000.00

Anticipated Number of Awards: Maximum of 1 award

Anticipated Award Amount: \$300,000.00 Year 1; \$300,000.00 Year 2

Length of Project: Up to 2 years

Applications will be reviewed and ranked according to the evaluation criteria outlined in Section 13.0.

Applicants must submit a budget summarizing the attributed costs for this project and complying with the terms outlined in the RFA. Applicants should complete the Budget Template provided in Attachment B. Proposed budgets cannot exceed each year's award. Applicants must strictly adhere to the operational budget, which summarizes all applicable costs related to meeting annual contract deliverables and comply with the terms outlined in this RFA. Annual funding will be available contingent upon funding availability, performance, fiscal management, quality management, outcomes, and data submission.

### **3.1 SOURCE OF FUNDS AND PASS THROUGH REQUIREMENTS**

Federal Award Identification Number: 6B08TI083050-01M001

Federal Award Date: 10/01/2019-09/30/2021

Subaward Period of Performance: 07/01/2021-06/30/2023

Amount of Federal Funds Obligated by this Action: \$600,000.00

Total Amount of Federal Funds Obligated to the Subrecipient: \$

Total Amount of the Federal Award: \$44,994,339

Federal Award Project Description:

Federal Awarding Agency:

Pass-through Entity: NC DHHS Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

DUNS #

CFDA Number: 93.959

CFDA Name:

Is award R&D: No.

Up to \$300,000.00 will be awarded and distributed to the successful applicant in Year 1 and up to \$300,000.00 in Year 2. Funds will be awarded to the applicant with the most effective plan, realistic budget and demonstration of ability to meet expectations. Applications will be reviewed and evaluated based on evaluation criteria.

### **3.2 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)**

As a subrecipient of federal funds, each selected contract recipient will be required to provide certain information required by the Federal Funding Accountability and Transparency Act (FFATA), including the organization's DUNS number. Please see <https://fedgov.dnb.com/webform> for free registration. Additional information about FFATA is available at <https://www.fsr.gov/>.

### **4.0 DEFINITIONS, ACRONYMS AND ABBREVIATIONS**

<b>Acronym</b>	<b>Meaning</b>
SAMHSA	Substance Abuse and Mental Health Services Administration
ALE	Alcohol Law Enforcement

RVR	Retailer Violation Rate
DHHS	Department of Health and Human Services
DMHDDSAS	Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
ENDS	Electronic Nicotine Delivery System
FDA	Food and Drug Administration
FFY	Federal Fiscal Year
FTE	Full-time equivalent
LEO	County Deputies/Municipal Officers
NCGS	North Carolina General Statute
PC	Program Coordinator
PTE	Part-time equivalent
QA	Quality Assurance
ASR	Annual Synar Report
UB	Undercover Buy
UP	Underage Purchaser
SSES	Synar Survey Estimation System

## 5.0 **SCOPE OF WORK**

The state tobacco inspection program will conduct at least 500-800 retailers are surveyed annually and at least additional 1,000 must be conducted per protocols and procedures. The state's youth access to tobacco products law (NCGS14-313), requires a law enforcement agency to be present during compliance checks using any underage purchasers between the ages of 16-17 years of age. NC DHHS currently has a 5-year agreement with North Carolina Department of Public Safety, Alcohol Law Enforcement. The successful applicant will work in conjunction with ALE.

Please keep in mind that the federal law was changed in December 2019. The FDA program must utilize underage purchasers that age range from 16-20 years old.

### **Contractor will be expected to:**

1. Develop effective means of communicating Synar program activities through regular and timely meetings, trainings and reporting.
2. Update and maintain a standardized set of inspection protocols that use sound inspection protocols and promote consistency between teams and from year to year.
3. Update and maintain a Data Collection template to record inspection information
4. Coordinate and communicate with State point of contacts as required by DHHS and SAMHSA.
5. Evaluate the quality of additional list(s) to improve list frame coverage
6. Execute the sampling design results and make recommendations to improve the design and if agreed upon, implement the recommendations into the design for the following year.
7. Evaluate sampling design results and make recommendations to improve the design and if agreed upon, implement the recommendations into the design for the following year.
8. Calculate weights, analyze data using CSAP's Synar Survey Estimation System (SSES); and
9. Complete list sampling frame coverage study by June 30, 2023
10. Draft the Annual Synar Report (ASR) for NC's submission to SAMHSA.
11. Support DHHS merchant education strategies

12. Facilitate trainings on strategies and prevention methods to reduce youth access to tobacco;
13. Facilitate a strategic planning that uses previous year's data to guide NC's efforts to improve their Synar program' and
14. Conduct analysis of non-Synar tobacco data.
15. Monitor expenses and submit financial statements to DHHS within 30 days on the 10<sup>th</sup> day of each month.
16. Complete quarterly report on North Carolina's template by the 10<sup>th</sup> of the following month.
17. Complete and submit required documentation to DMH/DD/SAS' Director of Tobacco Prevention as required.
18. Respond to inquiries from DMH/DD/SAS' Director of Tobacco Prevention, within 48 hours, as required.
19. Develop and maintain processes for ENDS pilot study.
20. Per state tobacco enforcement protocols, you must follow procedures of chain of custody and storing evidence.
21. Hire staff with qualified experience and education.

## 5.1 PROGRAMMATIC REQUIREMENTS AND PRIORITIES

As stated in the Purpose, the state tobacco enforcement must monitor and ensure at least 500-800 retailers are surveyed annually and at least additional 1,000 must be conducted per protocols and procedures. The state's youth access to tobacco products law (NCGS14-313), requires a law enforcement agency to be present during compliance checks using any underage purchasers between the ages of 16-17 years of age. The age range can potentially change per any new state legislators.

1. Contractor shall ensure staff take every precaution to ensure the safety of the underage purchasers.
2. Contractor shall ensure staff routinely review the results of compliance check inspections to ensure the quality and completeness of the evidence.
3. Contractor will work with ALE or FDA state team to conduct tobacco inspections and survey a percentage of retailers with underage purchasers that are between the ages of 18-20 per SAMHSA guidelines.

## 5.2 CONTRACTOR RESPONSIBILITIES

The North Carolina Tobacco Enforcement Program will focus solely on the annual completion of statewide FDA retail compliance check inspections and preventing youth access to tobacco products.

<b>Deliverable</b>	<b>Description</b>	<b>Timeline</b>
State inspections	The Contractor will provide technical assistance, training, oversight of the annual completion of statewide inspections in North Carolina: <ol style="list-style-type: none"> <li>1. At least 1,800 state tobacco compliance checks</li> <li>2. 500-1,000 signage inspections</li> <li>3. 800-1,000 participants will complete a tobacco retailer training in person and/or online.</li> </ol>	TBD
Provide the analysis of list sampling frame cover study	The Contractor will development all the requirements and resources needed to complete the coverage study per SAMHSA. The contractor will provide technical assistance, training and oversight to ensure all tracking is completed to provide the following for the annual federal fiscal Synar Survey 2022: <ol style="list-style-type: none"> <li>1. Unweighted percentage coverage found</li> <li>2. Weighted percent coverage found</li> <li>3. Number of outlets found through canvassing</li> <li>4. Number of outlets matched on the list frame</li> <li>5. Describe how areas were defined (e.g., census tracts, counties, etc.)</li> </ol>	September 2021-April 30, 2022

**The Contractor shall be responsible for the following:**

- Tracking 1800 state compliance checks
- Monthly invoice preparation and submission, as required by NC DHHS-DMH/DD/SAS
- Time-sensitive communication with NC DMH Director of Tobacco Prevention and state program staff, as required
- Ensure tobacco enforcement program is in compliance with SAMHSA requirements for Synar:
  1. Training staff on SSES
  2. Training new and current inspectors on protocols and procedures
  3. Supplies

### **5.3 PERFORMANCE STANDARDS AND EXPECTATIONS**

- Monitoring all statewide tobacco enforcement activities and complete analysis.
- Provide technical assistance and recommendations to improve processes to reduce youth access to tobacco products.

### **5.4 REPORTING REQUIREMENTS**

- A. DMH/DD/SAS will provide any necessary reporting templates to the Contractor within 30 days of the due date.
- B. Quarterly Reporting and Monthly Reporting Requirements
  - Contractor shall provide quarterly status reports, using a template provided by DMH, which will outline Contractor activity/progress on activities outlined in the proposal and timeline.
  - Contractor shall submit monthly reports, which outlines activity/progress on activities outlined in the application and timeline.
    - i. Names and individuals serving as staff
    - ii. Summary of successes
    - iii. Summary of challenges and/or barriers
    - iv. Anticipated next steps and completion dates
    - v. Report submissions are due no later than the 10<sup>th</sup> of each month
  - Contractor shall have monthly conference calls with DMH.
- C. Annual:
  - Contractor agrees to participate in an annual DMH site visit. At that time Contractor will have to provide random financial records, review contract deliverables and show where evidence is stored.
- D. Other
  - Contractor agrees to comply with any additional reporting requirements required by SAMHSA and/or DMH/DD/SAS during the contract.
  - DMH/DD/SAS shall work to ensure any federal reporting requirements introduced does not create duplicative reporting with existing DMH/DD/SAS reporting forms.
  - Contractor agrees to submit an annual report on tobacco enforcement activities.
  - Contractor will work collectively with ALE Staff to ensure progress is being made toward meeting annual state contract deliverables. Program staff working under this contract agree to work collaboratively, efficiently, and in good faith with internal and external partners associated with this contract.

### **5.5 OTHER CONTRACTOR REQUIREMENTS**

## **5.6 CONTRACTOR QUALIFICATIONS AND CAPACITY**

**As stated under the eligibility section, qualified applicants for this RFA are limited to public, private non-profit, or private for-profit organizations in good standing with the Department: Applicants shall:**

- Have been providing services in North Carolina for one year prior to the submission of this application.
- Provide a clear organization/collaboration chart that shows structure and management detail.
- Demonstrate experience working with federal, state, and local agencies.
- Successful management and/or oversight of a single state, federal contract with a focus on compliance and enforcement activities within the past 5 years, or a program similar in method.
- Demonstrate experience addressing community and public, substance abuse/misuse, and behavioral health federal compliance issues.
- Demonstrate experience and capacity to support time-sensitive, statewide inspection activities and associated travel expenses.
- Demonstrate experience preparing and submitting error-free, monthly invoices.

## **5.7 CONTRACTOR ENHANCEMENTS OR ADDITIONAL CONSIDERATIONS**

## **6.0 DIVISION RESPONSIBILITIES**

DMH/DD/SAS shall:

- Monitor the Contractor's performance through reporting and communication, as outlined in this RFA.
- Reimburse the Contractor as outlined in this RFA.
- Provide all reporting templates to the Contractor.
- Provide technical assistance, as needed or requested, to comply with the terms of this contract.

### **Performance Oversight**

DMH/DD/SAS will conduct, at minimum, one site visit per year to assess the Contractor's progress toward meeting the terms outlined in this RFA. Site visits will be scheduled in advance, and at a mutually agreeable time. The DMH/DD/SAS will provide the Contractor with requirements in advance of the scheduled visit.

If the DMH/DD/SAS determines that the Contractor's inability to comply with the terms of the contract can be addressed or remediated through changes in the Contractor's practices, the Division may require the Contractor to develop a plan of correction for addressing areas of noncompliance.

**The Contractor will demonstrate their strength in handling statewide tracking to support state tobacco enforcement processes.**

In addition to monthly and quarterly reports, the Division will assess the Contractor's performance 30 days prior to the end of Year 1 and provide written feedback on the Contractor's performance. The feedback should be used to make applicable changes to the Contractor's approach to activities performed in Year 2.

The Division may elect to terminate this contract if it determines that the Contractor cannot adequately satisfy the terms of the contract for any reason.

## **7.0 TERM OF CONTRACT, OPTIONS TO EXTEND**

The performance period for this contract begins on **07/01/2021** and ends **06/30/2023**. Up to two possible option years may be exercised by mutual agreement in accordance with the Terms and Conditions

## **8.0 BUDGET**

The RFA line item budget shall constitute the total cost to the Division for complete performance in accordance with the requirements and specifications herein, including all applicable expenses such as administrative cost. Contractor shall not invoice for any amounts not specifically allowed for in the line item budget of this RFA.

The Contractor shall use the Cost Table found in ATTACHMENT B: Line Item Budget to create the Line Item Budget and Budget Narrative. The Vendor shall not use any other tables or forms, nor modify the contents of any of the shaded cells in the Cost Table. All costs provided in Line item budget must be firm and fixed for the duration of the contract, which could last as long as three years if the State exercises its option for one additional year.

### **Budget Narrative Summary:**

Please describe your entity's direct labor costs. Provide the number of positions needed to implement this statewide program. Remember to include the numbers of hours and rate of pay for each person as well as their fringe rate. If you have personnel who will have other roles in the program such as serve as the primary point of contact and completion of financial reports, please provide their salary, fringe rate and the number of projected hours. Describe each position, their role in the program and the number of hours as well as the rate of pay for each employee including the fringe rate. Also describe in the budget narrative projected travel expenses and other direct costs.

### **Example of Staff Summary:**

*Inert work title: The FTE (insert work title), will oversee the daily project operations and activities of the state inspections. The FTE will coordinate communication between NCDHHS and external partners and ensure compliance with all protocols. The FTE will also facilitate trainings and prepare monthly project progress reports.*

### **Direct Labor Costs:**

List personnel labor, percentages and amounts for fringe benefits and a brief job description. Please base any percentages on full-time annual number of hours worked (i.e. 2,080 hours for a full-time person). Include projected number of training hours as well as actual time to conduct an inspector which averages one hour including travel time.

### **Other Direct Costs:**

Material and supplies: postage (UPS and/or FedEx) only, office supplies (Sharpie fine point pens, paper and ink), etc.

**Overhead, General and Administrative Expense:** Your entity will need to submit a letter and/or documentation on the actual percentage charged. This percentage will be reviewed on a case by case basis and will need to be approved by program.

## **9.0 INVOICING AND REIMBURSEMENT**

1. Activities provided under this contract must be separate and distinct from any activities from which the Contractor receives or seeks reimbursement through state-funded payments.
2. The Contractor shall submit a monthly invoice reflecting allowable expenditures no later than the 10<sup>th</sup> of each month for services rendered the previous month. The Contractor's invoice shall be submitted on the contracting agency's letterhead and shall incorporate an invoice template provided by the DMH/DD/SAS.

## **10.0 THE SOLICITATION PROCESS**

The following is a general description of the process by which agencies or organizations will be selected to complete the

goal or objective.

- 1) RFAs are being sent to prospective agencies and organizations.
- 2) Written questions concerning the RFA specifications will be received until the date specified on the cover sheet of this RFA. A summary of all questions and answers will be posted on the RFA web site.
- 3) Applications will be received from each agency or organization. The original must be signed and dated by an official authorized to bind the agency or organization.
- 4) All applications must be received by the funding agency not later than the date and time specified on the cover sheet of the RFA. Faxed applications will not be accepted.
- 5) At that date and time, the applications from each responding agency and organization will be logged in.
- 6) At their option, the evaluators may request additional information from any or all Contractors for the purpose of clarification or to amplify the materials presented in any part of the application. However, agencies and organizations are cautioned that the evaluators are not required to request clarification: therefore, all applications should be complete and reflect the most favorable terms available from the agency or organization.
- 7) Applications will be evaluated according to completeness, content, experience with similar projects, ability of the agency's or organization's staff, cost, etc. The award of a grant to one agency and organization does not mean that the other applications lacked merit, but that, all facts considered, the selected application was deemed to provide the best service to the State.
- 8) Agencies and organizations are cautioned that this is a request for applications, and the funding agency reserves the unqualified right to reject any and all applications when such rejections are deemed to be in the best interest of the funding agency.

## **11.0 GENERAL INFORMATION ON SUBMITTING APPLICATIONS**

- 1) Award or Rejection  
All qualified applications will be evaluated, and awards made to those agencies or organizations whose capabilities are deemed to be in the best interest of the funding agency. The funding agency reserves the unqualified right to reject any or all offers if determined to be in its best interest. Successful Contractors will be notified by **03/26/2021**.
- 2) Decline to Offer  
Any agency or organization that receives a copy of the RFA but declines to make an offer is requested to send a written "Decline to Offer" to the funding agency. Failure to respond as requested may subject the agency or organization to removal from consideration of future RFAs.
- 3) Cost of Application Preparation  
Any cost incurred by an agency or organization in preparing or submitting an application is the agency's or organizations sole responsibility; the funding agency will not reimburse any agency or organization for any pre-award costs incurred.
- 4) Elaborate Applications  
Elaborate applications in the form of brochures or other presentations beyond that necessary to present a complete and effective application are not desired.
- 5) Oral Explanations  
The funding agency will not be bound by oral explanations or instructions given at any time during the competitive process or after awarding the grant.
- 6) Reference to Other Data  
Only information that is received in response to this RFA will be evaluated; reference to information previously submitted will not suffice.
- 7) Titles  
Titles and headings in this RFA and any subsequent RFA are for convenience only and shall have no binding force or effect.
- 8) Form of Application  
Each application must be submitted on the form provided by the funding agency, which will become the funding agency's Performance Agreement (contract).
- 9) Exceptions  
All applications are subject to the terms and conditions outlined herein. All responses will be controlled by such terms and conditions. The attachment of other terms and condition by any agency and organization may be grounds for rejection of that agency or organization's application. Funded agencies and organizations specifically agree to the conditions set forth in the Performance Agreement (contract).

- 10) Advertising  
In submitting its application, agencies and organizations agree not to use the results therefrom or as part of any news release or commercial advertising without prior written approval of the funding agency.
- 11) Right to Submitted Material  
All responses, inquiries, or correspondence relating to or in reference to the RFA, and all other reports, charts, displays, schedules, exhibits, and other documentation submitted by the agency or organization will become the property of the funding agency when received.
- 12) Competitive Offer  
Pursuant to the provision of G.S. 143-54, and under penalty of perjury, the signer of any application submitted in response to this RFA thereby certifies that this application has not been arrived at collusively or otherwise in violation of either Federal or North Carolina antitrust laws.
- 13) Agency and Organization's Representative  
Each agency or organization shall submit with its application the name, address, and telephone number of the person(s) with authority to bind the agency or organization and answer questions or provide clarification concerning the application.
- 14) Subcontracting  
Agencies and organizations may propose to subcontract portions of work provided that their applications clearly indicate the scope of the work to be subcontracted, and to whom. All information required about the prime grantee is also required for each proposed subcontractor.
- 15) Proprietary Information  
Trade secrets or similar proprietary data which the agency or organization does not wish disclosed to other than personnel involved in the evaluation will be kept confidential to the extent permitted by NCAC TO1: 05B.1501 and G.S. 132-1.3 if identified as follows: Each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL." Any section of the application that is to remain confidential shall also be so marked in boldface on the title page of that section.
- 16) Participation Encouraged  
Pursuant to Article 3 and 3C, Chapter 143 of the North Carolina General Statutes and Executive Order No. 77, the funding agency invites and encourages participation in this RFA by businesses owned by minorities, women and the disabled including utilization as subcontractor(s) to perform functions under this Request for Applications.
- 17) Contract  
The Division will issue a contract to the recipient of the grant that will include their application.
- 18) Federal Certifications
  - i) Agencies or organizations receiving Federal funds will be required to execute Federal Certifications regarding Non-discrimination, Drug-Free Workplace, Environmental Tobacco Smoke, Debarment, Lobbying, and Lobbying Activities. A copy of the Federal Certifications is included in this RFA for your reference (see Appendix B). Federal Certifications should NOT be signed or returned with the application.
  - ii) Please be advised that successful Contractors may be required to have an audit in accordance with G. S. 143-6.2 as applicable to the agency or organization's status. Also, the contract may include assurances the successful Contractor would be required to execute when signing the contract. Agencies or organizations receiving Federal funds will be required to execute a Consolidated Federal Certification form (as applicable). Private not for profit agency contracts will also include a conflict of interest policy statement.

## **12.0 APPLICATION CONTENT AND INSTRUCTIONS**

Applications should provide a concise description of the applicant's capabilities and demonstrate support to with federal and state contracts. The entire Narrative, which includes the organizational background/capacities, planning/implementation plan and evaluation plan sections must be no more than fifteen (15) pages and must be single-spaced in a minimum of 12-point font. An original signature is required in blue ink on the letter of transmittal. The application must be organized into the following major sections:

I	Letter of Transmittal on Agency Letterhead
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II	Applicant Information
III	Program Narrative
IV	Budget
V	Attachments

- I. Letter of Transmittal, signed by the legally authorized signatory and on the applicant's letterhead, outlining why the applicant chose to apply. Cover letter shall include:
  - a. Explanation of why applicant is applying.
  - b. Explanation of why applicant is suitable candidate, including demonstrated experience with federal and state contracts.
- II. Applicant Information: Contractor's name and principal place of business; legal status (whether the contractor is a non-profit, for-profit organization; the state in which the contractor is incorporated or organized. The following for each entity must be included:

Fiscal Host Agency

- Agency Name
- Agency Executive Director Name
- Contact for this Application with Email and Phone Number
- Agency Address, Telephone Numbers
- Website Address

- III. Program Narrative (maximum 5-8 pages, excluding attachments) in the program narrative, please describe your entity and plan to implement the statewide tobacco inspections program. Consider the number of counties you plan to cover per month; the counties your entity plan to target to participate in the tobacco inspections program; you can have agreements with local law enforcement agencies, recruitment of a pool of underage purchasers and adult inspectors. In the state's FDA database, there are more than 13,000 retail tobacco outlets that could be potentially inspected statewide. Typically, the state works has to ensure that all routine checks are done annually for the agreed contracted amount. If follow ups are conducted the contracted total amount is the overall goal to meeting the agreed deliverable number of annual inspections.

a. Organizational Capacities

- i. Describe how the applicant fiscal organization and/or the organization/collaborative/agency is structured and managed.
- ii. Please include an organizational chart
- iii. Describe any training or other capacity building activities needed by any of the involved entity to ensure the success of this project.

b. Planning

- i. Describe the applicants' experience in developing and implementing tobacco enforcement programs and policies, including involvement and partnerships with local and/or state law enforcement.

c. Implementation Plan

i. Describe plans to:

1. Manage scheduling with underage purchaser, LEOs and FDA inspector
2. Ensure adequate statewide coverage to conduct inspections in all 100 counties.
3. Ensure and monitor inspection data and progress.
4. Secure evidence and documentation
5. Meet State Deadlines

IV. Provide a 3-month projected timeline for 07/01/2021 through 09/30/2022 (Attachment B) address the following:

- a. Staffing and workforce development/training needs
- b. Developing and/or identifying 6-monthly inspection plan
- c. Agreements with local law enforcement agencies-Recommended, but not required
- d. Recruitment of a pool of underage purchasers and adult inspectors.

V. Attachments:

VI. Statement of Assurance

VII. Organizational Chart

VIII. Program Narrative

IX. Budget Narrative

X. FY21 and FY22 Project Budget

XI. IRS Tax Exempt Determination letter

Submit complete Application, including signature of authorized representative, to (Christopher.Drew@dhhs.nc.gov) no later than 5:00PM on 02/26/2021.

## **13.0 EVALUATION CRITERIA AND SCORING**

### **PHASE I: INITIAL QUALIFYING CRITERIA**

The applicant’s proposal must meet all of the following Phase I application acceptance criteria in order to be considered for further evaluation. Any proposal receiving a “no” response to any of the following qualifying criteria shall be disqualified from consideration.

ITEM	APPLICATION ACCEPTANCE CRITERIA	RFA Section	YES	NO
1	Was the contractor’s application received by the deadline specified in the RFA?			
2	Vendor proposal includes all required affirmative statements, assurances and certifications signed by the vendor’s responsible representative, as described in <b>Section A</b> of the RFA			
3	Included in those certifications, the contractor states that it is not excluded from entering into a contract with DHHS/State due to restrictions related to the federal debarment list, etc.			
4	Vendor meets eligibility requirements as stated in <b>Section 2.0</b>			
5	Program’s review of the Contractor verifies that the vendor is not excluded from contracting with DHHS/State for any unresolved finding for recovery			
6	Vendor is not on the IRAN Divestment List			

### **PHASE II: CRITERIA FOR SCORING PROPOSAL/APPLICATIONS**

Qualifying application proposals will be collectively scored by the proposal review team. All qualified applications will be evaluated, and awards made based on the following criteria considered, to result in awards most advantageous to the State. Applications will be scored on the content, quality, and completeness of the responses to the items in the scope of work and to how well each response addresses the following core factors. DHHS will consider scores, organizational capacity, and distribution among catchment areas, and variety of quality improvement plans in determining awards. Please note that Contractors not meeting the eligibility requirements or any of the minimum or mandatory requirements as stated in Phase I will not be scored.

**PHASE III: CRITERIA FOR SCORING PROPOSAL/APPLICATIONS Evaluation Criteria**

Evaluation Criteria	Description	Score			
Organizational Capacities (18 points)	Describe how the applicant fiscal organization and/or the organization is structured and managed and include the agency cash flow capacity.	5			
	Please include an organizational chart.	1			
	Provide a one-pager describing employment benefits.	5			
	Describe agency ability to facilitate a strategic planning that uses previous year's data to guide NC's efforts to improve state enforcement.	5			
	Describe any training or other capacity building entities to ensure the success of this project.	2			
Planning (10)	Describe the applicants' experience in developing and implementing tobacco enforcement programs and policies, including involvement and partnerships with local and/or state law enforcement.	10			
Implementation Plan (32points)	Managed ENDS Pilot, state and survey processes as well as describe how to managed, track and update state tobacco retailer outlet list.	10			
	How you will ensure your entity have adequate resources to meet SAMHSA requirements to complete a scientific random sample of statewide tobacco retailers.	10			
	Address how you will secure tracking survey inspections verses state compliance inspections and documentation.	10			
	How you will meet the State deadlines.	2			
Section 5.1 Program Requirements and Priorities (10 points)	Provide a 6-month project timeline for 07/01/2021-01/01/2022 that includes specific steps roles and responsibility to reflect at least a month to quarter program plan.	10			
Section 8.0 Budget (30 points)	<p>Include a 2021-2022 (\$300,000) and 2021-2022 (\$300,000) budget no more what is listed.</p> <p>-how funds would be spent</p> <p>-why these costs are justified and necessary to conduct the proposed initiative costs should be reasonable and allowable within the approved federal budget. See Attachment A</p>				

	<p>-Allowable eligible expenditures are limited to direct project-related costs and cannot supplant any existing funding.</p> <p>*Distinction should be made between start-up cost and ongoing operating costs. Please note per the state all equipment request must have a quote and approval from the state personnel prior to purchasing.</p>				
Total Number of Points for this application		100			
Applicants final score out of 100 possible points= _____  (include bonus points, if applicable)					

Program Narrative (maximum 5-8 pages, excluding attachments) The following Program Narrative is to be completed according to the descriptions provided in each section below:

## **ATTACHMENT A: Statement of Assurance**

As the authorized representative of *[insert name of applicant organization]*, I assure the North Carolina Department of Health and Human Services that the applicant organization meets the following requirements:

I assure that Contract funds must be used for purposes supported by the program and in accordance with the law. **Funds may allowable expenses please review the budget template.**

Only allowable costs associated with the use of federal funds are permitted per the FDA five-year contract. Other sources of funds may be used for unallowable costs. Other support is defined as funds or resources, whether federal, non-federal or institutional, in direct support of activities through fellowships, gifts, prizes, or in-kind contributions.

In addition, the applicant agrees to the following Refusal of Funds from Alcohol, Tobacco, Electronic Vapor Product and/or Marijuana Entities: The applicant and/or its affiliate(s) agree that it shall not accept any grant or anything else of value from any alcohol, tobacco, electronic vapor product and/or marijuana manufacturer, distributor, or other alcohol, tobacco, electronic vapor product or marijuana related to state protocols and statutes.

As the authorized representative, I assure that is this application is awarded, funds will be dispersed expediently to the applicant substance abuse prevention provider agency or local community coalition. I understand that funding is contingent upon availability.

---

Signature of Authorized Representative

---

Date

**ATTACHMENT B: LINE ITEM BUDGET AND BUDGET NARRATIVE**

DMH/DD/SAS Program Budget Proposal and Budget Narrative for Year: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Name of Contracted Agency Applicant: \_\_\_\_\_

Award up to: \_\_\_\_\_

Category	# of Staff	# of Hours (Year)	Hourly Rate	Fringe Rate Amount (\$)	Total Estimated Cost
<b>Direct Labor</b>					
FTEs					
Financial Staff					
Inspector Training Hours					
<b>Total Direct Labor</b>					
<b>Other Direct Costs</b>					
Postage (UPS or FedEx)					
Office Supplies					
Meeting Expenses					
Office Space					
Travel (# miles @ \$.575 mile)					
<b>Total Other Direct Cost</b>					
Administrative Overhead Charge @ %					
<b>TOTAL BUDGET AMOUNT</b>					\$

**State Per Diem Rates:**

	<b>In State</b>	<b>Out of State</b>
Breakfast	<b>\$8.60</b>	<b>\$8.60</b>
<b>Lunch</b>	<b>\$11.30</b>	<b>\$11.30</b>
<b>Dinner</b>	<b>\$19.50</b>	<b>\$22.20</b>
<b>Lodging</b> (actual, up to)	<b>\$75.10</b>	<b>\$88.70</b>
<b>Total</b>	<b>\$114.50</b>	<b>\$130.80</b>

**APPENDIX A**

**TERMS AND CONDITIONS**

1. [HealthCare Providers](#)
2. [Private Sector](#)
3. [Local Government \(Public Sector\)](#)
4. [Other State Departments](#)
5. [Duke](#)
6. [Private University](#)
7. [Master Agreement \(UNC Systems\) incorporated by reference](#)

Select the appropriate terms and conditions for the Contractor organization and attach to the application as indicated in Section 12: Application Content and Instructions. These terms are a part of the award document for selected applications.

## GENERAL TERMS AND CONDITIONS

### Relationships of the Parties

**Independent Contractor:** The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

**Subcontracting:** The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

**Assignment:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may: (a) Forward the Contractor's payment check directly to any person or entity designated by the Contractor, or (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check. In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor,

receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### Services

**Service Standards:** During the term of the Agreement the Contractor and its employees, agents, and subcontractors shall provide high quality professional services consistent with the standards of practice in the geographic area and with all applicable federal, state, and local laws, rules and regulations, all applicable ethical standards, and standards established by applicable accrediting agencies. The Contractor and its employees, agents and subcontractors shall exercise independent professional judgment in the treatment and care of patients.

**Records:** During the term of this Agreement, the Contractor and its employees, agents, and subcontractors shall maintain complete and professionally adequate medical records consistent with the standards of practice in the geographic area and their respective health care professions. The Contractor and its employees, agents, and subcontractors shall prepare all reports, notes, forms, claims and correspondence that are necessary and appropriate to their professional services.

**Licenses:** During the term of this Agreement, the Contractor and its employees, agents, and subcontractors shall hold, current facility and occupational licenses and certifications at the levels required to practice their professions and to provide the contracted services in the State of North Carolina.

### Indemnity and Insurance

**Indemnification:** The Contractor agrees to indemnify and hold harmless the Division, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contractor or its employees, agents, or subcontractors in connection with the performance of this contract.

- (a) **Insurance:** During the term of the contract, the Contractor shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with the contract. At a

minimum, the Contractor shall provide and maintain the following coverage and limits:

- (1) **Professional Liability Insurance:** The Contractor shall ensure that the Contractor and its employees, agents, and subcontractors each maintain through an insurance company or through a program of self-funded insurance, professional liability insurance with limits of at least \$1,000,000 per occurrence and at least \$3,000,000 in the aggregate.
  - (2) **Worker's Compensation Insurance:** The Contractor shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of the Contractor's employees who are engaged in any work under the contract.
  - (3) **Employer's Liability Insurance:** The Contractor shall provide employer's liability insurance, with minimum limits of \$500,000.00, covering all of the Contractor's employees who are engaged in any work under the contract.
  - (4) **Commercial General Liability Insurance:** The Contractor shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.
  - (5) **Automobile Liability Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$2,000.00 for medical payment coverage. The Contractor shall provide this insurance for all automobiles that are:
    - (A) owned by the Contractor and used in the performance of this contract;
    - (B) hired by the Contractor and used in the performance of this contract; and
    - (C) owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance. The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned -- unless the vehicle is used in the performance of this contract.
- (b) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.

- (c) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.
- (d) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.
- (e) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.
- (f) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this contract.
- (g) The Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.
- (h) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.
- (i) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.
- (j) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance, if requested, to the Division before the Contractor begins work under this contract.

#### **Default and Termination**

**Termination Without Cause:** The Division may terminate this contract without cause by giving **30 days written notice** to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

**Termination for Cause:** If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the Division shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall,

at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Contractor's breach of this agreement, and the Division may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the Division may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

**Waiver of Default:** Waiver by the Division of any default or breach in compliance with the terms of this contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the Department and the Contractor and attached to the contract.

**Availability of Funds:** The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

**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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** 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 statutes of limitation.

### **Compliance with Applicable Laws**

**Compliance with Laws:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

**Health Insurance Portability and Accountability Act (HIPAA):** The Contractor agrees that, if the Division determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Division may require to ensure compliance.

### **Confidentiality**

**Confidentiality:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. The parties specifically agree that all medical and other patient records shall be treated as confidential so as to comply with all state and federal laws and regulations regarding confidentiality of such records. These confidentiality obligations shall not terminate with the termination of this Agreement.

**Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

**Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the Division's Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this contract, the contractor is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the contractor.

**Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Division or the Contractor to give affected persons written notice of a security breach arising out of the Contractor's performance under this contract, the Contractor shall bear the cost of the notice.

## Oversight

**Access to Persons and Records:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

**Record Retention:** Records shall not be destroyed, purged or disposed of without the express written consent of the Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

**Government Review:** To the extent required by applicable law and pursuant to written requests from any appropriate governmental authority, Contractor and the Division shall make available to such appropriate governmental authority this Agreement and any books, records, documents and other records that are necessary to certify the nature and extent of the services provided and the cost claimed for services rendered pursuant to this Agreement or so as to otherwise comply with the requirements of any lawful agreement between the party and such governmental authority.

## Miscellaneous

**Choice of Law:** The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Contractor. The Purchase and Contract Divisions of the NC Department of Administration and the NC Department of Health and Human Services shall give prior approval to any amendment to a contract awarded through those offices.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

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

**Time of the Essence:** Time is of the essence in the performance of this contract.

**Key Personnel:** The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the Division. The term "key personnel" includes any and all persons identified as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

**Care of Property:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the Division for loss of, or damage to, such property. At the

termination of this contract, the Contractor shall contact the Division for instructions as to the disposition of such property and shall comply with these instructions.

**Travel Expenses:** Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules. International travel shall not be reimbursed under this contract.

**Sales/Use Tax Refunds:** If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina

Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

## GENERAL TERMS AND CONDITIONS

### Relationships of the Parties

**Independent Contractor:** The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

**Subcontracting:** The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

**Assignment:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may: (a) Forward the Contractor's payment check directly to any person or entity designated by the Contractor; or (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check. In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### Indemnity and Insurance

**Indemnification:** The Contractor agrees to indemnify and hold harmless the Division, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or

omission of the Contractor in connection with the performance of this contract.

**Insurance:** (a) During the term of the contract, the Contractor shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with the contract. At a minimum, the Contractor shall provide and maintain the following coverage and limits:

(6) **Worker's Compensation Insurance:** The Contractor shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of the Contractor's employees who are engaged in any work under the contract.

(7) **Employer's Liability Insurance:** The Contractor shall provide employer's liability insurance, with minimum limits of \$500,000.00, covering all of the Contractor's employees who are engaged in any work under the contract.

(8) **Commercial General Liability Insurance:** The Contractor shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.

(9) **Automobile Liability Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage; a limit of \$500,000.00 for uninsured/under insured motorist coverage; and a limit of \$2,000.00 for medical payment coverage. The Contractor shall provide this insurance for all automobiles that are:

- (A) owned by the Contractor and used in the performance of this contract;
- (B) hired by the Contractor and used in the performance of this contract; and
- (C) owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned -- unless the vehicle is used in the performance of this contract.

- (b) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.
- (c) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.
- (d) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by

demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.

- (e) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.
- (f) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this contract.
- (g) The Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.
- (h) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.
- (i) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.
- (j) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance, if requested, to the Division before the Contractor begins work under this contract.

### **Default and Termination**

**Termination Without Cause:** The Division may terminate this contract without cause by giving 30 days written notice to the Contractor.

**Termination for Cause:** If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the Division shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Contractor's breach of this agreement, and the Division may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the Division may procure the contract services from other sources and hold the Contractor

responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

**Waiver of Default:** Waiver by the Division of any default or breach in compliance with the terms of this contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the Department and the Contractor and attached to the contract.

**Availability of Funds:** The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

**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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** 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 statutes of limitation.

### **Intellectual Property Rights**

**Copyrights and Ownership of Deliverables:** All deliverable items produced pursuant to this contract are the exclusive property of the Division. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

**Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Division shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

### **Compliance with Applicable Laws**

**Compliance with Laws:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

**Health Insurance Portability and Accountability Act (HIPAA):** The Contractor agrees that, if the Division determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended (“HIPAA”), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Division may require to ensure compliance.

### **Confidentiality**

**Confidentiality:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

**Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

**Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the Division’s Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this contract, the contractor is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the contractor.

**Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Division or the Contractor to give affected persons written notice of a security breach arising out of the Contractor’s performance under this contract, the Contractor shall bear the cost of the notice.

### **Oversight**

**Access to Persons and Records:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

**Record Retention:** Records shall not be destroyed, purged or disposed of without the express written consent of the Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

### **Warranties and Certifications**

**Date and Time Warranty:** The Contractor warrants that the product(s) and service(s) furnished pursuant to this contract (“product” includes, without limitation, any piece of equipment, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interfaces therein) that perform any date and/or time data recognition function, calculation, or sequencing will support a four digit year format and will provide accurate date/time data and leap year calculations. This warranty shall survive the termination or expiration of this contract.

**Certification Regarding Collection of Taxes:** G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Contractor certifies that it and all of its affiliates (if any) collect all required taxes.

### **Miscellaneous**

**Choice of Law:** The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina

and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Contractor. The Purchase and Contract Divisions of the NC Department of Administration and the NC Department of Health and Human Services shall give prior approval to any amendment to a contract awarded through those offices.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

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

**Time of the Essence:** Time is of the essence in the performance of this contract.

**Key Personnel:** The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the Division. The term "key personnel" includes any and all persons identified by as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

**Care of Property:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the Division for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the Division for instructions as to the disposition of such property and shall comply with these instructions.

**Travel Expenses:** Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules. International travel shall not be reimbursed under this contract.

**Sales/Use Tax Refunds:** If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

## GENERAL TERMS AND CONDITIONS

### Relationships of the Parties

**Independent Contractor:** The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

**Subcontracting:** The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

**Assignment:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may: (a) Forward the Contractor's payment check directly to any person or entity designated by the Contractor, or (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check. In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### Indemnity and Insurance

**Indemnification:** The Contractor agrees to indemnify and hold harmless the Division, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or

omission of the Contractor in connection with the performance of this contract to the extent permitted by law.

### Default and Termination

**Termination Without Cause:** The Division may terminate this contract without cause by giving 30 days written notice to the Contractor.

**Termination for Cause:** If, through any cause, the Contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, the Division shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Contractor's breach of this agreement, and the Division may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the Division may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

**Waiver of Default:** Waiver by the Division of any default or breach in compliance with the terms of this contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the Department and the Contractor and attached to the contract.

**Availability of Funds:** The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

**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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** 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 statutes of limitation.

### **Intellectual Property Rights**

**Copyrights and Ownership of Deliverables:** All deliverable items produced pursuant to this contract are the exclusive property of the Division. The Contractor shall not assert a claim of copyright or other property interest in such deliverables.

### **Compliance with Applicable Laws**

**Compliance with Laws:** The Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Contractor shall comply with all federal and State laws relating to equal employment opportunity.

**Health Insurance Portability and Accountability Act (HIPAA):** The Contractor agrees that, if the Division determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Division may require to ensure compliance.

### **Confidentiality**

**Confidentiality:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Contractor under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. The Contractor acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this contract.

**Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

**Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the Division's Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor

shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this contract, the contractor is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the contractor.

**Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Division or the Contractor to give affected persons written notice of a security breach arising out of the Contractor's performance under this contract, the Contractor shall bear the cost of the notice.

### **Oversight**

**Access to Persons and Records:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

**Record Retention:** Records shall not be destroyed, purged or disposed of without the express written consent of the Division. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

## Miscellaneous

**Choice of Law:** The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

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**Travel Expenses:** Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules or approved local government travel policy. International travel shall not be reimbursed under this contract.

**Sales/Use Tax Refunds:** If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

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## GENERAL TERMS AND CONDITIONS

### Relationships of the Parties

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**Beneficiaries:** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### Termination

**Termination:** The Division may terminate this contract without cause by giving **30 days written notice** to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

**Availability of Funds:** The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

### Compliance with Applicable Laws

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Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the Division may require to ensure compliance.

### Confidentiality

**Confidentiality:** Any medical records, personnel information or other items exempt from the NC Public Records Act or otherwise protected by law from disclosure given to the Contractor under this contract shall be kept confidential and not divulged or made available to any individual or organization without the prior written approval of the Division.

**Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

**Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the Division's Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this contract, the contractor is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the contractor.

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policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

### **Miscellaneous**

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**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of

the agreement and should not be used to construe the meaning thereof.

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**Travel Expenses:** Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules. International travel shall not be reimbursed under this contract.

## GENERAL TERMS AND CONDITIONS

### Relationships of the Parties

**Independent Contractor:** The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

**Subcontracting:** The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

**Assignment:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may: (a) Forward the Contractor's payment check directly to any person or entity designated by the Contractor, or (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check. In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### Services

**Service Standards:** The Contractor shall provide high quality services consistent with the standard of practice in the geographic area and with all applicable federal, state, and local laws, rules and regulations, all applicable ethical standards, and standards established by applicable accrediting agencies. The Contractor shall exercise independent professional judgment in the treatment and care of patients.

**Records:** The Contractor shall maintain complete and professionally adequate medical records consistent with the standards of practice and the profession. The Contractor shall prepare all reports, notes, forms, claims and correspondence that are necessary and appropriate to the Contractor's provision of professional services.

**Licenses:** During the term of this Agreement, the Contractor shall hold, a current license at the level required to practice the Contractor's profession and provide the contracted services in the State of North Carolina.

### Indemnity and Insurance

**Indemnification:** The Division, the State of North Carolina and Contractor agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions to the extent allowable by law.

(k) **Insurance:** During the term of the contract, the Contractor shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with the contract. At a minimum, the Contractor shall provide and maintain the following coverage and limits:

(10) **Professional Liability:** The Contractor shall provide and maintain, through an insurance company or through a program of self-funded insurance, professional liability insurance for itself with limits of at least \$1,000,000 per occurrence and at least \$3,000,000 in the aggregate.

(11) **Worker's Compensation Insurance:** The Contractor shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of the Contractor's employees who are engaged in any work under the contract.

(12) **Employer's Liability Insurance:** The Contractor shall provide employer's liability insurance, with minimum limits of

\$500,000.00, covering all of the Contractor's employees who are engaged in any work under the contract.

(13) **Commercial General Liability Insurance or A Program of Self Insurance:** The Contractor shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.

(14) **Automobile Liability Insurance or A Program of Self Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage. The Contractor shall provide this insurance for all automobiles that are:

(A) owned by the Contractor and used in the performance of this contract;

(B) hired by the Contractor and used in the performance of this contract; and

(C) owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned -- unless the vehicle is used in the performance of this contract.

(l) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.

(m) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.

(n) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.

(o) Providing and maintaining the types and amounts of insurance or self-insurance specified in this paragraph is a material obligation of the Contractor and is of the essence of this contract.

(p) With the exception of programs of self-insurance, the Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.

(q) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.

(r) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.

(s) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance, if requested, to the Division before the Contractor begins work under this contract.

### **Default and Termination**

**Termination Without Cause:** The Division may terminate this contract without cause by giving **30 days written notice** to the Contractor. Contractor may terminate this contract without cause upon 90 days prior written notice to the Division. In either event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

**Termination for Cause:** Either party may terminate this Agreement for any material breach of the Agreement provided the breaching party is given written notice of the breach and 30 days from receipt of such notice to correct the breaching conditions as described in the notice. If, the Contractor should fail to fulfill its obligations under this contract in a timely and proper manner, the Division shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Contractor's breach of this agreement, and the Division may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the Division may procure the contract services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. The

filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

**Waiver of Default:** Waiver by the Division of any default or breach in compliance with the terms of this contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the Department and the Contractor and attached to the contract.

**Availability of Funds:** The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

**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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** 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 statutes of limitation.

**Patents And Inventions:** Any invention or discovery made or conceived in the performance of this contract (hereinafter called "*INVENTION*"), and any patent granted on such *INVENTION* shall be jointly or individually owned by Contractor and/or Division in accordance with the following criteria:

- (a) Title to any *INVENTION* made or conceived jointly by employees of both Contractor and Division in the performance of this contract (hereinafter called "*JOINT INVENTION*") vests jointly in Division and Contractor.
- (b) Title to any *INVENTION* made or conceived solely by employees or students of either Contractor or Division in the performance of this Contract vests in the party whose employees or students made or conceived the *INVENTION* or discovery.

**Publication:** Contractor and its investigators are free to publish papers dealing with the results of the research project, if any, sponsored under this Contract. However, Division must be given thirty (30 days) to review such papers prior to any publication thereof. The Contractor shall acknowledge the Division's funding role in all publications.

**Similar Research:** Nothing in this Contract may be construed to limit the freedom of the Contractor or of its

researchers who are participants under the Contract from engaging in similar research made under grants, contracts, or agreements with parties other than the Division.

**Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Division shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

### Compliance with Applicable Laws

**Compliance with Laws:** In the performance of this Agreement, the Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Contractor shall comply with all federal and State laws relating to equal employment opportunity in the performance of this Agreement.

**Health Insurance Portability and Accountability Act (HIPAA):** The Contractor agrees that, if the Division determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements in the performance of this Agreement and will execute such agreements and practices as the Division may require to ensure compliance.

### Confidentiality

**Confidentiality:** Any medical records, personnel information or other items exempt from the NC Public Records Act or otherwise protected by law from disclosure given to the Contractor under this contract shall be kept confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. Subject to the foregoing provisions, Contractor reserves the right to use the results of all services provided under this contract for its teaching, research and publication purposes, provided such use is otherwise permitted by applicable law.

**Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

**Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the Division's Contract Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor

shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this contract, the contractor is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the contractor.

**Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Division or the Contractor to give affected persons written notice of a security breach arising out of the Contractor's performance under this contract, the Contractor shall bear the cost of the notice.

### Oversight

**Access to Persons and Records:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

**Record Retention:** In accordance with the State's basic records retention policy, records resulting from these Services shall not be destroyed, purged or disposed of without the express written consent of the Division during the period specified in the Stat's records retention policy and in accordance with state and federal law. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

**Government Review:** To the extent required by applicable law and pursuant to written requests from any appropriate governmental authority, Contractor and the Division shall make available to such appropriate governmental authority this Agreement and any books, records, documents and other records that are necessary

to certify the nature and extent of the services provided and the cost claimed for services rendered pursuant to this Agreement or so as to otherwise comply with the requirements of any lawful agreement between the party and such governmental authority.

### Miscellaneous

**Choice of Law:** The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Contractor. The Purchase and Contract Divisions of the NC Department of Administration and the NC Department of Health and Human Services shall give prior approval to any amendment to a contract awarded through those offices.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

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

**Time of the Essence:** Time is of the essence in the performance of this contract.

**Key Personnel:** The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the Division. The term "key personnel" includes any and all persons identified by as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

**Care of Property:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the Division for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the Division for instructions as to the disposition of such property and shall comply with these instructions.

**Travel Expenses:** Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules.

International travel shall not be reimbursed under this contract.

**Sales/Use Tax Refunds:** If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

## GENERAL TERMS AND CONDITIONS

### Relationships of the Parties

**Independent Contractor:** The Contractor is and shall be deemed to be an independent contractor in the performance of this contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

**Subcontracting:** The Contractor shall not subcontract any of the work contemplated under this contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this contract. Only the subcontractors specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor. The Contractor shall be responsible for the performance of all of its subcontractors.

**Assignment:** No assignment of the Contractor's obligations or the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may: (a) Forward the Contractor's payment check(s) directly to any person or entity designated by the Contractor, or (b) Include any person or entity designated by Contractor as a joint payee on the Contractor's payment check(s). In no event shall such approval and action obligate the State to anyone other than the Contractor and the Contractor shall remain responsible for fulfillment of all contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Contractor. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Contractor that any such person or entity, other than the Division or the Contractor, receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

### Services

**Service Standards:** The Contractor shall provide high quality services consistent with the standard of practice in the geographic area and with all applicable federal, state, and local laws, rules and regulations, all applicable ethical standards, and standards established by applicable accrediting agencies. The Contractor shall exercise independent professional judgment in the treatment and care of patients.

**Records:** The Contractor shall maintain complete and professionally adequate medical records consistent with the standards of practice and the profession. The Contractor shall prepare all reports, notes, forms, claims and correspondence that are necessary and appropriate to the Contractor's provision of professional services.

**Licenses:** During the term of this Agreement, the Contractor shall hold, a current license at the level required to practice the Contractor's profession and provide the contracted services in the State of North Carolina.

### Indemnity and Insurance

**Indemnification:** The Division, the State of North Carolina and Contractor agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions to the extent allowable by law.

- (t) **Insurance:** During the term of the contract, the Contractor shall provide, at its sole cost and expense, commercial insurance of such types and with such terms and limits as may be reasonably associated with the contract. At a minimum, the Contractor shall provide and maintain the following coverage and limits:
- (15) **Professional Liability:** The Contractor shall provide and maintain, through an insurance company or through a program of self-funded insurance, professional liability insurance for itself with limits of at least \$1,000,000 per occurrence and at least \$3,000,000 in the aggregate.
  - (16) **Worker's Compensation Insurance:** The Contractor shall provide and maintain worker's compensation insurance, as required by the laws of the states in which its employees work, covering all of the Contractor's employees who are engaged in any work under the contract.
  - (17) **Employer's Liability Insurance:** The Contractor shall provide employer's liability

insurance, with minimum limits of \$500,000.00, covering all of the Contractor's employees who are engaged in any work under the contract.

(18) **Commercial General Liability Insurance or A Program of Self Insurance:** The Contractor shall provide commercial general liability insurance on a comprehensive broad form on an occurrence basis with a minimum combined single limit of \$1,000,000.00 for each occurrence.

(19) **Automobile Liability Insurance or A Program of Self Insurance:** The Contractor shall provide automobile liability insurance with a combined single limit of \$500,000.00 for bodily injury and property damage. The Contractor shall provide this insurance for all automobiles that are:

(A) owned by the Contractor and used in the performance of this contract;

(B) hired by the Contractor and used in the performance of this contract; and

(C) owned by Contractor's employees and used in performance of this contract ("non-owned vehicle insurance"). Non-owned vehicle insurance protects employers when employees use their personal vehicles for work purposes. Non-owned vehicle insurance supplements, but does not replace, the car-owner's liability insurance.

The Contractor is not required to provide and maintain automobile liability insurance on any vehicle – owned, hired, or non-owned -- unless the vehicle is used in the performance of this contract.

(u) The insurance coverage minimums specified in subparagraph (a) are exclusive of defense costs.

(v) The Contractor understands and agrees that the insurance coverage minimums specified in subparagraph (a) are not limits, or caps, on the Contractor's liability or obligations under this contract.

(w) The Contractor may obtain a waiver of any one or more of the requirements in subparagraph (a) by demonstrating that it has insurance that provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.

(x) The Contractor may obtain a waiver of any one or more of the requirements in paragraph (a) by demonstrating that it is self-insured and that its self-insurance provides protection that is equal to or greater than the coverage and limits specified in subparagraph (a). The Division shall be the sole judge of whether such a waiver should be granted.

(y) Providing and maintaining the types and amounts of insurance or self-insurance specified in this

paragraph is a material obligation of the Contractor and is of the essence of this contract.

(z) With the exception of programs of self insurance, the Contractor shall only obtain insurance from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in the State of North Carolina. All such insurance shall meet all laws of the State of North Carolina.

(aa) The Contractor shall comply at all times with all lawful terms and conditions of its insurance policies and all lawful requirements of its insurer.

(bb) The Contractor shall require its subcontractors to comply with the requirements of this paragraph.

(cc) The Contractor shall demonstrate its compliance with the requirements of this paragraph by submitting certificates of insurance, if requested, to the Division before the Contractor begins work under this contract.

### Default and Termination

**Termination Without Cause:** The Division may terminate this contract without cause by giving **30 days written notice** to the Contractor. Contractor may terminate this contract without cause upon 90 days prior written notice to the Division. In either event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

**Termination for Cause:** Either party may terminate this Agreement for any material breach of the Agreement provided the breaching party is given written notice of the breach and 30 days from receipt of such notice to correct the breaching conditions as described in the notice. If, the Contractor should fail to fulfill its obligations under this contract in a timely and proper manner, the Division shall have the right to terminate this contract by giving written notice to the Contractor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the Division, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Contractor's breach of this agreement, and the Division may withhold any payment due the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. In case of default by the Contractor, without limiting any other remedies for breach available to it, the Division may procure the contract services from other sources and hold the Contractor

responsible for any excess cost occasioned thereby. The filing of a petition for bankruptcy by the Contractor shall be an act of default under this contract.

**Waiver of Default:** Waiver by the Division of any default or breach in compliance with the terms of this contract by the Contractor shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this contract unless stated to be such in writing, signed by an authorized representative of the Department and the Contractor and attached to the contract.

**Availability of Funds:** The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Division.

**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 by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** 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 statutes of limitation.

**Patents And Inventions:** Any invention or discovery made or conceived in the performance of this contract (hereinafter called "*INVENTION*"), and any patent granted on such *INVENTION* shall be jointly or individually owned by Contractor and/or Division in accordance with the following criteria:

- (a) Title to any *INVENTION* made or conceived jointly by employees of both Contractor and Division in the performance of this contract (hereinafter called "*JOINT INVENTION*") vests jointly in Division and Contractor.
- (b) Title to any *INVENTION* made or conceived solely by employees or students of either Contractor or Division in the performance of this Contract vests in the party whose employees or students made or conceived the *INVENTION* or discovery.

**Publication:** Contractor and its investigators are free to publish papers dealing with the results of the research project, if any, sponsored under this Contract. However, Division must be given thirty (30 days) to review such papers prior to any publication thereof. The Contractor shall acknowledge the Division's funding role in all publications.

**Similar Research:** Nothing in this Contract may be construed to limit the freedom of the Contractor or of its researchers who are participants under the Contract from engaging in similar research made under grants, contracts, or agreements with parties other than the Division.

**Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Division shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

### Compliance with Applicable Laws

**Compliance with Laws:** In the performance of this Agreement, the Contractor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Contractor shall comply with all federal and State laws relating to equal employment opportunity. In the performance of this Agreement.

**Health Insurance Portability and Accountability Act (HIPAA):** The Contractor agrees that, if the Division determines that some or all of the activities within the scope of this contract are subject to the Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements in the performance of this Agreement and will execute such agreements and practices as the Division may require to ensure compliance.

### Confidentiality

**Confidentiality:** Any medical records, personnel information or other items exempt from the NC Public Records Act or otherwise protected by law from disclosure given to the Contractor under this contract shall be kept confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. Subject to the foregoing provisions, Contractor reserves the right to use the results of all services provided under this contract for its teaching, research and publication purposes, provided such use is otherwise permitted by applicable law.

**Data Security:** The Contractor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

**Duty to Report:** The Contractor shall report a suspected or confirmed security breach to the Division's Contract

Administrator within twenty-four (24) hours after the breach is first discovered, provided that the Contractor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered. During the performance of this contract, the contractor is to notify the Division contract administrator of any contact by the federal Office for Civil Rights (OCR) received by the contractor.

**Cost Borne by Contractor:** If any applicable federal, state, or local law, regulation, or rule requires the Division or the Contractor to give affected persons written notice of a security breach arising out of the Contractor's performance under this contract, the Contractor shall bear the cost of the notice.

### Oversight

**Access to Persons and Records:** The State Auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7. Additionally, as the State funding authority, the Department of Health and Human Services shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions.

**Record Retention:** In accordance with the State's basic records retention policy, records resulting from these Services shall not be destroyed, purged or disposed of without the express written consent of the Division during the period specified in the Stat's records retention policy and in accordance with state and federal law. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to federal policy and regulations, record retention may be longer than five years. Records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-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 five-year period described above, whichever is later. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years.

**Government Review:** To the extent required by applicable law and pursuant to written requests from any appropriate governmental authority, Contractor and the Division shall make available to such appropriate

governmental authority this Agreement and any books, records, documents and other records that are necessary to certify the nature and extent of the services provided and the cost claimed for services rendered pursuant to this Agreement or so as to otherwise comply with the requirements of any lawful agreement between the party and such governmental authority.

### Miscellaneous

**Choice of Law:** The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, are governed by the laws of North Carolina. The Contractor, by signing this contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Amendment:** This contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Contractor. The Purchase and Contract Divisions of the NC Department of Administration and the NC Department of Health and Human Services shall give prior approval to any amendment to a contract awarded through those offices.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this contract shall remain in full force and effect.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

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

**Time of the Essence:** Time is of the essence in the performance of this contract.

**Key Personnel:** The Contractor shall not replace any of the key personnel assigned to the performance of this contract without the prior written approval of the Division.

The term "key personnel" includes any and all persons identified by as such in the contract documents and any other persons subsequently identified as key personnel by the written agreement of the parties.

**Care of Property:** The Contractor agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this contract and will reimburse the Division for loss of, or damage to, such property. At the termination of this contract, the Contractor shall contact the Division for instructions as to the disposition of such property and shall comply with these instructions.

**Travel Expenses:** Reimbursement to the Contractor for travel mileage, meals, lodging and other travel expenses incurred in the performance of this contract shall not exceed the rates published in the applicable State rules. International travel shall not be reimbursed under this contract.

**Sales/Use Tax Refunds:** If eligible, the Contractor and all subcontractors shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Contractor shall not use the award of this contract as a part of any news release or commercial advertising.

## **APPENDIX B**

### **CERTIFICATIONS AND ASSURANCES**

1. Conflict of Interest (choose one)
  - a. [Conflict of Interest Acknowledgement and Policy](#)  
(non-governmental agencies)
  - b. [Conflict of Interest Acknowledgement and Policy - Individual](#)
2. [State Grant Certification – No Overdue Tax Debts](#)  
(non-governmental agencies)
3. [IRS Tax Exemption Letter](#) (if not already electronically on file)  
and [IRS Tax Exemption Verification Form \(Annual\)](#) (Non Profit Contractors)
4. [Federal Certifications](#)
5. [State Certifications](#)
6. [Iran Divestment Act](#)
7. [FFATA Subawardee Reporting Form](#)

**CONFLICT OF INTEREST ACKNOWLEDGEMENT AND POLICY**

State of \_\_\_\_\_

County \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said County and State, certify that

\_\_\_\_\_ personally appeared before me this day and acknowledged

that he/she is \_\_\_\_\_ of \_\_\_\_\_  
[name of Organization]

and by that authority duly given and as the act of the Organization, affirmed that the foregoing Conflict of

Interest Policy was adopted by the Board of Directors/Trustees or other governing body in a meeting held on the

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Official Seal)

Notary Public

My Commission expires \_\_\_\_\_, 20 \_\_\_\_



***Instruction for Organization:***

***Sign and attach the following pages after adopted by the Board of Directors/Trustees or other governing body OR replace the following with the current adopted conflict of interest policy.***

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Signature of Organization Official

## Conflict of Interest Policy Example

The Board of Directors/Trustees or other governing persons, officers, employees or agents are to avoid any conflict of interest, even the appearance of a conflict of interest. The Organization's Board of Directors/Trustees or other governing body, officers, staff and agents are obligated to always act in the best interest of the organization. This obligation requires that any Board member or other governing person, officer, employee or agent, in the performance of Organization duties, seek only the furtherance of the Organization mission. At all times, Board members or other governing persons, officers, employees or agents, are prohibited from using their job title, the Organization's name or property, for private profit or benefit.

A. The Board members or other governing persons, officers, employees, or agents of the Organization should neither solicit nor accept gratuities, favors, or anything of monetary value from current or potential contractors/vendors, persons receiving benefits from the Organization or persons who may benefit from the actions of any Board member or other governing person, officer, employee or agent. This is not intended to preclude bona-fide Organization fund raising-activities.

B. A Board or other governing body member may, with the approval of Board or other governing body, receive honoraria for lectures and other such activities while not acting in any official capacity for the Organization. Officers may, with the approval of the Board or other governing body, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If a Board or other governing body member, officer, employee or agent is acting in any official capacity, honoraria received in connection with activities relating to the Organization are to be paid to the Organization.

C. No Board member or other governing person, officer, employee, or agent of the Organization shall participate in the selection, award, or administration of a purchase or contract with a vendor where, to his knowledge, any of the following has a financial interest in that purchase or contract:

1. The Board member or other governing person, officer, employee, or agent;
2. Any member of their family by whole or half blood, step or personal relationship or relative-in-law;
3. An organization in which any of the above is an officer, director, or employee;
4. A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment or contracts.

D. **Duty to Disclosure** -- Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to the Board or other governing body or one's supervisor immediately.

E. **Board Action** -- When a conflict of interest is relevant to a matter requiring action by the Board of Directors/Trustees or other governing body, the Board member or other governing person, officer, employee, or agent (person(s)) must disclose the existence of the conflict of interest and be given the opportunity to disclose all material facts to the Board and members of committees with governing board delegated powers considering the possible conflict of interest. After disclosure of all material facts, and after any discussion with the person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

In addition, the person(s) shall not participate in the final deliberation or decision regarding the matter under consideration and shall leave the meeting during the discussion of and vote of the Board of Directors/Trustees or other governing body.

F. **Violations of the Conflicts of Interest Policy** -- If the Board of Directors/Trustees or other governing body has reasonable cause to believe a member, officer, employee or agent has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If, after hearing the person's response and after making further investigation as warranted by the circumstances, the Board of Directors/Trustees or other governing body determines the member, officer, employee or agent has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

**G. Record of Conflict** -- The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have an actual or possible conflict of interest, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement that presents a possible conflict of interest, the content of the discussion, including any alternatives to the transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Approved by:

##ContractorName##

Name of Organization

---

Signature of Organization Official

---

Date

**CONFLICT OF INTEREST ACKNOWLEDGEMENT AND POLICY - INDIVIDUAL**

**A conflict of interest** is a situation in which the individual and/or independent contractor has competing professional or personal interests (usually in a financial or economic nature). Such competing interests can make it difficult to fulfill his or her duties and responsibilities impartially. A conflict of interest exists even if no unethical or improper act results from it. A conflict of interest can create an appearance of impropriety that can undermine confidence in the person, profession, or court system.

As an independent contractor for the Department of Health and Human Services (DHHS) the contractor warrants and affirms the following:

His/her business is independent and that he/she markets his/her professional services to others, except to the extent necessary to avoid a conflict of interest.

The position is not used for financial gain beyond that received directly for this service nor will the work performed on this project create an appearance of a conflict of interest for me or a member of my family or others with whom I have business or other ties.

When a conflict of interest is identified, the contractor will disclose it in writing to the contract administrator listed on the contract.

\_\_\_\_\_  
Signature of Individual

State of \_\_\_\_\_

County \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said County and State, certify that  
\_\_\_\_\_ personally appeared before me this day and acknowledged  
and affirmed that they will abide by the foregoing Conflict of Interest Policy

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Official Seal)

Notary Public

My Commission expires \_\_\_\_\_, 20 \_\_\_\_

## State Grant Certification – No Overdue Tax Debts

**Grantee/Contractor** should complete this certification for all state funds received. Entity should enter appropriate data in the yellow highlighted areas. The completed and signed form should be provided to the state agency funding the grant to be attached to the contract for the grant funds. A copy of this form, along with the completed contract, should be kept by the funding agency and available for review by the Office of State Budget and Management.

*Note: If you have a contract that extends more than one state fiscal year, you will need to obtain an updated certification for each year of the contract.*

### Entity's Letterhead

**[Date of Certification (mmddyyyy)]**

To: State Agency Head and Chief Fiscal Officer

#### Certification:

We certify that the **[insert organization's name]** does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. 143C-6-23(c) is guilty of a criminal offense punishable as provided by N.C.G.S.) 143C-10-1b.

#### Sworn Statement:

**[Name of Board Chair]** and **[Name of Second Authorizing Official]** being duly sworn, say that we are the Board Chair and **[Title of the Second Authorizing Official]**, respectively, of **[insert name of organization]** of **[City]** in the State of **[Name of State]**; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

\_\_\_\_\_  
Board Chair

\_\_\_\_\_  
**[Title of Second Authorizing Official]**

Sworn to and subscribed before me on the day of the date of said certification.

\_\_\_\_\_  
(Notary Signature and Seal)

My Commission Expires: \_\_\_\_\_

If there are any questions, please contact the state agency that provided your grant. If needed, you may contact the North Carolina Office of State Budget and Management:

NCGrants@osbm.nc.gov-(919)807-4795

<sup>1</sup> G.S. 105-243.1 defines: Overdue tax debt. – Any part of a tax debt that remains unpaid 90 days or more after the notice of final assessment was mailed to the taxpayer. The term does not include a tax debt, however, if the taxpayer entered into an installment agreement for the tax debt under G.S. 105-237 within 90 days after the notice of final assessment was mailed and has not failed to make any payments due under the installment agreement.”

**CERTIFICATION OF ELIGIBILITY  
Under the Iran Divestment Act**

Pursuant to G.S. 147-86.59, any person identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The Iran Divestment Act of 2015, G.S. 147-86.55 *et seq.*\* requires that each vendor, prior to contracting with the State certify, and the undersigned on behalf of the Vendor does hereby certify, to the following:

1. that the vendor is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran;
2. that the vendor shall not utilize on any contract with the State agency any subcontractor that is identified on the Final Divestment List; and
3. that the undersigned is authorized by the Vendor to make this Certification.

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

By: \_\_\_\_\_  
Signature Date

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

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx> and will be updated every 180 days. For questions about the Department of State Treasurer's Iran Divestment Policy, please contact Meryl Murtagh at [Meryl.Murtagh@nctreasurer.com](mailto:Meryl.Murtagh@nctreasurer.com) or (919) 814-3852.

\* Note: Enacted by Session Law 2015-118 as G.S. 143C-55 *et seq.*, but has been renumbered for codification at the direction of the Revisor of Statutes.

*The Non-Profit Contractor must provide a copy of their IRS Tax Exemption Status Letter.  
If DHHS already has a copy of that document electronically on file, the annual verification must be submitted  
validating that their Tax Exempt Status has not changed.*

**IRS Tax Exemption Verification Form (Annual)**

We, the undersigned entity, hereby testify that the 501 (c) (3) status is on file with the North Carolina Department of Health and Human Services and is still in effect.

Name of Agency \_\_\_\_\_

\_\_\_\_\_  
Chairman, Executive Director, or other Authorized Official

Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

## FEDERAL CERTIFICATIONS

**The undersigned states that:**

1. He or she is the duly authorized representative of the Contractor named below;
2. He or she is authorized to make, and does hereby make, the following certifications on behalf of the Contractor, as set out herein:
  - a. The Certification Regarding Nondiscrimination;
  - b. The Certification Regarding Drug-Free Workplace Requirements;
  - c. The Certification Regarding Environmental Tobacco Smoke;
  - d. The Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions; and
  - e. The Certification Regarding Lobbying;
3. He or she has completed the Certification Regarding Drug-Free Workplace Requirements by providing the addresses at which the contract work will be performed;
4. [Check the applicable statement]
  - [ ] He or she **has completed** the attached **Disclosure Of Lobbying Activities** because the Contractor **has made, or has an agreement to make**, a payment to a lobbying entity for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action;

**OR**

  - [ ] He or she **has not completed** the attached **Disclosure Of Lobbying Activities** because the Contractor **has not made, and has no agreement to make**, any payment to any lobbying entity for influencing or attempting to influence any officer or employee of any agency, any Member of Congress, any officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action.
5. The Contractor shall require its subcontractors, if any, to make the same certifications and disclosure.

---

**Signature**

**Title**

---

**Contractor Name**

**Date**

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

### I. Certification Regarding Nondiscrimination

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

## II. Certification Regarding Drug-Free Workplace Requirements

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

### Address

Street

---

City, State, Zip Code

---

Street

---

City, State, Zip Code

---

3. Contractor will inform the Department of any additional sites for performance of work under this agreement.
4. False certification or violation of the certification may be grounds for suspension of payment, suspension or termination of grants, or government-wide Federal suspension or debarment. 45 C.F.R. 82.510.

### **III. Certification Regarding Environmental Tobacco Smoke**

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

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

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

#### **Instructions**

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

1. By signing and submitting this document, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of the fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originate may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant will provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549, 45 CFR Part 76. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter any lower tier covered transaction with a person who is debarred, suspended, determined ineligible or voluntarily excluded from participation in this covered transaction unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this document that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

### **Certification**

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

### **V. Certification Regarding Lobbying**

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

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

### **VI. Disclosure Of Lobbying Activities**

#### **Instructions**

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

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

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



**State Certifications**  
**Contractor Certifications Required by North Carolina Law**

**Instructions**

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

- Article 2 of Chapter 64: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_64/Article\\_2.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_64/Article_2.pdf)
- G.S. 105-164.8(b): [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_105/GS\\_105-164.8.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_105/GS_105-164.8.pdf)
- G.S. 143-48.5: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-48.5.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-48.5.html)
- G.S. 143-59.1: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_143/GS\\_143-59.1.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.1.pdf)
- G.S. 143-59.2: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_143/GS\\_143-59.2.pdf](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-59.2.pdf)
- G.S. 143-133.3: [http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_143/GS\\_143-133.3.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-133.3.html)

**Certifications**

- (1) **Pursuant to G.S. 143-48.5 and G.S. 143-133.3**, the undersigned hereby certifies that the Contractor named below, and the Contractor’s subcontractors, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system." E-Verify System Link: [www.uscis.gov](http://www.uscis.gov)
- (2) **Pursuant to G.S. 143-59.1(b)**, the undersigned hereby certifies that the Contractor named below is not an “ineligible Contractor” as set forth in G.S. 143-59.1(a) because:
  - (a) Neither the Contractor nor any of its affiliates has refused to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina when the sales met one or more of the conditions of G.S. 105-164.8(b); **and**
  - (b) [check **one** of the following boxes]
    - Neither the Contractor nor any of its affiliates has incorporated or reincorporated in a “tax haven country” as set forth in G.S. 143-59.1(c)(2) after December 31, 2001; **or**
    - The Contractor or one of its affiliates **has** incorporated or reincorporated in a “tax haven country” as set forth in G.S. 143-59.1(c)(2) after December 31, 2001 **but** the United States is not the principal market for the public trading of the stock of the corporation incorporated in the tax haven country.
- (3) **Pursuant to G.S. 143-59.2(b)**, the undersigned hereby certifies that none of the Contractor’s officers, directors, or owners (if the Contractor is an unincorporated business entity) has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934 within 10 years immediately prior to the date of the bid solicitation.
- (4) The undersigned hereby certifies further that:
  6. He or she is a duly authorized representative of the Contractor named below;
  7. He or she is authorized to make, and does hereby make, the foregoing certifications on behalf of the Contractor; **and**
  8. He or she understands that any person who knowingly submits a false certification in response to the requirements of G.S. 143-59.1 and -59.2 shall be guilty of a Class I felony.

---

Contractor’s Name

---

Signature of Contractor’s Authorized Agent

Date

---

Printed Name of Contractor’s Authorized Agent

Title

---

Signature of Witness

Date

Printed Name of Witness \_\_\_\_\_

Title \_\_\_\_\_

The witness should be present when the Contractor's Authorized Agent signs this certification and should sign and date this document immediately thereafter.

**Federal Funding Accountability and Transparency Act (FFATA) Data Reporting Requirement**  
NC DHHS, Division of \_\_\_\_\_ Subawardee Information

**A. Exemptions from Reporting**

1. Entities are **exempted** from the entire FFATA reporting requirement if **any** of the following are true:
  - The entity has a gross income, from all sources, of less than \$300,000 in the previous tax year
  - The entity is an individual
  - If the required reporting would disclose classified information
2. Entities who are not exempted entirely from FFATA reporting may be exempted from the requirement to provide executive compensation data. This executive compensation data is required ONLY if both below are true:
  - More than 80% of the entity's gross revenues are from the federal government **and** those revenues are more than \$25 million in the preceding fiscal year
  - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission.

**By signing below, I state that the entity listed below is exempt from:**

**The entire FFATA reporting requirement:**

- as the entity's gross income is less than \$300,000 in the previous tax year.
- as the entity is an individual.
- as the reporting would disclose classified information.

**Only executive compensation data reporting:**

- as at least one of the bulleted items in item number 2 above is not true.

Signature \_\_\_\_\_ Name \_\_\_\_\_ Title \_\_\_\_\_

Entity \_\_\_\_\_ Date \_\_\_\_\_

**B. Reporting**

1. **FFATA Data** required by all entities which receive federal funding (except those exempted above) per the reporting requirements of the *Federal Funding Accountability and Transparency Act (FFATA)*.

Entity's Legal Name _____	Contract Number _____
---------------------------	-----------------------

- Active SAM registration record is attached  
An active registration with SAM is **required**  
(go to [www.sam.gov](http://www.sam.gov) for more info about SAM)

Entity's DUNS Number _____	Entity's Parent's DUNS Nbr (if applicable) _____
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**Entity's Location**

↘ **Primary Place of Performance for specified contract**  
 Check here if the address is the **same** as Entity's Location

street address \_\_\_\_\_  
 city/st/zip+4 \_\_\_\_\_  
 county \_\_\_\_\_

street address \_\_\_\_\_  
 city/st/zip+4 \_\_\_\_\_  
 county \_\_\_\_\_

2. **Executive Compensation Data** for the entity's five most highly compensated officers (unless exempted above):

	Title	Name	Total Compensation
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

4.

5.