

<b>STATE OF NORTH CAROLINA</b> <b>Department of Health and Human Services</b> <b>(DHHS)</b> <b>Information Technology Division</b>	<b>REQUEST FOR PROPOSAL NO. 30-180397</b>	
	Offers will be publicly opened: September 7, 2018	
	Issue Date: July 10, 2018	
<b>Refer <u>ALL</u> inquiries regarding this RFP to:</b> Melissa Pressley Melissa.Pressley@dhhs.nc.gov 919-855-4966	Commodity Number: 946-20- Auditing	
	Description: Independent Verification and Validation Services for the NC Medicaid Enterprise System Project	
	Issuing Agency: North Carolina Department of Health and Human Services, Division of Health Benefits	
<b>See page 2 for mailing instructions.</b>	Requisition No.: n/a	

**OFFER AND ACCEPTANCE:** The State seeks offers for the Services and/or goods described in this solicitation. All offers and responses received shall be treated as offers to contract. The State's acceptance of any offer must be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence as follows: Best and Final Offers, if any, Special Terms and Conditions specific to this RFP, Specifications of the RFP, the Information Technology Terms and Conditions, and the agreed portion of the awarded Vendor's offer.

**EXECUTION:** In compliance with this Request for Proposal, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all Services or goods upon which prices are offered, at the price(s) offered herein, within the time specified herein. By executing this offer, I certify that this offer is submitted competitively and without collusion.

**Failure to execute/sign offer prior to submittal shall render offer invalid. Late offers are not acceptable.**

OFFEROR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY, STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:	FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

Offer valid for **two hundred ten (210)** days from date of offer opening

**ACCEPTANCE OF OFFER:** If any or all parts of this offer are accepted, an authorized representative of DHHS shall affix their signature hereto and this document and the documents identified above shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the awarded Vendor(s).

<p><b><u>FOR AGENCY USE ONLY</u></b></p> <p>Offer accepted and contract awarded this ___ day of _____, 20___, as indicated on attached certification, by _____ (Authorized representative of DHHS).</p>
---

**DELIVERY INSTRUCTIONS:** The Vendor must deliver **one (1) signed, original executed offer** and **seven (7) copies** of the Offer to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front. **Vendor must return all the pages of this solicitation in their response.**

The Vendor must also submit one (1) **signed, executed electronic copy** of its offer on a USB Flash Drive(s) and **one (1) electronic copy of the signed, original executed offer redacted in accordance with Chapter 132 of the North Carolina General Statutes**, the Public Records Act, on a USB Flash Drive(s). The files should not be password-protected and should be capable of being copied to other media.

For the purposes of this RFP, redaction means to edit the document by obscuring or removing information that is considered confidential and proprietary by the Vendor **and** meets the definition of Confidential Information set forth in N.C.G.S. 132-1.2.

If the offer does not contain Confidential Information, Vendor should submit a signed statement to that effect.

Address envelope and insert offer number as shown below. Please note that the US Postal Service does not deliver any mail (US Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the offer in this Office by the specified time and date of opening.**

MAILING ADDRESS FOR DELIVERY OF BID VIA U.S. POSTAL SERVICES	OFFICE ADDRESS FOR DELIVERY BY ANY OTHER MEANS, SPECIAL DELIVERY, OVERNIGHT DELIVERY, OR BY ANY OTHER CARRIER
OFFER NUMBER: 30-180397 NC Department of Health and Human Services Office of Procurement, Contracts and Grants Attn: Melissa Pressley 2008 Mail Service Center Raleigh, NC 27699-2008	OFFER NUMBER: 30-180397 NC Department of Health and Human Services Office of Procurement, Contracts and Grants Attn: Melissa Pressley 801 Ruggles Drive, Hoey Building Raleigh, NC 27603

Sealed offers, subject to the conditions made a part hereof, will be received at **801 Ruggles Drive, Hoey Building** until 2:00 pm Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Offers must be submitted in a sealed package with the Execution page signed and dated by an official authorized to bind the Vendor’s firm. Failure to return a signed offer shall result in disqualification. All offers must comply with Section VI, Proposal Content and Organization.

Offers **will not** be accepted by electronic means. This RFP is available electronically at <https://www.ips.state.nc.us/ips/>. All inquiries regarding the RFP specifications or requirements are to be addressed to the contact person listed on Page One.

**NON-RESPONSIVE OFFERS:** Vendor offers will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:

- “This offer does not constitute a binding offer”,
- “This offer will be valid only if this offer is selected as a finalist or in the competitive range”,
- “The Vendor does not commit or bind itself to any terms and conditions by this submission”,
- “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
- “This offer will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
- A statement of similar intent.

**VENDOR'S LICENSE OR SUPPORT AGREEMENTS:** The terms and conditions of the Vendor's standard services, license, maintenance or other agreement(s) applicable to Services, Software and other Products acquired under this RFP may apply to the extent such terms and conditions do not materially change the terms and conditions of this RFP. In the event of any conflict between the terms and conditions of this RFP and the Vendor's standard agreement(s), the terms and conditions of this RFP relating to audit and records, jurisdiction, choice of law, the State's electronic procurement application of law or administrative rules, the remedy for intellectual property infringement and the exclusive remedies and limitation of liability in the Information Technology Terms and Conditions herein shall apply in all cases and supersede any provisions contained in the Vendor's relevant standard agreement or any other agreement. The State shall not be obligated under any standard license and/or maintenance or other Vendor agreement(s) to indemnify or hold harmless the Vendor, its licensors, successors or assigns, nor arbitrate any dispute, nor pay late fees, legal fees or other similar costs.

**DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

**QUESTIONS CONCERNING RFP:** Written questions concerning this RFP will be received until July 30, 2018 at 2:00 pm Eastern Standard Time. They must be sent via e-mail to: [Melissa.Pressley@dhhs.nc.gov](mailto:Melissa.Pressley@dhhs.nc.gov). Please insert "Questions RFP-30-180397" as the subject for the email. The questions should be submitted in the following format:

Citation	Vendor Question	The State's Response
Offer Section & Page Number		

The State will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) <https://www.ips.state.nc.us/ips/>. Oral answers are not binding on the State.

Vendor contact regarding this RFP with anyone other than Melissa Pressley may be grounds for rejection of said Vendor's offer.

**ADDENDUM TO RFP:** If a pre-offer conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/>, and shall become an Addendum to this RFP. Vendors' questions posed orally at any pre-offer conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.

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

**BASIS FOR REJECTION:** Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the specifications or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed specification is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

**NOTICE TO VENDORS:** The State may, but will not be required to evaluate or consider any additional terms and conditions submitted with an Offeror's response. This applies to any language appearing in or attached to the document as part of the Offeror's response. By execution and delivery of this Invitation for Offer and response(s), the Offer agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless such are specifically accepted by the State.

**LATE OFFERS:** Regardless of cause, late offers will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late offers will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

**VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The NC electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/ips>

**POINTS OF CONTACT:** Contact by the Offeror with the persons shown below for contractual and technical matters related to this RFP is only permitted if expressly agreed to by the procurement officer named on page 2, or upon award of contract:

Vendor Contractual Point of Contact	Vendor Technical Point of Contact
<p>[NAME OF VENDOR]</p> <p>Street: [STREET ADDRESS]</p> <p>[CITY, STATE, ZIP]</p> <p>Attn: Assigned Contract Manager</p>	<p>[NAME OF VENDOR]</p> <p>Street: [STREET ADDRESS]</p> <p>[CITY, STATE, ZIP]</p> <p>Attn: Assigned Technical Lead</p>

Vendor Contractual Point of Contact
<p>Rob Morehead, IV&amp;V Project Manager            NC Department of Health and Human Services            Attn: Contract Administrator  <a href="mailto:William.Morehead@dhhs.nc.gov">William.Morehead@dhhs.nc.gov</a>            919-813-5062</p>

## Table of Contents

I.	Introduction.....	6
II.	Bidding Information.....	7
III.	Technical Proposal.....	13
IV.	Cost Proposal.....	14
V.	Other Requirements and Special Terms.....	14
VI.	Proposal Content and Organization.....	19
	Attachment A: Technical Specifications.....	23
	Attachment B: Schedule of Periodic Reviews.....	38
	Attachment C: Cost Proposal.....	40
	Attachment D: Information Technology Terms and Conditions.....	43

# **I. Introduction**

## **A. Background**

1. In September 2015, the North Carolina General Assembly enacted S.L. 2015-245, which directs NC DHHS to transition the State's Medicaid program from a fee-for-service model to a managed care model.
2. In June 2017, NC DHHS submitted a Section 1115 demonstration application to The Centers for Medicare & Medicaid Services (CMS) to obtain permission to demonstrate the efficacy of NC DHHS's managed care model.
3. If the application is approved, NC DHHS will be required to develop and/or procure a Medicaid Enterprise System (MES) designed for managed care to replace its Medicaid Management Information System (MMIS) and its Reporting & Analytics (R&A) system, which were designed to support a fee-for-service system.
4. CSRA State and Local Solutions LLC holds NC DHHS's current MMIS contract and Truven Health Analytics LLC holds NC DHHS's current R&A contract. Both contracts were set to expire June 30, 2018, but NC DHHS has exercised options to extend both contracts to June 30, 2019.
5. NC DHHS holds options to extend both contracts one more year to June 30, 2020.
6. If the Section 1115 demonstration waiver application is not approved, NC DHHS will still be required by CMS to replace the current systems and contracts in compliance with federal requirements for MITA and modularity to receive enhanced funding reimbursement.
7. CMS regulations require the State to acquire the services of an Independent Verification and Validation (IV&V) provider throughout the life cycle of the MES project (the "Project" or "MES Project") and any subsequent phases or initiatives.

## **B. Purpose**

The purpose of this RFP is to solicit offers from Vendors of Independent Verification and Validation (IV&V) services willing to perform IV&V services for DHHS during the Planning, Procurement, and Implementation phases of North Carolina's Medicaid Enterprise System (MES) Project to ensure that Project objectives are achieved.

## **C. Objectives**

1. To ensure project success and decrease implementation risks by obtaining independent and objective guidance and expertise from an IV&V Vendor that will:
  - a. Offer services above and beyond the traditional IV&V model;
  - b. Provide a high level of engagement throughout the Project from start to finish;
  - c. Be proactive, not passive or reactive; and
  - d. Actively identify and recommend actions to mitigate problems, not just report on problems.
2. To secure and maintain the highest possible level of federal financial participation (FFP) for the planning, implementation, and certification phases of NC DHHS's MES Project by complying fully with CMS's MITA 3.0 Framework, CMS's Seven Conditions and Standards (SCS) for Enhanced Funding, and CMS's certification standards.
3. To ensure that the components of the MES function together from end-to-end as planned.
4. To limit re-work by implementing lessons learned from other State projects.
5. To reduce costs and save time by reusing system components whenever possible.

## **D. Definite Quantity Contract**

This request is for a close-ended contract between the awarded Vendor and the State to furnish a pre-determined quantity of a good or service during a specified period.

## **E. Rights Reserved by The State**

The State reserves the right to make partial, progressive or multiple awards where it is advantageous to

award separately by items; where more than one supplier is needed to provide the contemplated specifications as to quantity, quality, delivery, service, geographical areas; and where other factors are deemed to be necessary or proper to the purchase in question.

## II. Bidding Information

### A. Procurement Schedule

The Department will make every effort to adhere to the following schedule, but reserves the right to adjust the schedule as necessary.

Action	Responsibility	Date
Issue of RFP	DHHS OPCG	7/10/18
Deadline to Submit Questions	Potential Vendors	7/30/18
Response to Written Questions	DHHS OPCG	8/23/18
Submission of Offer by 2:00 p.m. Eastern	Vendor(s)	9/7/18
Evaluation of Offerors	Evaluation Committee	9/7/18-12/30/18
Selection of Finalists	Evaluation Committee	10/8/18
Negotiations (optional)	Evaluation Committee designees and selected Vendor(s)	TBD
Best and Final Offers from Finalists (optional)	Vendors	TBD
Oral Presentation and/or Product Demonstrations by Finalists (optional)	Vendors	TBD
Contract Award	DHHS OPCG	12/31/18
Protest Deadline	Vendors	15 days after award

### B. Instructions to Vendors

- Offers submitted electronically, or via facsimile (FAX) machine **will not** be accepted.
- EXECUTION:** Failure to sign under EXECUTION section will render offer invalid.
- PROMPT PAYMENT DISCOUNTS:** Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the Agreement except as a factor to aid in resolving cases of identical prices.
- MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Electronic Vendor Portal (eVP) allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and Services available on the Interactive Purchasing System at the following web site: <https://vendor.ncgov.com/vendor/login>
- ORGANIZATION:** Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- E-PROCUREMENT:** This is **not** an E-Procurement solicitation.
- E-VERIFY:** Pursuant to N.C.G.S. §143B-1350(k), the State shall not enter a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

9. **Reserved.**

**C. General Conditions for Proposals**

1. **DEFINITIONS, ACRONYMS AND ABBREVIATIONS:** The following words, acronyms, and abbreviations have the meanings shown below when used in this RFP. Additional words, acronyms and abbreviations may be defined when first used in this RFP. See 9 NCAC 06A.0102 for definitions of common State procurement terms.

**Contract Year:** Each one-year period during the term of the contract beginning on the effective date or on the anniversary of the effective date and continuing for one year thereafter.

**DDI:** Design Development Implementation

**Deliverables:** Deliverables, as used herein, shall comprise all Hardware, Vendor Services, professional Services, Software and provided modifications to any Software, and incidental materials, including any goods, Software or Services access license, data, reports and documentation provided or created during the performance or provision of Services hereunder. Deliverables include "Work Product" and means any expression of Vendor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software.

**Department:** means the North Carolina Department of Health and Human Services (DHHS).

**Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).

**HIPAA Security and Privacy Rule** means the Standards for Security and Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164.

**ITD:** Is the Information Technology Division of the North Carolina Department of Health and Human Services.

**IV&V:** Independent Verification and Validation

**MES:** Medicaid Enterprise System

**MITA:** Medicaid Information Technology Architecture

**MMIS:** Medicaid Management Information System

**NCDIT or DIT:** The NC Department of Information Technology, formerly Office of Information Technology Services.

**PMO:** Project Management Office

**QA:** Quality Assurance

**Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.

**Required by Law** has the same meaning as the term "required by law" defined in 45 C.F.R. §164.103.

**RFP:** Request for Proposal

**Solution or System:** Solution (or System) describes features, functions and characteristics of the product, system, service, or result that will meet the business and stakeholder requirements.

**State:** The State of North Carolina and its Agencies.

**Vendor:** Company, firm, corporation, partnership, individual, etc., submitting an offer in response to a solicitation.

2. **READ AND REVIEW:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all specifications, requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from the State's contact person listed on the front page of the solicitation.

Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time identified hereinabove.

3. **VENDOR RESPONSIBILITY:** The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs thereof. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying Services, maintenance, warranties, value added Services or other criteria identified herein. The Vendor acknowledges that, to the extent the awarded contract involves the creation, research, investigation or generation of a future RFP or other solicitation; the Vendor will be precluded from bidding on the subsequent RFP or other solicitation and from serving as a subcontractor to an awarded vendor. The State reserves the right to disqualify any Vendor if the State determines that the Vendor has used its position (whether as an incumbent Vendor, or as a subcontractor hired to assist with the RFP development, or as a Vendor offering free assistance) to gain a competitive advantage on the RFP or other solicitation.
4. **ELIGIBLE VENDOR:** The Vendor certifies that in accordance with N.C.G.S. §143-59.1(b), Vendor is not an ineligible vendor as set forth in N.C.G.S. §143-59.1 (a).
5. **ORAL EXPLANATIONS:** The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.
6. **INSUFFICIENCY OF REFERENCES TO OTHER DATA:** **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) **will not** suffice as a response to this solicitation.
7. **CONFLICT OF INTEREST:** Applicable standards may include: N.C.G.S. §§143B-1352 and 143B-1353, 14-234, and 133-32. The Vendor shall not knowingly employ, during the period of the Agreement, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing Services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
8. **CONTRACT TERM:** A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be four (4) years, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend the Agreement for three (3) additional one (1) year periods at its sole discretion.
9. **EFFECTIVE DATE:** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing the Vendor for goods provided nor Services rendered prior to the appropriate signatures and the arrival of the effective date of the Agreement. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the Agreement.
10. **RECYCLING AND SOURCE REDUCTION:** It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of

the purchasers at the NCDIT Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.

**11. HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to N.C.G.S. §§143B-1361(a), 143-48 and 143-128.4 and any applicable Executive Order, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://ncadmin.nc.gov/businesses/hub/>.

**12. AMENDMENTS OR REVISIONS; CONTRACT AWARD STATUS; OBVIOUS PRICE ERRORS**

- a. Any and all amendments or revisions to this document shall be made by written addenda issued by NC DHHS.
- b. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award.
- c. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.

**13. RIGHTS RESERVED:** While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the issuing Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:

- a. waive any formality;
- b. amend the solicitation;
- c. cancel or terminate this RFP;
- d. reject any or all offers received in response to this RFP;
- e. waive any undesirable, inconsequential, or inconsistent provisions of this RFP;
- f. if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
- g. not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
- h. if all offers are found non-responsive, determine whether Waiver of Competition criteria may be satisfied, and if so, negotiate with one or more known sources of supply.

**14. ALTERNATE OFFERS:** The Vendor may submit alternate offers for various levels of service(s) or products meeting specifications. Alternate offers must specifically identify the RFP specifications and advantage(s) addressed by the alternate offer. Any alternate offers must be clearly marked with the legend as shown herein. Each offer must be for a specific set of Services or products and offer at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be an offer with a different price and a separate RFP offer. Vendors may also provide multiple offers for software or systems coupled with support and maintenance options, provided, however, all offers must satisfy the specifications.

---

---

Alternate offers must be clearly marked  
**“Alternate Offer for [Name of Vendor]”**

and numbered sequentially with the first offer if separate offers are submitted.

This legend must be in bold type of not less than 14-point type on the face of the offer, and on the text of the alternative offer.

---

---

**15. CO-VENDORS:** Vendors may submit offers as partnerships or other business entities. Such partners or other “co-Vendors”, if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.

**16. SUBMITTING AN OFFER:** Each Vendor submitting an offer warrants and represents that:

- a. The offer is based upon an understanding of the specifications and requirements described in this RFP.

- b. Costs for developing and delivering responses to this RFP and any subsequent presentations of the offer as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their offers.
17. **SUBMITTED MATERIALS:** All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and the Vendor resulting from this RFP process.
18. **MODIFICATIONS TO OFFER:** An offer may not be unilaterally modified by the Vendor.
19. **STATE REVIEW AND APPROVAL:** This RFP and any resulting contract are exempt from State contract review and approval requirements pursuant to N.C.G.S. § 143B-216.80(b)(4).
20. **APPROVAL BY CMS:** This RFP and any resulting contract are subject to review and approval by the Centers for Medicare and Medicaid Services (CMS).

#### D. Evaluation Process

1. **BEST VALUE:** "Best Value" procurement methods are authorized by N.C.G.S. §§143-135.9 and 143B-1350(h). The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's offer; the Vendor's past performance; and the evaluated probability of performing the specifications stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable Vendors to offer and the Agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of a procurement. Evaluation shall also include compliance with information technology project management policies, compliance with information technology security standards and policies, substantial conformity with the specifications, and other conditions set forth in the solicitation.
2. **SOURCE SELECTION:** A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award this RFP to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
  - a. The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the offer.
  - b. Evaluation Process Explanation. State Agency employees will initially review all offers. Offers will be initially classified as being responsive or non-responsive. If an offer is found non-responsive, it will not be considered further. All responsive offers will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Offer shall have specific page numbers and sections stated in the reference.
  - c. To be eligible for consideration, a Vendor's offer **must** substantially conform to the intent of all specifications. Compliance with the intent of all specifications will be determined by the State. Offers that do not meet the full intent of all specifications listed in this RFP may be deemed deficient. Further, a serious deficiency in the offer to any one factor may be grounds for rejection regardless of overall score.
  - d. Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of offer, data that is essential for a complete and thorough evaluation of the offer.
3. **BEST AND FINAL OFFERS (BAFO):** If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of offers, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The

State will evaluate BAFOs and add any additional weight to the Vendors' respective offer. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.

4. **EVALUATION CRITERIA:**

- a. Does the Vendor's Proposal substantially conform to the specifications in the RFP?
- b. Does the Vendor's Proposal document that the Vendor understands the purposes of MES IV&V?
- c. Does the Vendor's Proposal document that the Vendor will provide a high level of engagement throughout the MES Project from start to finish?
- d. Does the Vendor's Proposal document that the Vendor will be proactive, not passive or reactive?
- e. Does the Vendor's Proposal document that the Vendor will actively identify and recommend actions to mitigate problems, not just report on problems?
- f. Does the Vendor's Proposal document that its evaluation of MES Project deliverables will likely improve the quality of those deliverables?
- g. Does the Vendor's Proposal document that the Vendor can accurately assess project risk?
- h. Does the Vendor's Proposal document that the Vendor can successfully mitigate project risk?
- i. Does the Vendor's Proposal document that the Vendor can trace requirements from initial design all the way through to User Acceptance Testing?
- j. Does the Vendor's Proposal document that the Vendor's proposed staff has the training and experience necessary to provide high quality MES IV&V services?
- k. Does the Vendor's Proposal document that the Vendor's staff is adequate for the size and complexity of the MES Project?
- l. Does the Vendor's Proposal document that the Vendor will be able to perform its duties on time?
- m. Does the Vendor's Proposal document that the Vendor will be able to perform its duties with high quality?
- n. Does the Vendor's Proposal document that the Vendor will be able to perform its duties in a manner that accomplishes the MES Project's business objectives?
- o. Do the Vendor's business references document that the Vendor has provided outstanding MES IV&V services in the past?
- p. Does the Vendor's Proposal document that the Vendor has experience with MES modular system implementations?
- q. Does the Vendor's Proposal document that the Vendor has experience in MES Certification?
- r. Cost.

5. **PAST PERFORMANCE:** The Vendor may be disqualified from any evaluation or award if the Vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.

6. **EVALUATION METHOD:**

- a. The Evaluation Committee shall compare Vendor proposals to the evaluation criteria listed above and shall list and describe the strengths and weaknesses of each Vendor's proposal as compared to the evaluation criteria and the other Vendors' proposals.
- b. The Evaluation Committee shall prepare a narrative summarizing the strengths and weaknesses of each Vendor's proposal and provide a contract award recommendation to the DHHS Office of Procurement, Contracts and Grants.
- c. The DHHS Office of Procurement, Contracts and Grants will review the narrative and contract award recommendation to ensure the evaluation was completed in accordance with State and DHHS guidelines.

- d. The Vendor with the best overall proposal as determined by the best value trade-off method (i.e., most strengths and fewest weaknesses, as compared to the evaluation criteria and other Vendors' proposals) will be awarded the contract.
7. **INTERACTIVE PURCHASING SYSTEM (IPS):** The State has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve offer award information electronically from our Internet web site: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-offer number (30-180397), and then search. This information may not be available for several weeks dependent upon the complexity of the acquisition and the length of time to complete the evaluation process.
8. **PROTEST PROCEDURES:** When an Offeror protests a contract awarded by the agency, the agency and Offeror shall comply with the following:
  - a. The Offeror shall deliver a written request for a protest meeting to the agency head or her designee within fifteen (15) calendar days from the date of contract award. The Offeror's request shall contain specific reasons and any supporting documentation regarding why there is a concern with the award. If the request does not contain this information or the agency head determines that a meeting would serve no purpose, then the agency head, within ten (10) calendar days from the date of receipt may respond in writing to the offeror and refuse the protest meeting request.
  - b. If the protest meeting is granted, the agency head shall schedule the meeting within thirty (30) calendar days after receipt of the letter, unless a later date is accepted by the protesting party and the agency. The agency shall provide written notice of the date and time of the protest meeting to any awarded vendor. Within ten (10) calendar days from the date of the protest meeting, the agency head shall respond to the protesting Offeror in writing with a final agency decision.
  - c. If a protest is determined by the agency head to be valid then the following outcomes may occur:
    - i. The award and issued purchase order shall be canceled and the solicitation for offers to contract is not re-bid;
    - ii. The award and issued purchase order shall be canceled and the solicitation for offers to contract is re-bid;
    - iii. The award and issued purchase order shall be canceled and the contract shall be awarded to the next lowest priced, technically competent, qualified offeror, if that offeror agrees to still honor its submitted bid.
  - d. If the Offeror desires further administrative review after receiving a decision under paragraphs a. or b., the protesting party may, within sixty (60) days from the date such decision is received, file a contested case petition with the Office of Administrative Hearings (OAH) in accordance with N.C.G.S. §150B-23.

### **III. Technical Proposal**

1. Reserved.
2. Reserved.
3. Reserved.
4. Reserved.
5. Reserved.
6. Reserved.
7. Reserved.
8. Reserved.
9. Reserved.
10. Reserved.
11. Reserved.

- 12. SCOPE OF WORK:** The Vendor shall perform the independent verification and validation (IV&V) tasks described in Paragraph 14, Requirements, below.
- 13. TECHNICAL SPECIFICATIONS:** Means, as used herein, a specification that documents the requirements of a system or system component. It typically includes functional requirements, performance requirements, interface requirements, design requirements, development standards, maintenance standards, or similar terms. Substantial conformity with technical specifications is required by G.S. § 143B-1350(h).
- a. This RFP does not contain any Technical Specifications because this RFP seeks the provision of services and not systems or system components.
  - b. Reserved.
  - c. Reserved.
- 14. IV&V SERVICES REQUIREMENTS:** The IV&V Services Requirements are set out in RFP Attachments A and B. Please acknowledge that you have read, understand, and agree to perform/submit all tasks/Deliverables as described in RFP Attachments A and B, and describe in your proposal how you will comply with each Requirement.

**IV. Cost Proposal**

- 1. **OFFER COSTS:** The Vendor must list and describe all costs that will be charged to the State, which may include but not be limited to the items listed in the cost tables provided in RFP Attachment C.
- 2. Reserved.
- 3. **ALTERNATIVE COST RESPONSE:** Vendors who propose an Alternative cost response must submit a separate document labeled "Alternative Cost Response".

**V. Other Requirements and Special Terms**

- 1. **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:** In accordance with N.C.G.S. §143B-1361(b), the Vendor must detail the manner in which it intends to utilize resources or workers in the RFP response. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's offer. The Vendor shall provide the following for any offer or actual utilization or contract performance:
  - a. The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the Agreement and whether any of this work will be performed outside the United States
  - b. The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
  - c. Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing Services under a state contract outside of the United States
  - d. Any Vendor or subcontractor providing call or contact center Services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center Services are being provided

Will any work under the Agreement be performed outside the United States?	Yes _____	No _____
If "yes", specify location:		

- 2. **SPECIAL TERMS AND CONDITIONS:**
  - a. The Information Technology Terms and Conditions in Attachment D shall govern this Contract, except as provide in subsection d., below.
  - b. Reserved.
  - c. Reserved.

d. Paragraph #16 in Section 1 of the Information Technology Terms and Conditions is supplemented as follows: Vendor shall provide Certificates of Insurance to the State not later than ten (10) days following the date of the Notice of Award issued pursuant to this RFP. Vendor must notify the State immediately of any material change in insurance coverage, including, but not limited to changes in limits, coverage, or status of the policies.

e. **Reserved.**

f. **Conflicts of Interest**

- i. Any vendor (and its subcontractors) providing independent verification and validation (IV&V) services to the MES Project is prohibited from soliciting, proposing, or being awarded any project management, quality assurance, software design, development, or other manner of planning, design, development, or implementation phase activity on the MES Project for which these IV&V services are being procured.
- ii. This exclusion is executed in accordance with federal regulations at 45 CFR 95.626, which require that this IV&V effort "... be conducted by an entity that is independent from the State (unless the State receives an exception from the CMS/HHS)."
- iii. For purposes of clarity, the Center for Medicaid and CHIP Services (CMCS) defines "the State" in the above regulatory citation as being a state's IT project, and the umbrella agency or department. The primary purpose of this exclusion is to ensure that the IV&V Vendor avoids any real or perceived conflicts of interest. For federal purposes, the scope of IV&V includes planning, management, and other programmatic activities in conformance with the term's usage in federal regulations at 45 CFR 95.626.
- iv. Independent V&V is the set of verification and validation activities performed by an agency not under the control of the organization developing the software. IV&V services must be provided and managed by an organization that is technically and managerially independent of the subject software development project. This independence takes two mandatory forms.
- v. First, technical independence requires that the IV&V services provider organization, its personnel, and subcontractors are not and have not been involved in the software development or implementation effort or in the project's initial planning and/or subsequent design. Technical independence helps ensure that IV&V review reports are free of personal or professional bias, posturing, or gold plating.
- vi. Second, managerial independence is required to make certain that the IV&V effort is provided by an organization that is departmentally and hierarchically separate from the software development and program management organizations. Managerial independence helps ensure that the IV&V Vendor can deliver findings and recommendations to state and federal executive leadership and management without restriction, fear of retaliation, or coercion (e.g., reports being subject to prior review or approval from the development group before release to outside entities, such as the federal government).

3. **FINANCIAL STATEMENTS:** Agencies must determine that a Vendor has sufficient financial resources to perform. GS 143B-1350(h1). The Vendor **shall** provide evidence of financial stability with its response to this RFP as further described hereinbelow. As used herein, Financial Statements shall **exclude** tax returns and compiled statements.

- a. For a publicly traded company, audited Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, The Vendor must explain the reason why they are not available.
- b. For a privately held company, audited Financial Statements for the past three (3) fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, The Vendor must explain the reason why they are not available. If audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial

condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.

- c. The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of this RFP award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.

**4. DISCLOSURE OF LITIGATION:** The Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State, may constitute a material breach of the Agreement.

- a. The Vendor shall notify the State in its offer, if it, or any of its subcontractors, or their officers, directors, or key personnel who may provide Services under any contract awarded pursuant to this solicitation, have ever been convicted of a felony, or any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception. The Vendor shall promptly notify the State of any criminal litigation, investigations or proceeding involving the Vendor or any subcontractor, or any of the foregoing entities' then current officers or directors during the term of the Agreement or any Scope Statement awarded to the Vendor.
- b. The Vendor shall notify the State in its offer, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it or its subcontractors during the three (3) years preceding its offer, or which may occur during the term of any award to the Vendor pursuant to this solicitation, that involve (1) Services or related goods similar to those provided pursuant to any contract and that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
- c. All notices under subsection a and b herein shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the Information Technology Terms and Conditions in Attachment D. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.

**5. CRIMINAL CONVICTION:** In the event the Vendor, an officer of the Vendor, or an owner of a 25% or greater share of the Vendor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of North Carolina employees; convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Vendor's business integrity, such vendor shall be prohibited from entering into a contract for goods or Services with any department, institution or agency of the State.

**6. SECURITY AND BACKGROUND CHECKS:** The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by the Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.

**7. ASSURANCES:** If any criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of the Agreement, causes the State to be reasonably concerned about:

- a. the ability of the Vendor or its subcontractor to continue to perform the Agreement in accordance with its terms and conditions, or
- b. whether the Vendor or its subcontractor in performing Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of the Agreement or violation of law, regulation or public policy;

the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that the Vendor or its subcontractors hereunder will be able to continue to perform the Agreement in accordance with its terms and conditions and the Vendor or its subcontractors will not engage in conduct in performing Services under the Agreement which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

**8. CONFIDENTIALITY OF DATA AND INFORMATION:** All RFP responses, information marked as confidential or proprietary, financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Vendor in order to carry out the Agreement, or which become available to the Vendor in carrying out the Agreement, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

**9. Reserved.**

**10. MEETINGS:** Vendor staff will initially meet with Agency staff once a month to report on the Vendor's activities, findings, concerns, and recommendations; to request Agency assistance and support as needed; and to discuss any contract disputes that may arise. The frequency of the meetings may be increased and decreased over the term of the Contract as needed and agreed by the Parties. The meetings will be held at the Agency's offices in Raleigh, North Carolina at the dates and times agreed upon by the Parties. At least one of Vendor's on-site staff must attend each meeting in person; Vendor's off-site staff may attend via teleconference at Vendor's expense. The Vendor shall prepare and circulate a written agenda for each meeting, which shall include all items proposed by each Party. The meetings will be co-chaired by the Vendor and the Agency. The Vendor shall prepare and circulate the minutes of each meeting within three working days after each meeting.

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

- a. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:
  - i. Cancel the Stop Work Order, or
  - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of the Agreement.

- b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if:
  - i. The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of the Agreement, and
  - ii. The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon an offer submitted at any time before final payment under the Agreement.
- c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.
- d. The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

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

**13. Reserved.**

**14. FINANCIAL RESOURCES ASSESSMENT, QUALITY ASSURANCE, PERFORMANCE AND RELIABILITY:**

- a. Pursuant to N.C.G.S. §143B-1350(h)(1), Agencies must conduct a risk assessment, including whether the Vendor has sufficient financial resources to satisfy the agreed upon limitation of liability prior to the award of a contract with Vendor.
- b. Contract Performance Security: The State reserves the right to require performance guaranties pursuant to N.C.G.S. §143B-1340(f) and 09 NCAC 06B.1207 from the Vendor without expense to the State.
- c. Project Assurance, Performance and Reliability Evaluation: Pursuant to N.C.G.S. §143B-1340, the State CIO may require quality assurance reviews of Projects as necessary.

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

- a. It is understood and agreed by both parties that all the terms and conditions of the Agreement shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from the Agreement, nor in any manner amend or supersede any of the other terms or provisions of the Agreement or any amendment hereto.
- b. Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by the Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by the Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to

the Vendor's personnel, an estimated time schedule for the provision of the Services by the Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.

- c. All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by the Vendor and the State prior to beginning work.
- d. The State has the right to require the Vendor to stop or suspend performance under the "Stop Work" provision in accordance with Section V. Other Requirements and Special Terms, 11. Stop Work Order.
- e. The Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under the Agreement cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:
  - i. Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
  - ii. Terminate the work authorization, or
  - iii. Alter the scope of the work authorization to define tasks that can be accomplished within the remaining estimated work hours.
  - iv. The State will notify the Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or Services.

16. Reserved.

17. Reserved.

18. Reserved.

19. Reserved.

## **VI. Proposal Content and Organization**

1. **CONTENTS OF PROPOSAL:** This section should contain all relevant and material information relating to the Vendor's organization, personnel, and experience that would substantiate its qualifications and capabilities to perform the Services and/or provide the goods described in this RFP. If any relevant and material information is not provided, the offer may be rejected from consideration and evaluation. Offers will be considered and evaluated based upon the Vendor's full completion and response to the following, and any additional requirements herein, or stated in a separate Exhibit.
2. **INFORMATION AND DESCRIPTIVE LITERATURE:** The Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this RFP, each Vendor must submit with their offer sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous offer will not satisfy this provision. proposal that do not comply with these requirements may be rejected.
3. **PROPOSAL CONTENT:** Demonstrate substantial conformity to the RFP specifications.
  - a. Provide a detailed description of **Vendor's** firm that includes all the following information:
    1. Full name, address, and telephone number of the organization;
    2. Date established;
    3. Background of firm;

4. Ownership (public company, partnership, subsidiary);
  5. If incorporated, state of incorporation must be included.
  6. Number of full-time employees on January 1st for the last three years or for the duration that the Vendor's firm has been in business, whichever is less.
- b. Clearly state Vendor's understanding of the problem(s) presented by this RFP.
  - c. Describe Vendor's approach to performing IV&V engagements, including elements such as (but not limited to):
    1. What Vendor believes to be the appropriate role of IV&V;
    2. Any tools or methodologies that Vendor will use to guide and perform IV&V work;
    3. How Vendor applies standards as part of its IV&V work;
    4. How Vendor's IV&V approach varies or is tailored to specific client projects, solution types, and/or life cycle phases;
    5. What types of artifacts and work products Vendor produces during IV&V work; and
    6. What factors Vendors believes are essential to effective IV&V.
  - d. Describe how Vendor would apply its organization's IV&V approach to the tasks described in this RFP.
    1. Identify specific activities Vendor would perform;
    2. Identify the tools, methods, and/or standards Vendor would employ to perform these activities;
    3. Identify specific artifacts and work products that Vendor recommends for the MES Project IV&V effort;
    4. Describe how Vendor would approach IV&V over the full life of the MES Project and across the various planned procurements (e.g., technology-based vs. business process outsourcing);
    5. Explain how Vendor will perform the specified types of assessments required by CMS and DHHS;
    6. Provide a proposed schedule and work plan for performing the IV&V work and developing the artifacts and work products Vendor recommends;
    7. Explain any requirements for or expectations of support from DHHS personnel, from the PMO, and/or from other MES vendors over the project life;
    8. Explain how Vendor will maintain independence while still working proactively and cooperatively to help the State make the MES Project a success;
  - e. Describe how Vendor's approach will help North Carolina achieve a robust and effective MES solution that meets CMS certification requirements.
  - f. Describe how Vendor's services will go above and beyond the traditional IV&V model.
  - g. Describe how Vendor will provide a high level of engagement throughout the MES Project from start to finish.
  - h. Describe how Vendor will provide **proactive, not passive or reactive**, IV&V services that will improve MES Project outcomes and reduce design, development, or implementation problems or issues before they happen.
  - i. Describe how Vendor would inform project stakeholders about critical risks.
  - j. Describe how Vendor would ensure that these risks are promptly addressed.
  - k. Describe how Vendor's IV&V approach would enable the State to maximize the containment of risks for a project of this size and complexity.
  - l. Describe how Vendor's IV&V approach would help the State and the other MES vendors minimize issues related to duplication of efforts, integration and interfaces, implementation quality, etc.
  - m. Describe Vendor's approach to managing an IV&V project of the size and complexity of the NC MES

Project. Include at a minimum:

1. Project management methodologies, tools, or standards that Vendor uses to manage its engagements;
  2. Schedule planning and management;
  3. Status reporting;
  4. Deliverable development and coordination;
  5. Resource management and coordination with other stakeholders (e.g., DHHS, the System Integrator Contractor, PMO Contractor, other vendors, external stakeholders such as CMS);
  6. Communications;
  7. Issue identification and resolution;
  8. Risk identification and management;
  9. Budget planning and management; and
  10. Staff performance management.
- n. Describe how Vendor will ensure availability of sufficient resources and staff to start IV&V operations within 15 calendar days of contract award and to be fully operational within 45 calendar days of award.
- o. Explain where Vendor's staff would be located and what facilities and resources will be available to them through the life of this project.
4. **ERRATA OR EXCEPTIONS:** Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
5. **OFFER FORMAT:** The offers should contain the **entire** solicitation and be organized in the exact order in which the requirements and/or desirable performance criteria are presented in the RFP. **The Execution page of this RFP must be placed at the front of the Proposal.** Each page should be numbered. The offer should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the Vendor's offer. All offers should be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.
6. **GENERAL INSTRUCTIONS:** Vendors are strongly encouraged to adhere to the following general instructions to bring clarity and order to the offer and subsequent evaluation process:
- a. Elaborate offers in the form of brochures or other presentations beyond that necessary to present a complete and effective offer are not desired.
  - b. The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
7. **RFP RESPONSE ORGANIZATION:** The offer should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.
- a. Letter of Transmittal - Each offer must be accompanied by a letter of transmittal that provides the following information:
    1. Identify the submitting organization;
    2. Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized by the organization to contractually obligate the organization;
    3. Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the Agreement on behalf of the organization;
    4. Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;
    5. Acknowledge receipt of all amendments to this RFP.
  - b. Table of Contents.

- c. Technical Proposal
  - d. Cost Proposal
  - e. References.
  - f. Financial Information.
  - g. Conflict of Interest:
    - i. Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP;
    - ii. State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
    - iii. State the employing State Agency, individual's title at that State Agency, and termination date.
  - h. Errata and Exceptions, if any. Offers conditioned upon acceptance of Vendor Exceptions may be determined to be non-responsive by the State.
  - i. **Reserved.**
  - j. **Reserved.**
  - k. **Reserved.**
  - l. Within each section of their offer, Vendors should address the items in the order in which they appear in this RFP. Forms, if any provided in the RFP, must be completed and included in the appropriate section of the offer. All discussion of proposal systems, costs, rates, or expenses must be presented with the cost response.
8. **ADHERENCE TO INSTRUCTIONS:** Any offer that does not adhere to these instructions may be deemed non-responsive and rejected on that basis.
9. **ATTACHMENTS:** Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

**Remainder of Page Intentionally Left Blank**

# **Attachment A**

## **IV&V Services Requirements (Statement of Work)**

### **Introduction**

The Vendor will provide IV&V services for CMS and the State in support of the Medicaid Certification Enterprise Lifecycle (MECL) in accordance with guidance found in the Medicaid Enterprise Certification Toolkit. The Medicaid Enterprise System (MES) certification process consists of four life cycle phases:

- a. The Project Initiation and Planning Phase;
- b. The Requirements, Design, and Development Phase;
- c. The Integration, Test, and Implementation Phase; and
- d. The Operations and Maintenance Phase;

and three types of certification milestone reviews:

- a. Project Initiation Milestone Reviews;
- b. Operational Milestone Reviews; and
- c. MMIS Certification Final Reviews.

All three Milestone Reviews will be performed for each MES module. The MECL and its Milestone Reviews are explained in detail in the CMS Medicaid Enterprise Certification Toolkit.

Vendor shall perform its IV&V tasks iteratively throughout the MECL to determine whether plans, methods and products fulfill the requirements placed on them by previous iterations, phases or steps, and whether they are internally complete, consistent, and sufficiently correct to adequately support the next iteration, phase and step. Vendor shall perform the services listed in Sections 1 – 12 below:

### **1. Progress Reports and Certification Checklists**

- a. The IV&V Vendor produces Quarterly Progress Reports that document the strengths and weaknesses of the MES Project and provide recommendations for correcting weaknesses. Progress Reports are prepared in advance of MMIS milestone reviews with CMS.
- b. Vendor interviews and observes Agency Project Management Staff, contractor staff, and subcontractor staff.
- c. Vendor observes project meetings and activities to understand the processes, procedures, and tools used in the MES Project.
- d. Vendor reviews and analyzes documentation produced in connection with the MES Project for adherence to industry standards.
- e. Vendor fills out the reviewer comment portion of the Medicaid Enterprise Certification Checklists and appends them to progress reports.
- f. In preparation for the MES milestone reviews, Vendor evaluates State documents and other artifacts, along with any working modules or code applicable to the review, and completes the reviewer comments portion of the Medicaid Enterprise Certification Checklists, which are appended to the MES IV&V Progress Report.
- g. Vendor delivers the final MES progress report to CMS and the State at least two (2) weeks before the scheduled MMIS milestone review.
- h. Vendor provides draft and final MES progress reports to CMS and NC DHHS simultaneously.

## 2. Oversight

- a. Vendor is given unrestricted access during regular business hours to all MES Project documents, facilities, and staff, **including those of all MES Project contractors and subcontractors.**
- b. Vendor observes meetings, reviews deliverables and documentation, and conducts interviews.
- c. Vendor reviews the MES Project for:
  1. Progress against budget and schedule;
  2. Risk management and assessment;
  3. Inclusion of state goals/objectives and all federal MES requirements in all RFPs and contracts;
  4. Adherence to the State's software development life cycle (SDLC);
  5. Incorporation of the standards and conditions for Medicaid IT into design and development;
  6. Reasonability, thoroughness, and quality of MITA self-assessment, concept of operations, information architecture, and data architecture;
  7. Incorporation of NC DHHS's MITA goals and plans into MMIS design and development;
  8. Robust configuration management that includes state or developer configuration audits against configuration baseline;
  9. Change management planning and execution;
  10. Adherence to service level agreements;
  11. Completeness and reasonability of MES concept of operations, architecture, and designs;
  12. Accuracy of capture of interfaces and data sharing requirements with external systems;
  13. Viability and completeness of the data transition plan;
  14. Traceability of requirements through design, development, and testing;
  15. Adequacy of system security and privacy policies, plans, technical designs, and implementations;
  16. Coverage and integrity of all system testing, including stress testing and testing of interfaces between modules and with external partner systems;
  17. Capacity management, including consideration of future vendor support and release plans for underlying databases, software, and hardware; and
  18. Adequacy of disaster recovery planning.
- d. Vendor makes recommendations about the NC DHHS artifacts that are required for MES milestone reviews. A list of required artifacts is included in the CMS Medicaid Enterprise Certification Toolkit.

## 3. Verification Services: Verification services include:

- a. Independent integration testing services of all systems;
- b. Review of key project deliverables to identify and prioritize testable requirements;

- c. Development and implementation of a Verification Strategy documenting the objectives, scope, approach, standards, procedures, and tools to be used in the verification effort;
- d. Implementation of automated testing tools and related standards and procedures;
- e. Development and execution of various test artifacts (test scenarios, test runs, test cases, and test scripts); and
- f. Administrative activities and tasks in support of the verification effort.

#### **4. Validation Services**

- a. Validation Services ensure that:
  - 1. All business issues have been addressed;
  - 2. The new MES will meet the current and planned business needs of the Division of Health Benefits (DHB); and
  - 3. All necessary training, policy, process, and procedural changes have been defined and implemented within DHB.
- b. Validation Services include:
  - 1. Review of the current business environment, policies, processes, and procedures, including workflow and forms;
  - 2. Development of a Validation Strategy to define and support the validation efforts;
  - 3. Support for the development and execution of test artifacts;
  - 4. Support for the development and implementation of training in the use of the new system, as well as attendant policies, processes, and procedures;
  - 5. Helping NC DHHS obtain CMS Certification of the new MES by gathering and consolidating the information required for the CMS Certification visit; and
  - 6. Ancillary administrative activities and tasks.

#### **5. Audit Services**

- a. Vendor periodically audits the entire Project to identify significant risks and variances from the defined schedules, plans, and processes.
- b. Audits are scheduled with all Project teams, contractors, and subcontractors.
- c. Audits follow written procedures that include issue escalation.
- d. Audit reports and escalated issues are provided to the Project Manager who forwards them to the Project Directors.
- e. Audit Services include:
  - 1. Development and implementation of audit procedures;
  - 2. Identification of the key Project deliverables and processes to be audited;
  - 3. Performance of audits;

4. Tracking issues to resolution; and
5. Ancillary administrative activities and tasks.

## 6. **Assessment Types**

- a. **Continuous Periodic Assessments (CPA):** Continuous Periodic Assessments performed by Vendor continuously throughout the term of the contract; and
- b. **Ad Hoc Assessments:** Assessments performed by Vendor on an occasional basis, as requested by the State in its discretion in a CSR or a Contract amendment.

## 7. **Continuous Periodic Assessment (CPA) Management Plan**

- a. Within ten (10) business days after the effective date of the contract, Vendor will submit a CPA Management Plan for Contract Year 1 to the State. The State will approve or reject the Management Plan within three (3) business days. The submission and review process shall be repeated until the plan is accepted by the State. Vendor shall not perform any CPA tasks until the plan is approved by the State. Vendor distributes copies of the draft and final CPA Management Plans as directed by the State.
- b. At least twenty (20) business days before the end of each Contract Year, Vendor will submit a draft CPA Management Plan for the following Contract Year, unless the contract is coming to an end because the State has exercised all options or has decided not to exercise an option. The State will approve or reject the CPA Management Plan within ten (10) business days. The submission and review process shall be repeated until the plan is accepted by the State. Vendor shall not perform any CPA tasks in the following Contract Year until the plan is approved by the State. Vendor shall distribute copies of the draft and approved CPA Management Plan as directed by the State.
- c. Upon the State's approval of the Vendor's CPA Management Plan, the Vendor will begin to perform CPA assessments pursuant to the schedule in RFP Attachment B, below or another schedule approved, in writing, by the State Point of Contact listed on page 4 of the RFP.

## 8. **Contents of the CPA Management Plan:** The CPA Management Plan describes the tasks, personnel, duration, milestones, checklists, communication plans, standards, and methodology for all CPA tasks. The plan contains:

- a. Resumes of all personnel that clearly depict their relevant IV&V experience. The State prefers that all personnel have at least three (3) years' experience.
- b. An organizational chart that documents the Vendor's team, including the team's place within the Vendor's corporation structure, and providing the key names, addresses, and other contact information to be used for dispute resolution and customer feedback. The State requires the organizational chart to be updated as resources are added, deleted, reassigned, or replaced and provided to the State Point of Contact listed on page 4 of the RFP.
- c. A communication plan that documents the information that will be given to the Stakeholders and the frequency and methods of information distribution.
- d. A work plan that describes the work schedule, including tasks, activities, deliverables, and milestones, and shows the schedule's critical path reflecting both the Vendor's and the State's delivery and response milestones;
- e. A narrative description of all deliverables to be developed and delivered during each assessment, including the format, content, and organization of the deliverables;
- f. All Project checklists that will be used to identify each aspect of the Project that will be reviewed and commented on and the Project management standards that will be applied.

- g. When the Vendor's CPA Management Plan has been approved by the State, Vendor uploads the Plan into CALT (a CMS website) and sends an electronic email copy of the Plan to all federal Stakeholders. The Vendor shall update the Management Plan throughout the Contract Year to reflect State-approved modifications to the plan.
- h. Vendor will not perform any assessments until it and the State have agreed upon the form and content of its assessment reports.
- i. Vendor will format and distribute deliverables as directed by the State.
- j. The State wishes to receive no less than ten (10) calendar days' prior written notice from Vendor of any expected delay in the production of any deliverable.
- k. During the CPA process, the Vendor:
  - 1. Conducts an analysis of the project performance sufficient to identify and make recommendations for improvement;
  - 2. Provides risk management assessment and capacity planning services;
  - 3. Develops performance metrics that facilitate tracking project completion against milestones set by the State; and
  - 4. Provides the results of its analysis to CMS at the same time it provides them to the State.

## **9. Monthly CPA Reports**

- a. CMS regulations require Vendor to document its CPA findings in written CPA Reports, which are evaluated by the State for timeliness and quality.
- b. CMS regulations require Vendor to submit CPA Reports simultaneously to CMS and NC DHHS within five (5) business days after the end of each calendar month.
- c. Vendor distributes copies of its CPA Reports to others as directed by the State.
- d. The CPA Report documents the status of the entire Project, including any pertinent historical background information.
- e. The CPA Report contains responses to the following questions:
  - 1. What is the State's current progress?
  - 2. Is the effort within the triple constraints of budget, scope, and schedule?
  - 3. Are the appropriate documents and artifacts accurate and up to date?
  - 4. Is there adequate Stakeholder involvement in the Project?
  - 5. Are best practices and metrics employed to identify issues, progress, and performance?
  - 6. What State processes are working well?
  - 7. What State processes need improvement?
- f. The CPA Report contains:
  - 1. A dashboard noting appropriate risks and mitigation strategies.

2. A review of and recommendations for the management of the Project by the State.
  3. Detailed recommendations specifying what can be done in the short-term and in the long-term to improve the State's operation. Recommended technologies, methodologies, or resources shall conform to industry standards and be appropriate for the circumstances and constraints of the Project.
  4. Quantified findings.
- g. Vendor uploads the CPA Report into CALT, the CMS website, and sends electronic email copies to all federal Stakeholders.

## **10. Quarterly CPA Presentations**

- a. Vendor makes a Periodic Assessment Presentation for Program Stakeholders within ten (10) business days after the end of each Contract Quarter.
- b. The Quarterly CPA Presentation provides an opportunity for the MES Team and all Stakeholders to obtain clarification of the Vendor's findings.
- c. The Quarterly CPA Presentation is scheduled at a date and time agreeable to the parties.
- d. Vendor arranges for the appropriate Vendor personnel to be present at the presentation.

## **11. CPA Tasks**

The Vendor Tasks will vary, depending upon the phase of the Project being reviewed. The Project will use a combination of waterfall and agile development methodologies. The Project will be tracked and reported in the State's Touchdown System, unless the Department designates another system. See the link below for more details about the State QMS. <https://it.nc.gov/services/service-directory/project-management/project-approval-oversight-epmo/qms-processes-and-forms>

Vendor will review the progress of the entire MES Project, divided into three project areas:

1. Management Oversight;
2. Implementation Oversight; and
3. Operations Oversight.

The Tasks within these three areas are described in the following paragraphs. The schedule for the performance of these Tasks appears in RFP Attachment B. As provided in Section 7.c of Attachment A, the State Point of Contact listed on page 4 of the RFP may provide written approval of a revised schedule.

### **a. Management Oversight**

#### **1. Project Management**

- a. Assess coordination, communication, and management to verify that agencies and departments are not working independently of one another and are following the communication plan.
- b. Verify that the Project Management Plan is being followed.
- c. Evaluate the Project Management Plan to verify that it is developed, communicated, implemented, monitored, and complete.
- d. Evaluate the Project Management Plan and Project Reports to verify that Project status is accurately traced using Project matrices.

- e. Verify that milestones and completion dates are planned, monitored, and met.
- f. Verify the existence and institutionalization of an appropriate Project issue tracking mechanism that documents issues as they arise, enables communication of issues to proper stakeholders, documents an appropriate mitigation strategy, and tracks issues to closure.
- g. Evaluate the system's planned life-cycle development methodology to see if it is appropriate for the system being developed.

## **2. Risk Management**

- a. Verify that a Program Risk Management Plan has been created and is being followed.
- b. Evaluate the Program's risk management plans and procedures to verify that risks are identified and quantified and that mitigation plans are developed, communicated, implemented, monitored, and complete.

## **3. Change Management**

- a. Verify that a Change Management Plan has been created and is being followed.
- b. Evaluate the Change Management Plan to verify that it is developed, communicated, implemented, monitored, and complete; that resistance to change is anticipated; and that presentations are made for meeting the resistance.

## **4. Configuration Management**

- a. Review and evaluate the Configuration Management Plans and procedures.
- b. Verify that all critical development documents are maintained under an appropriate level of control.
- c. Verify that processes and tools are in place to identify code versions and to rebuild system configurations for source code.
- d. Verify that appropriate source and object code libraries are maintained for training, testing, and production, and that formal sign-off procedures are in place for approving deliverables.
- e. Verify that appropriate processes and tools are in place to manage system changes, including the formal logging of change requests and the review, prioritization, and timely scheduling of maintenance actions.
- f. Verify that mechanisms are in place to prevent unauthorized changes from being made to the system and to prevent authorized changes from being made to the wrong version.
- g. Review the use of Configuration Management information (such as the number and type of corrective maintenance actions over time) in Program Management.

## **5. Project Budget and Schedule**

- a. Evaluate and make recommendations on the Project budget and schedule to ensure that the budget and schedule are adequate for the work-breakdown structure and schedule.
- b. Review schedules to verify that adequate time and resources are assigned for planning, development, reviewing, testing, and reworking.
- c. Examine historical data to determine whether the DHHS Division of Health Benefits has accurately estimated time, labor, and cost of software development efforts.

## **6. Quality Assurance (QA)**

- a. Evaluate and make recommendations on the Program's QA plans, procedures, and organization.
- b. Verify that the QA organization has an appropriate level of independence from Program Management.
- c. Verify that the QA Organization has evaluated and made recommendations on the Project's QA plans, procedures, and organization.
- d. Verify that the QA organization monitors the fidelity of all defined processes in all phases of the Project.
- e. Verify that the quality of all Project output is monitored by formal QA reviews and approvals.
- f. Determine whether appropriate mechanisms are in place for Program self-evaluations and process improvement.
- g. Verify that Project self-evaluations are performed and that measures are continually taken to improve the process.

## **7. Requirements Management**

- a. Evaluate and make recommendations on the program's processes and procedures for managing requirements.
- b. Verify that system requirements are well defined, understood, and documented.
- c. Evaluate the allocation of system requirements between hardware and software requirements.
- d. Verify that software requirements can be traced through design, code, and test phases to verify that the system performs as intended and contains no unnecessary software elements.
- e. Verify that requirements are under formal configuration control.

## **8. Security Requirements**

- a. Evaluate and make recommendations on policies and procedures for ensuring that the system is secure and that the privacy of client data is maintained.
- b. Evaluate the Project's restrictions on system and data access.
- c. Evaluate the Project's security and risk analyses.
- d. Verify that processes and equipment are in place to back up client and Program data and files and archive them safely at appropriate intervals.

## **9. Requirements Analysis**

- a. Verify that an analysis of client, State, and federal needs and objectives has been performed and verify that the requirements of the systems are well understood, well defined, and satisfy federal regulations.
- b. Verify that all stakeholders have been consulted on the desired functionality of the system and that users have been involved in prototyping the user interface.
- c. Verify that all stakeholders have agreed to all changes which impact Project objectives, cost, or schedule.

- d. Verify that performance requirements (e.g., timing, response time, and throughput) satisfy user needs.
- e. Verify that system user maintenance requirements are clear and complete.
- f. Verify that the requirements align with the MITA Checklists for certification.

#### **10. Procurement Documents**

- a. Participate in the drafting of RFIs, RFQs, RFPs and other procurement documents to support Medicaid transformation and modernization procurements.
- b. Evaluate and align business and technology requirements to RFPs and ensure all CMS requirements are met.
- c. Participate in the procurement process by reviewing and commenting on RFIs and/or RFPs, ensuring that the State has clearly documented the business requirements.
- d. Participate in proposal review preparations by assisting in the creation of the evaluation criteria materials and making recommendations where appropriate.

#### **11. Project Personnel and Organization**

- a. Examine the job assignments, skills, training, and experience of the Vendor personnel involved in the Project --- including the Vendor's contractors and subcontractors --- to verify that they are adequate for the development task.
- b. Verify that lines of reporting and responsibility provide adequate technical and managerial oversight of the Project.
- c. Verify that the Project's organizational structure supports training, process definition, independent Quality Assurance, Configuration Management, product evaluation, and any other functions critical for success.

#### **12. Subcontractors and External Staffing**

- a. Evaluate the use of subcontractor and other external sources of Project staff (such as IT staff for another State organization) in Program development.
- b. Verify that the obligations of subcontractors and external staff (terms, conditions, statement of work, requirements, standards, development milestones, acceptance criteria, delivery dates) are clearly defined.
- c. Verify that the subcontractors' software development methodology and product standards are compatible with the system's standards and environment.
- d. Verify that subcontractors have and maintain the skills, personnel, plans, resources, procedures, and standards to meet their commitment. Examine the feasibility of offsite support.
- e. Verify that any proprietary tools used by subcontractors do not restrict the future maintainability, portability, and reusability of the system.

**13. NC Medicaid Program:** Assess and monitor current Medicaid Agency practices to determine alignment with State and Federal standards and internal processes and procedures.

#### **14. Interface Requirements**

- a. Verify that all system interfaces are exactly described, by medium and by function, including input/output control codes, data format, polarity, range, units, and frequency.
- b. Verify that approved interface documents are available and that appropriate relationships (such as interface working groups) are in place with all agencies and organizations supporting the interfaces.

#### **15. Requirements Allocation and Specification**

- a. Verify that all system requirements have been allocated to either a software or hardware subsystem.
- b. Verify that specifications have been developed for all hardware and software subsystems in sufficient level of detail to ensure successful implementation.

**16. Reverse Engineering:** If a legacy system or a transfer system is or will be used in development, verify that a well-defined plan and process for reengineering the system is in place and is followed. The process may include reverse engineering, code translation, redocument, restricting, normalization, and retargeting.

#### **17. Project Sponsorship**

- a. Assess and recommend improvements to ensure continuous executive stakeholder buy-in, participation, support, and commitment, and to ensure that open pathways of communication exist among all stakeholders.
- b. Verify that executive sponsorship was bought in to all changes which impact Project objectives, cost, or schedule.

#### **18. Management Assessment**

- a. Verify and assess Project management and organization.
- b. Verify that lines of reporting and responsibility provide adequate technical and managerial oversight of the Project.
- c. Evaluate Project progress, resources, budget, schedules, work flow, and reporting.

#### **19. Business Process Reengineering**

- a. Evaluate the plans to redesign business systems to achieve improvements in critical measures of performance, such as cost, quality, service, and speed.
- b. Verify that the reengineering plan has the necessary strategy, management backing, resources, skills, and incentives for effective change.
- c. Verify that resistance to change is anticipated and prepared for by using principles of change management at each step (such as excellent communication, participation, incentives) and having the appropriate leadership (executive pressure, vision, and actions) throughout the reengineering process.

#### **20. Communication Management**

- a. Verify that a Communication Plan has been created and is being followed.
- b. Evaluate the Communication Plan to verify that it supports communications and work product sharing between all Project stakeholders.

- c. Assess whether Communication Plans and strategies are effective, implemented, monitored, and complete.

## **21. Process Definition and Product Standards**

- a. Review and make recommendations on all processes and standards associated with system development.
- b. Verify that all major development processes are defined and that the defined and approved processes and standards are followed.
- c. Verify that the processes and standards are compatible with each other and with the system development methodology.
- d. Verify that all process definitions and standards are complete, clear, up to date, consistent in format, and easily available to Program personnel.

## **b. Implementation Oversight**

### **1. Unit Test**

- a. Evaluate the plans, requirements, environment, tools, and procedures used for the unit testing of system modules.
- b. Evaluate the level of test automation, interactive testing, and interactive debugging available in the test environment.
- c. Verify that an appropriate level of test coverage is achieved by the test process, that test results are verified, that the correct code configuration has been tested, and that the tests are appropriately documented.
- d. Verify and validate unit test results of all program modules and processes, including code review as necessary, before they are integrated and system tested, and ensure results of the unit tests are fully documented. The DDI Contractor is required to conduct system development, including quality assurance, in accordance with the approved system design deliverables.

### **2. System Integration Test**

- a. Evaluate the plans, requirements, environment, tools, and procedures used for integration testing of system modules.
- b. Evaluate the level of automation and the availability of the system test environment.
- c. Verify that an appropriate level of test coverage is achieved by the test process, that test results are verified, that the correct code configuration has been tested, and that the tests are appropriately documented, including formal logging of errors found in testing.
- d. Verify that the test organization has an appropriate level of independence from the development organization.

### **3. Pilot Test**

- a. Evaluate the plans, requirements, environment, tools, and procedures for pilot testing.
- b. Verify that a sufficient number and type of case scenarios are used to ensure comprehensive but manageable testing.
- c. Verify that tests are run in a realistic time environment.

- d. Verify that test scripts are complete, with step-by-step procedures, required preexisting events or triggers, and expected results.
  - e. Ensure that test results are verified, that the correct code configuration has been used, and that the test runs are appropriately documented, including formal logging of errors found in testing.
  - f. Verify that the test organization has an appropriate level of independence from the development organization.
4. **Interface Testing:** Evaluate interface testing plans and procedures for compliance with industry standards.
5. **System and Acceptance Testing**
- a. Evaluate the plans, requirements, environment, tools, and procedures used for integration testing of system modules.
  - b. Evaluate the level of automation and the availability of the system test environment.
  - c. Verify that an appropriate level of test coverage is achieved by the test process, that test results are verified, that the correct code configuration has been tested, and that the tests are appropriately documented, including formal logging of errors found in testing.
  - d. Evaluate interface testing plans and procedures for compliance with industry standards.
  - e. Create and verify test scripts and plans that are complete with step-by-step procedures, required pre-existing events or triggers, and expected results for UAT test artifacts.
  - f. Evaluate the plans, requirements, environment, tools, and procedures for pilot testing the system.
  - g. Verify that a sufficient number and type of test case scenarios are used to ensure comprehensive but manageable testing and that tests are run in a realistic, real-time environment.
  - h. Verify that test results are verified, that the correct code configuration has been used, and that the test runs are appropriately documented, including formal logging of errors found in testing.
  - i. Verify the test organization has an appropriate level of independence from the development organization.
  - j. Validate user acceptance test results from the DDI Contractor with the joint PMO and System Integrator Contractor prior to implementation and on an ongoing basis as changes are made to the system.
  - k. Prepare a user acceptance test validation strategy to ensure that the new technology meets the current and planned business needs.
  - l. Document and report concerns, issues and risks, and recommendations as to the readiness for user acceptance testing. The intent of this task is to verify that the test plan was followed and the criteria used to test the scenarios for each deliverable has been reviewed and documented according to the processes developed.
6. **Acceptance and Turnover**
- a. Define, review, and approve acceptance procedures and acceptance criteria for each product before the product is tested.
  - b. Document test results in writing.

- c. Verify that acceptance procedures specify how software defects discovered during acceptance testing will be corrected.
- d. Verify that no product is accepted without appropriate acceptance testing based on the defined acceptance criteria.
- e. Verify that the acceptance testing organization is independent from all other staff.
- f. Verify that training for contractor-supplied software is provided throughout the development process, especially if the software is to be turned over to State staff for operation.
- g. Review and evaluate the Implementation Plan.

## **7. Data Conversion**

- a. Evaluate the State's existing and proposed plans, procedures, and software for data conversion.
- b. Verify that procedures are in place and are being followed to review the completed data for completeness and accuracy and to perform data cleanup as required.
- c. Determine conversion error rates and whether the error rates are manageable.
- d. Recommend ways to make the conversion process more efficient and to maintain data integrity during conversion.

## **8. Database Software**

- a. Evaluate new and existing database products to determine if they are adequate to meet existing and proposed system requirements.
- b. Determine if the database's data format is easily convertible to other formats, if it supports the addition of new data items, if it is scalable, if it is easily refreshable, and if it is compatible with the State's existing hardware and software, including any OLTP environment.
- c. Evaluate current and projected Vendor support of the software, as well as the State's software acquisition plans and procedures.
- d. Verify that all design products are under configuration control and formally approved before detailed design begins.

## **9. Database Design**

- a. Evaluate new and existing database designs to determine whether they meet existing and proposed system requirements.
- b. Recommend improvements to existing designs to improve data integrity and system performance.
- c. Evaluate the design for maintainability, scalability, refreshability, concurrence, normalization (where appropriate), and any other factors affecting performance and data integrity.
- d. Evaluate the process for administering the database, including backup, recovery, performance analysis, and control of data item creation.

## **10. User Training and Documentation**

- a. Review and make recommendations on the training provided to system users.
- b. Verify sufficient knowledge transfer for maintenance and operation of the new system.

- c. Verify that user training is instructor-led, hands-on, and directly related to the business processes and required job skills.
- d. Verify that user-friendly training materials and help desk services are easily available to all users.
- e. Verify that all necessary policy, process, and standards documentation is easily available to users.
- f. Verify that all training is given on time and is evaluated and monitored for effectiveness, with additional training provided as needed.

**c. Operations Oversight**

1. Evaluate the change request and defect tracking processes.
2. Evaluate the operational processes, including backup, disaster recovery, and daily operations, and verify that the processes are being followed and are effective.
3. Evaluate user satisfaction to identify areas for improvement.
4. Evaluate the impact of the system on goals and performance standards.
5. Evaluate operational plans and processes.

**12. Ad Hoc Assessments**

- a. Vendor may be asked to perform Ad Hoc Assessments of any aspect of the MES Project or of any aspect of any Medicaid Information Technology project that impacts the MES Project.
- b. Vendor's work on Ad Hoc Assessments is debited from an annual pool of 5,000 person-hours.
- c. The State may use any, all, or none of the 5,000 person-hours each Contract Year and shall be billed only for the hours used.
- d. The State will give the Vendor at least fourteen (14) calendar days' prior written notice of its desire to receive an Ad Hoc Assessment.
- e. The State will give this notice in the form of a written Customer Service Request ("CSR"), which shall describe the tasks to be performed.
- f. The Vendor shall respond to the CSR by preparing a draft Ad Hoc Management Plan for the State's approval within 14 calendar days.
- g. The Ad Hoc Management plan shall specify:
  1. The tasks to be performed;
  2. The members of the Ad Hoc Assessment Team and their roles;
  3. Task duration;
  4. Task Milestones;
  5. Task Standards;
  6. Task Methodologies; and
  7. A firm fixed cost based upon the total number of person-hours specified in the Plan multiplied by the Fixed Blended Hourly Rate specified in RFP Attachment C, Cost Table 3.

- h. If the Ad Hoc Management Plan is accepted by the State, the State will confirm its acceptance in writing and Vendor shall begin work on the Ad Hoc Assessment.
- i. Vendor will submit an Ad Hoc Assessment report to NC DHHS within ten (10) business days after the completion of the Ad Hoc Assessment.
- j. During its performance of an Ad Hoc Assessment, Vendor will make weekly reports on the number of person-hours expended on the assessment and the number of budgeted hours that remain.
- k. Upon the completion of an Ad Hoc Assessment, Vendor may invoice the State for: (a) the total number of person-hours expended upon the assessment multiplied by the Fixed Blended Hourly Rate specified in Attachment C, Cost Table 3; or (b) the firm fixed cost quoted in the Vendor's approved Ad Hoc Management Plan, whichever is less.
- l. No more than 5,000 person-hours of Ad Hoc work can be authorized by CSR during any one Contract Year. After 5,000 person-hours have been authorized by CSR during a Contract Year, additional Ad Hoc work during the same Contract Year can be authorized only by Contract amendment. The Fixed Blended Hourly Rate specified in RFP Attachment C, Cost Table 3 shall be binding upon the Parties as they negotiate such Contract amendments.

**Remainder of Page Intentionally Left Blank**

## Attachment B: Schedule of Periodic Reviews <sup>1</sup>

Review Areas	# of Review Items	Review Schedule												
		Frequency	Month											
Management Oversight		Frequency	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th
Project Management	6	Alternate Months	x		x		x		x		x		x	
Risk Management	6	Alternate Months		x		x		x		x		x		x
Change Management	6	Alternate Months	x		x		x		x		x		x	
Configuration Management	6	Alternate Months		x		x		x		x		x		x
Project Estimating and Scheduling	6	Alternate Months		x		x		x		x		x		x
Quality Assurance	6	Alternate Months	x		x		x		x		x		x	
Requirements Management	6	Alternate Months		x		x		x		x		x		x
Security Requirements	6	Alternate Months	x		x		x		x		x		x	
Requirements Analysis	6	Alternate Months		x		x		x		x		x		x
Project Personnel and Organization	4	Quarterly			x			x			x			x
Subcontractors and External Staff	4	Quarterly			x			x			x			x
NC MES Program Office	1	Annually						x						
Interface Requirements	4	Quarterly		x			x			x			x	
Requirements Allocation and Specification	4	Quarterly		x			x			x			x	
Reverse Engineering	4	Quarterly	x			x			x			x		
Project Sponsorship	2	Bi-Annually		x						x				
Management Assessment	2	Bi-Annually			x						x			
Business Process Reengineering	2	Bi-Annually				x						x		
Communication Management	2	Bi-Annually					x						x	
Process Definition and Product Standards	2	Bi-Annually	x						x					
<b>Implementation Oversight <sup>1</sup></b>														
Unit Testing	6	Alternate Months	x		x		x		x		x		x	
System Integration Test	6	Alternate Months	x		x		x		x		x		x	
Pilot Test	6	Alternate Months		x		x		x		x		x		x
Interface Testing	6	Alternate Months	x		x		x		x		x		x	
Systems and Acceptance Test	6	Alternate Months	x		x		x		x		x		x	
Acceptance and Turnover	6	Alternate Months		x		x		x		x		x		x
Data Conversion	6	Alternate Months		x		x		x		x		x		x

Database Software/Design	6	Alternate Months	x		x		x		x		x		x	
User Training and Documentation	6	Alternate Months		x		x		x		x		x		x
Developer Training and Documentation	6	Alternate Months	x		x		x		x		x		x	
<b>Operations Oversight</b>														
Operational Change Tracking	6	Alternate Months	x		x		x		x		x		x	
Operational Processes and Activity	6	Alternate Months	x		x		x		x		x		x	
Computer & User Operational Satisfaction	4	Quarterly		x			x			x			x	
Operational Goals	4	Quarterly	x			x			x			x		
Operational Documentation	2	Bi-Annually			x						x			

<sup>1</sup> The Vendor shall perform Implementation Oversight Reviews once each month during each Project's Implementation and Rollout (including both Pilot rollout and Statewide rollout), notwithstanding the schedule shown herein.

<sup>1</sup> This schedule may be modified upon written approval of the State Point of Contact listed on page 4 of the RFP.

## Attachment C: Cost Proposal Instructions

1. Use the following Cost Tables to complete the Cost Proposal.
2. Do not use any other tables or forms.
3. Do not modify the contents of any of the tinted cells in the Cost Tables.
4. The costs to the State quoted in the Cost Proposal must cover all Vendor's costs. No other payments will be made by the State for the services rendered.
5. All unit costs quoted in the Cost Proposal must be firm and fixed for the duration of the contract, which could last seven (7) years if the State exercises all its one-year options.
6. The State may ask for clarification during the evaluation period, but it is not required to do so. Cost Proposals that are incomplete or that contain significant inconsistencies may be rejected by the State without any request for clarification.

**Cost Table 1  
Continuous Periodic Assessments (CPA)**

Review Areas	Unit Costs	Multiplier	Extended Costs <sup>1</sup>
<b>Management Oversight</b>			
Project Management	\$	6	\$
Risk Management	\$	6	\$
Change Management	\$	6	\$
Configuration Management	\$	6	\$
Project Estimating and Scheduling	\$	6	\$
Quality Assurance	\$	6	\$
Requirements Management	\$	6	\$
Security Requirements	\$	6	\$
Requirements Analysis	\$	6	\$
Project Personnel and Organization	\$	4	\$
Subcontractors and External Staff	\$	4	\$
Program Office	\$	1	\$
Interface Requirements	\$	4	\$
Requirements Allocation and Specification	\$	4	\$
Reverse Engineering	\$	4	\$
Project Sponsorship	\$	2	\$
Management Assessment	\$	2	\$
Business Process Reengineering	\$	2	\$
Communication Management	\$	2	\$
Process Definition and Product Standards	\$	2	\$
<b>Implementation Oversight</b>			
Unit Testing	\$	6	\$
System Integration Test	\$	6	\$

Pilot Test	\$	6	\$
Interface Testing	\$	6	\$
Systems and Acceptance Test	\$	6	\$
Acceptance and Turnover	\$	6	\$
Data Conversion	\$	6	\$
Database Software	\$	6	\$
Database Design	\$	6	\$
Training and Documentation	\$	6	\$
<b>Operations Oversight</b>			
Operational Change Tracking	\$	2	\$
Operational Processes and Activity	\$	4	\$
Computer & User Operational Satisfaction	\$	1	\$
Operational Goals	\$	4	\$
Operational Documentation	\$	2	\$

<sup>1</sup> Extended Cost represent the anticipate annual cost for a particular review. Actual fees and reimbursement will be based on the CPA and schedule of periodic reviews approved by the Department.

**Cost Table 2**  
**Costs of Plans, Presentations, and Reports**

<b>Deliverable</b>	<b>Unit Cost</b>	<b>Multiplier</b>	<b>Extended Cost <sup>2</sup></b>
Management Plan (Annually)	\$	1	\$
Assessment Presentation (Quarterly)	\$	4	\$
Assessment Report (Monthly)	\$	12	\$
<b>Total Fixed Annual Cost of Periodic Assessments<sup>1</sup></b>			\$

<sup>1</sup> This Table does not include the costs of any Ad Hoc Reports that may be requested by the State.

<sup>2</sup> Extended Cost represents the anticipate annual cost for a particular deliverable. Actual fees and reimbursement will be based on the plans, presentations and reports approved by the Department.

**Cost Table 3**  
**Ad Hoc Tasks and Reports**

<b>Fixed Blended Hourly Rate for Ad Hoc Tasks and Reports</b>	\$
---	----

# Attachment D: Information Technology Terms and Conditions

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

1) **DEFINITIONS:** As used herein;

**Agreement** means the contract awarded pursuant to this RFP.

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

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

**Services** shall mean the duties and obligations undertaken by the Vendor under, and to fulfill, the specifications, requirements, terms and conditions of the Agreement.

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

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

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

4) **SUBCONTRACTING:** The Vendor may subcontract the performance of required Services with Resources under the Agreement only with the prior written consent of the State contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor and the Agreement. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third-party beneficiary of the Agreement; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

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

6) **GOVERNMENTAL RESTRICTIONS:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary

alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Agreement. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate the Agreement and compensate Vendor for sums then due under the Agreement.

- 7) **PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any Contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any Contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Agreement or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign the Agreement and bind the Party to the terms and conditions of this RFP. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of the Agreement; obligation or Contract for future award of compensation as an inducement or consideration for making the Agreement. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B..1206, or other provision of law.
- 8) **AVAILABILITY OF FUNDS:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in the Agreement. If the Agreement or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Agreement or Purchase Order. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in this RFP. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Agreement is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under the Agreement, terminate any Services supplied to the Agency under the Agreement, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and Services accepted prior to the date of the aforesaid notice in conformance with the payment terms.
- 9) **ACCEPTANCE CRITERIA:** The State shall have the obligation to notify Vendor, in writing ten calendar days following provision, performance (under a provided milestone or otherwise as agreed) or delivery of any Services or other Deliverables described in the Agreement that are not acceptable. The notice shall specify in reasonable detail the reason(s) a given Deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of any applicable inspection and testing procedures. Should a Deliverable fail to meet any specifications or acceptance criteria, the State may exercise any and all rights hereunder. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects or errors contained in the Deliverables or non-compliance with the specifications were not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure or correct the defect or replace or re-perform the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price.
- 10) **PAYMENT TERMS:** Monthly Payment terms are Net 30 days after receipt of correct invoice (with completed timesheets for Vendor personnel) and acceptance of one or more of the Deliverables, under milestones or otherwise as may be provided elsewhere in this solicitation, unless a period of more than thirty (30) days is required by the Agency. The Purchasing State Agency is responsible for all payments

under the Agreement. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 *et. seq.* of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than thirty (30) days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

**11) EQUAL EMPLOYMENT OPPORTUNITY:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

**12) ADVERTISING/PRESS RELEASE:** The Vendor absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the State or its Agent. For the purpose of this provision of the Agreement, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

**13) LATE DELIVERY:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered or performed at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure the particular substitute Services or other Deliverables.

**14) ACCESS TO PERSONS AND RECORDS:** Pursuant to N.C.G.S. §147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of the Agreement or to costs charged to the Agreement. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of the Agreement. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

**15) ASSIGNMENT:** Vendor may not assign the Agreement or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm the Agreement attorning and agreeing to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under the Agreement. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

**16) INSURANCE COVERAGE:** During the term of the Agreement, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Agreement. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work

under the Agreement. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Agreement; and

- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Agreement. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of the Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Agreement. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Agreement.

**17) DISPUTE RESOLUTION:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under the Agreement. If a dispute cannot be resolved between the Parties within sixty (60) days after delivery of notice, either Party may elect to exercise any other remedies available under the Agreement, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**18) CONFIDENTIALITY:** In accordance with N.C.G.S. §143B-1350(e) and 143B-1375, and 09 NCAC 06B.0103 and 06B.1001, the State may maintain the confidentiality of certain types of information described in N.C.G.S. §132-1 *et seq.* Such information may include trade secrets defined by N.C.G.S. §66-152 and other information exempted from the Public Records Act pursuant to N.C.G.S. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C.G.S. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C.G.S. §132-9 or other applicable law.

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

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

- a) If Vendor fails to deliver or provide correct Services or other Deliverables within the time required by the Agreement, the State shall provide written notice of said failure to Vendor, and by such notice require performance assurance measures pursuant to N.C.G.S. 143B-1340(f). Vendor is responsible for the delays resulting from its failure to deliver or provide services or other Deliverables.

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

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

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

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

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

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

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

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

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

**24) TIME IS OF THE ESSENCE:** Time is of the essence in the performance of the Agreement.

- 25) DATE AND TIME WARRANTY:** The Vendor warrants that any Deliverable, whether Services, hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs, modifies or affects any date and/or time data recognition function, calculation, or sequencing, will still enable the modified function to perform accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.
- 26) INDEPENDENT CONTRACTORS:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. The Agreement shall not operate as a joint venture, partnership, trust, agency or any other similar business relationship.
- 27) TRANSPORTATION:** Transportation of any tangible Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.
- 28) NOTICES:** Any notices required under the Agreement should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.
- 29) TITLES AND HEADINGS:** Titles and Headings in the Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.
- 30) AMENDMENT:** The Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 36) herein.
- 31) TAXES:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of the Agreement. Applicable State or local sales taxes shall be invoiced as a separate item.
- 32) GOVERNING LAWS, JURISDICTION, AND VENUE:**
- a) The Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina and applicable Administrative Rules. The place of the Agreement or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in Contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to the Agreement, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.
  - b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern the Agreement. To the extent the Contract entails both the supply of "goods" and "Services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such Services as "goods" would result in a clearly unreasonable interpretation.
- 33) FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear

explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**34) COMPLIANCE WITH LAWS:** The Vendor 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.

**35) SEVERABILITY:** If a court of competent jurisdiction holds that a provision or requirement of the Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of the Agreement shall remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**36) CHANGES:** The Agreement and subsequent purchase order(s) is awarded subject to the provision of the specified Services and the shipment or provision of other Deliverables as specified herein. Any changes made to the Agreement or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Services or other Deliverables delivered without a purchase order from the Agency or State Award Authority.

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

**38) Reserved.**

## **Section 2: Reserved.**

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

**1) VENDOR'S REPRESENTATION:** Vendor warrants that qualified personnel will provide Services in a professional manner. "Professional manner" means that the personnel performing the Services will and other MES processes the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under the Agreement. Vendor will serve as the prime Vendor under the Agreement. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third-party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Such third-party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

a) Intellectual Property. Vendor represents that it has the right to provide the Services and other Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor also represents that its Services and other Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.

b) Inherent Services. If any Services or other Deliverables, functions, or responsibilities not specifically described in the Agreement are required for Vendor's proper performance, provision and delivery of the Services and other Deliverables pursuant to the Agreement, or are an inherent part of or necessary sub-task included within the Services, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract.

- c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of the Agreement; and that entering into the Agreement is not prohibited by any Contract, or order by any court of competent jurisdiction.

**2) Reserved.**

- 3) PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of the Agreement without prior written approval by the Agency Contract Administrator. The individuals designated as key personnel for purposes of the Agreement are those specified in the Vendor's offer. Any desired substitution shall be noticed to the Agency's Contract Administrator in writing accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the Services of any person providing Services under the Agreement. Upon such termination, the Agency may request acceptable substitute personnel or terminate the Contract Services provided by such personnel.

- a) Unless otherwise expressly provided in the Contract, Vendor will furnish all its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and other Deliverables.
- b) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
- c) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
  - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
  - ii) Such use does not conflict with any procurement law, regulation or policy, or
  - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.
- d) Unless otherwise provided by the Agency, the Vendor shall furnish all necessary personnel, Services, and otherwise perform all acts, duties and responsibilities necessary or incidental to the accomplishment of the tasks specified in the Agreement. The Vendor shall be legally and financially responsible for its personnel including, but not limited to, any deductions for social security and other withholding taxes required by state or federal law. The Vendor shall be solely responsible for acquiring any equipment, furniture, and office space not furnished by the State necessary for the Vendor to comply with the Agreement. The Vendor personnel shall comply with any applicable State facilities or other security rules and regulations.

- 4) PERSONAL SERVICES:** The State shall have and retain the right to obtain personal Services of any individuals providing Services under the Agreement. This right may be exercised at the State's discretion in the event of any transfer of the person providing personal Services, termination, default, merger, acquisition, bankruptcy or receivership of the Vendor to ensure continuity of Services provided under the Agreement. Provided, however, that the Agency shall not retain or solicit any Vendor employee for purposes other than completion of personal Services due as all or part of any performance due under the Agreement.

- a) Vendor personnel shall perform any duties on the premises of the State during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
- b) The State has and reserves the right to disapprove the continuing assignment of Vendor personnel provided by Vendor under the Agreement. If this right is exercised and the Vendor is not able to replace the disapproved personnel as required by the State, the parties agree to employ best commercial efforts to informally resolve such failure equitably by adjustment of other duties, set-off, or modification to other terms that may be affected by Vendor's failure.
- c) Vendor will make every reasonable effort consistent with prevailing business practices to honor the specific requests of the State regarding assignment of Vendor's employees. Vendor reserves the sole right to determine the assignment of its employees. If one of Vendor's employees is unable to perform due to illness, resignation, or other factors beyond Vendor's control, Vendor will provide suitable personnel at no additional cost to the State.
- d) The Agreement shall not prevent Vendor or any of its personnel supplied under the Agreement from performing similar Services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
  - i) Such use does not conflict with the terms, specifications or any amendments to the Agreement, or
  - ii) Such use does not conflict with any procurement law, regulation or policy, or
  - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel