

## ATTACHMENT B: INSTRUCTIONS TO VENDORS

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1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** The State reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal.
4. **BASIS FOR REJECTION:** The State reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to the State, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of the State.
5. **EXECUTION:** Failure to sign the Execution Page (numbered page 1 of the RFP) in the indicated space will render proposal non-responsive, and it shall be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract documents, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP, including any negotiated terms; (2) requirements and specifications and administration provisions in Sections 4, 5 and 6 of this RFP; (3) North Carolina General Contract Terms and Conditions in ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) Instructions in ATTACHMENT B: INSTRUCTIONS TO VENDORS; (5) ATTACHMENT A: PRICING, and (6) Vendor's proposal.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each Vendor shall submit with its proposal any sketches, descriptive literature and/or complete specifications covering the products and Services offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Failure to comply with these requirements shall constitute sufficient cause to reject a proposal without further consideration.
8. **RECYCLING AND SOURCE REDUCTION:** It is the policy of the State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of commodities purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will adequately protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of purchasers those products or packaging they offer which have recycled content and that are recyclable.
9. **CERTIFICATE TO TRANSACT BUSINESS IN NORTH CAROLINA:** As a condition of contract award, each out-of-State Vendor that is a corporation, limited-liability company or limited-liability partnership shall have received, and shall maintain throughout the term of the Contract, a Certificate of Authority to Transact Business in North Carolina from the North Carolina Secretary of State, as required by North Carolina law. A State contract requiring only an isolated transaction completed within a period of six months, and not in the course of a number of repeated transactions of like nature, shall not be considered as transacting business in North Carolina and shall not require a Certificate of Authority to Transact Business.

10. **SUSTAINABILITY**: To support the sustainability efforts of the State of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
- All copies of the proposal are printed double sided.
  - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.
  - Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
  - Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.
11. **HISTORICALLY UNDERUTILIZED BUSINESSES**: The State is committed to retaining Vendors from diverse backgrounds, and it invites and encourages participation in the procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. In particular, the State encourages participation by Vendors certified by the State Office of Historically Underutilized Businesses, as well as the use of HUB-certified vendors as subcontractors on State contracts.
12. **RECIPROCAL PREFERENCE**: North Carolina adheres to a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any proposal from a North Carolina resident Vendor. To the extent another state does so, North Carolina applies the same percentage increase to the proposal of a vendor resident in that state. Residency is determined by a Vendor's "Principal Place of Business," defined as that principal place from which the overall trade or business of the Vendor is directed or managed.
13. **INELIGIBLE VENDORS**: As provided in G.S. 147-86.59 and G.S. 147-86.82, the following companies are ineligible to contract with the State of North Carolina or any political subdivision of the State: a) any company identified as engaging in investment activities in Iran, as determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, and b) any company identified as engaged in a boycott of Israel as determined by appearing on the List of restricted companies created by the State Treasurer pursuant to G.S. 147-86.81. A contract with the State or any of its political subdivisions by any company identified in a) or b) above shall be void *ab initio*.
14. **CONFIDENTIAL INFORMATION**: To the extent permitted by applicable statutes and rules, the State will maintain as confidential trade secrets in its proposal that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as "CONFIDENTIAL" by the Vendor, with specific trade secret information enclosed in boxes, marked in a distinctive color or by similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible. If a legal action is brought to require the disclosure of any material so marked as confidential, the State will notify Vendor of such action and allow Vendor to defend the confidential status of its information.
15. **PROTEST PROCEDURES**: To protest a contract award, the Vendor shall submit a written request for a protest meeting addressed to: Executive Administrator, North Carolina State Health Plan, 3200 Atlantic Avenue, Raleigh, NC 27604. The request must be received by the Plan within thirty (30) calendar days from the date of Contract award. The written request shall contain specific reasons and any supporting documentation for the protest. If the request does not contain this information or if the Executive Administrator determines that a meeting would serve no purpose, then the Executive Administrator may, within ten (10) calendar days from the date of receipt of the request, respond in writing to the Vendor and deny the request for a protest meeting.

If the protest meeting is granted, the Executive Administrator will attempt to schedule the meeting within thirty (30) calendar days after receipt of the letter, or as soon as possible thereafter. Within ten (10) calendar days from the date of the protest meeting, the Executive Administrator will respond to the Vendor in writing with the Executive Administrator's decision.

Inclusion of this protest procedure is not intended to, and does not, waive, the Plan's exemption from Article 3 of Chapter 143 of the North Carolina General Statutes or any rules promulgated thereunder. Moreover, pursuant to N.C.G.S. § 135-48.35, a contract dispute involving the Plan is not a contested case under the Administrative Procedure Act, Chapter 150B of the North Carolina General Statutes.

16. **MISCELLANEOUS:** Any gender-specific pronouns used herein, whether masculine or feminine, shall be read and construed as gender neutral, and the singular of any word or phrase shall be read to include the plural and vice versa.
17. **COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Vendor agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of the State concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless the State directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation or award of a Contract related to this RFP. Failure to comply with this requirement shall constitute sufficient justification to disqualify a Vendor from a Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.
18. **TABULATIONS:** Proposal tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>. Click on the IPS BIDS icon, click on Search for Bid, enter the bid number, and then search. Tabulations will normally be available at this web site not later than one working day after the bid opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.
19. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** The North Carolina electronic Vendor Portal (eVP) allows Vendors to electronically register for free with the State to receive electronic notification of current procurement opportunities for goods and Services of potential interests to them available on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information is available at the following website: <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.
20. **WITHDRAWAL OF PROPOSAL:** Proposals that have been delivered by hand, U.S. Postal Service, courier or other delivery service may be withdrawn **only** in writing and if receipt is acknowledged by the office issuing the RFP prior to the time for opening proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). Written withdrawal requests shall be submitted on the Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of proposals shall be allowed only for good cause shown and in the sole discretion of the State.
21. **INFORMAL COMMENTS:** The State shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of the State during the competitive process or after award. The State is bound only by information provided in writing in this RFP and in formal Addenda issued through IPS.
22. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; the State of North Carolina will not reimburse any Vendor for any costs incurred prior to award.
23. **INSPECTION AT VENDOR'S SITE:** The State reserves the right to inspect, at a reasonable time, the equipment, item, plant or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for the State's determination that such equipment, item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

## ATTACHMENT C: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS

1. **PERFORMANCE AND DEFAULT:** If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under the Contract, the State shall have the right to terminate the Contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, any or all finished or unfinished deliverable items under the Contract prepared by the Vendor shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed as to which the option is exercised. Notwithstanding, Vendor shall not be relieved of liability to the State for damages sustained by the State by virtue of any breach of the Contract, and the State may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due the State from such breach can be determined. The State reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to the State.

In the event of default by the Vendor, the State may procure the goods and Services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under the Contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, the State may immediately cease doing business with the Vendor, immediately terminate the Contract for cause, and may take action to debar the Vendor from doing future business with the State.

- a) Vendor grants the State a personal non-transferable and non-exclusive right to use and access, all Services and other functionalities or Services provided, furnished or accessible under this Agreement. The State may utilize the Services as agreed herein. The State is authorized to access State Data provided by the State and any Vendor-provided data as specified herein and to transmit revisions, updates, deletions, enhancements, or modifications to the State Data. This shall include the right of the State to, and access to, Support without the Vendor requiring a separate maintenance or support agreement unless otherwise specifically agreed in writing. User access to the Services shall be routinely provided by the Vendor and may be subject to a more specific Service Level Agreement (SLA) agreed to in writing by the parties. In the absence of an SLA, the Vendor agrees to provide the Services at least in the manner that it provides accessibility to the services to comparable users.
- b) The State's right to access the Services and its associated services neither transfers, vests, nor infers any title or other ownership right in any intellectual property rights of the Vendor or any third party, nor does this right of access transfer, vest, or infer any title or other ownership right in any intellectual property associated with the Services unless otherwise agreed to by the parties. The provisions of this paragraph will not be construed as a sale of any ownership rights in the Services. Any Services or technical and business information owned by Vendor or its suppliers or licensors made accessible or furnished to the State shall be and remain the property of the Vendor or such other party, respectively. Vendor has a limited, non-exclusive license to access and use any State Data as provided to Vendor, but solely for performing its obligations under this Agreement and in confidence as provided herein. Vendor or its suppliers shall at minimum, and except as otherwise agreed, provide telephone assistance to the State for all Services procured hereunder during the State's normal business hours (unless different hours are specified herein). Vendor warrants that its Support and customer service and assistance will be performed in accordance with generally accepted industry standards. The State has the right to receive the benefit of upgrades, updates, maintenance releases or other enhancements or modifications made generally available to Vendor's users for similar Services. Vendor may, at no additional charge, modify the Services to improve operation and reliability or to meet legal requirements.
- c) Vendor will provide to the State the same Services for updating, maintaining and continuing optimal performance for the Services as provided to other similarly situated Users of the Services, but minimally as provided for and specified herein. The technical and professional activities required for establishing, managing, and maintaining the Services environment are the responsibilities of the Vendor. Any training specified herein will be provided by the Vendor to specified State users for the fees or costs as set forth herein or in an SLA.
- d) Some Services provided online pursuant to this Solicitation may, in some circumstances, be accompanied by a user clickwrap agreement. The term clickwrap agreement refers to an agreement that requires the end user to manifest his or her assent to terms and conditions by clicking an "ok" or "agree" button on a dialog box or pop-up window as part of the process of access to the Services. All terms and conditions of any clickwrap agreement provided with any

Services solicited herein shall have no force and effect and shall be non-binding on the State, its employees, agents, and other authorized users of the Services.

- e) If Vendor modifies or replaces the Services provided to the State and other comparable users, and if the State has paid all applicable Fees, the State shall be entitled to receive, at no additional charge, access to a newer version of the Services that supports substantially the same functionality as the then accessible version of the Services. Newer versions of the Services containing substantially increased functionality may be made available to the State for an additional subscription fee. In the event of either of such modifications, the then accessible version of the Services shall remain fully available to the State until the newer version is provided to the State and accepted. If a modification materially affects the functionality of the Services as used by the State, the State, at its sole option, may defer such modification.
2. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the goods or Services offered prior to their delivery, it shall be the responsibility of the Vendor to notify the Contract Administrator at once, in writing, indicating the specific regulation which required such alterations. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
3. **AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in the Contract.
4. **TAXES:** Any applicable taxes shall be invoiced as a separate item.
- a) The State does not enter into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
- b) The agency(ies) participating in the Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.
- c) Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
5. **SITUS AND GOVERNING LAWS:** This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules, and within which State all matters, whether sounding in Contract or tort or otherwise, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.
7. **NON-DISCRIMINATION:** The Vendor will take necessary action to comply with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination on the basis of any prohibited grounds as defined by Federal and State law.
8. **CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.

9. **INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY:** Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

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

Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or patent-pending invention, article, device or appliance delivered in connection with the Contract.

10. **TERMINATION FOR CONVENIENCE:** If this Contract contemplates deliveries or performance over a period of time, the State may terminate this Contract at any time by providing 60 days' notice in writing from the State to the Vendor. In that event, any or all finished or unfinished deliverable items prepared by the Vendor under this Contract shall, at the option of the State, become its property. If the Contract is terminated by the State as provided in this section, the State shall pay for those items for which such option is exercised, less any payment or compensation previously made.
11. **ADVERTISING:** Vendor agrees not to use the existence of the Contract or the name of the State of North Carolina as part of any commercial advertising or marketing of products or Services. A Vendor may inquire whether the State is willing to act as a reference by providing factual information directly to other prospective customers.
12. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to the Contract to verify accounts and data affecting fees or performance under the Contract.
13. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder

shall be permitted.

However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, the State may:

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

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. Upon advance written request, the State may, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of the Contract.

#### 14. **INSURANCE:**

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

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 \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-contracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract within the State.

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense cost shall be in excess of the limit of liability.

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

**REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of the Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or the Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

15. **GENERAL INDEMNITY:** The Vendor shall hold and save the State, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of the Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of the Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that the State has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against the State's agents who are involved in the delivery or processing of Vendor goods or Services to the State. The representation and warranty in the preceding sentence shall survive the termination or expiration of the Contract.

**16. ELECTRONIC PROCUREMENT:**

a) Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third-party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

b) Reserve.

c) Reserve.

d) Reserve.

e) Vendor shall at all times maintain the confidentiality of its username and password for the Statewide E-Procurement Services. If Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize its employees to use its password. Vendor shall be responsible for all activity and all charges by such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by email. Vendor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

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

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

**19. CARE OF STATE DATA AND PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any data owned and furnished to the Vendor by the State (State Data), or other State property in the hands of the Vendor, for use in connection with the performance of the Contract or purchased by or for the State for the Contract. Vendor will reimburse the State for loss or damage of such property while in Vendor's custody.

The State Data in the hands of the Vendor shall be protected from unauthorized disclosure, loss, damage, destruction by a natural event or other eventuality. Such State Data shall be returned to the State in a form acceptable to the State upon the termination or expiration of this Agreement. The Vendor shall notify the State of any security breaches within 24 hours as required by G.S. 143B.1379. See G.S. 75-60 *et seq.*

**20. OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to the State of North Carolina or any of its agencies shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the vendor wishes to relocate or outsource any portion of performance to a location outside the United States, or to contract with a subcontractor for any such the performance, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons providing performance under a State contract to a location outside of the United States.

**21. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with the Contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

- 22. ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda hereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.
- All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.
- 23. ELECTRONIC RECORDS:** The State will digitize all Vendor responses to this solicitation, if not received electronically, as well as any awarded contract together with associated procurement-related documents. These electronic copies shall constitute a preservation record, and shall serve as the official record of this procurement with the same force and effect as the original written documents comprising such record. Any electronic copy, printout or other output readable by sight shown to reflect such record accurately shall constitute an "original."
- 24. AMENDMENTS:** This Contract may be amended only by a written Amendment duly executed by the State and the Vendor. No changes in the technical requirements & specifications, time for performance, or other contractual terms shall be effective without a written Amendment.
- Notwithstanding this requirement, (1) if needed or applicable, the addition of BRDs or Implementation Plans or ADMs, not affecting the technical requirements & specifications may be developed or modified in writing and signed by the Vendor's Contract Administrator for day to day activities or other individual authorized to bind the Vendor, and the Plan's Contract Administrator for day to day activities or other designee approved by the Plan's Executive Administrator; and (2) due dates referenced in the technical requirements & specifications as "to be determined by the Plan" will be established in writing by the Plan's Contract Administrator for day to day activities through either the Implementation Plan, a BRD or an ADM. Such documents are incorporated into the Contract when signed and are given the precedence as set forth in RFP Section 4.13 "Contract Documents".
- 25. NO WAIVER:** Notwithstanding any other language or provision in the Contract, nothing herein is intended nor shall be interpreted as a waiver of any right or remedy otherwise available to the State under applicable law. The waiver by the State of any right or remedy on any one occasion or instance shall not constitute or be interpreted as a waiver of that or any other right or remedy on any other occasion or instance.
- 26. 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.
- 27. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in the Contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity or other State or federal constitutional provision or principle that otherwise would be available to the State under applicable law.
- 28. PERFORMANCE BOND:** The Vendor shall provide contract performance security based upon ten percent (10%) of the estimated contract total based on the Vendor's cost proposal. This security will be in the form of a surety bond licensed in North Carolina with a Best's rating of no less than A-. The contract performance surety will be provided to the Plan's Contracting Section within thirty (30) calendar days from the date of execution of the contract. This security must remain in effect for the entire term of the contract. A new surety bond must be issued if the contract is renewed or extended.

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

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The Vendor shall detail the location(s) at which performance will occur, as well as the manner in which it intends to utilize resources or workers outside of the United States in the performance of this Contract. The State will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award. Please complete items a, b, and c below.

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

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

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

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

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

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

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### ATTACHMENT E: CERTIFICATION OF FINANCIAL CONDITION

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

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

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

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

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

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

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

The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.

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

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

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

---

Signature \_\_\_\_\_ Date \_\_\_\_\_

---

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

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

## **ATTACHMENT F: SUPPLEMENTAL VENDOR INFORMATION**

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### **HISTORICALLY UNDERUTILIZED BUSINESSES**

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

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

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

If so, state HUB classification: \_\_\_\_\_

**ATTACHMENT G: BUSINESS ASSOCIATE AGREEMENT**

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**BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement (“BAA”) is entered into between the North Carolina State Health Plan for Teachers and State Employees (“the Plan”), a division and covered healthcare component of the Department of State Treasurer (“DST”), and [INSERT NAME OF ENTITY] (hereinafter the “Contractor”), referred to as “Party” or collectively as “Parties.” This BAA is effective when signed by the parties, and shall remain in effect for so long as the relationship between the Parties necessitates the use or disclosure of Protected Health Information (PHI).

**BACKGROUND**

The Department of State Treasurer includes as a division the North Carolina State Health Plan for Teachers and State Employees. The Plan is a health benefit plan which, standing alone, would be a covered entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). DST - which includes several divisions that do not qualify as covered entities and whose functions are not regulated by HIPAA - has designated itself a “hybrid entity.” The Parties believe that the relationship between Contractor and the Plan is such that Contractor is or may be a Business Associate within the meaning of the HIPAA Privacy and Security Rules.

The purpose of this BAA between Contractor and the Plan is to protect the Plan Member information in accordance with the HIPAA Privacy and Security Rules. The parties enter into this BAA with the intent to comply with HIPAA provisions that allow for 1) a covered healthcare component of a hybrid entity (the Plan) to disclose PHI to a business associate and 2) a business associate (Contractor) to create, maintain, transmit, or receive PHI on behalf of the Plan once the Plan obtains satisfactory assurances that Contractor will appropriately safeguard the information.

Specifically, Sections 261 through 264 of the Federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality, and integrity of health information. The “Health Information Technology for Economic and Clinical Health” (“HITECH”) Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)) modified and amended the Administrative Simplification provisions. Pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services (“Secretary”) issued regulations modifying 45 C.F.R. Parts 160 and 164 (the “HIPAA Rules”), as further amended by the Omnibus Final Rule (78 Fed. Reg. 5566), (hereinafter, the Administrative Simplification provisions, HITECH, such rules, amendments, and modifications, including any that are subsequently adopted, will be collectively referred to as “HIPAA”).

The Parties wish to enter into a contract through which Contractor will provide certain services and/or products to the Plan. Pursuant to such arrangement, Contractor may be considered a “business associate” of the Plan as defined by HIPAA in that Contractor may have access to Protected Health Information in fulfilling its responsibilities.

The Parties agree as follows:

## I. GENERAL TERMS AND CONDITIONS

- A. **Definitions:** Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth by HIPAA. In the event of an inconsistency between the provisions of this BAA and mandatory provisions of HIPAA, HIPAA shall control. Where provisions of this BAA are different from those mandated by HIPAA, but are nonetheless permitted by HIPAA, the provisions of this BAA shall control.
- B. **Ambiguous Terms:** In case of ambiguous, inconsistent, or conflicting terms within this BAA, such terms shall be resolved to allow for compliance with HIPAA.
- C. **Application of Civil and Criminal Penalties:** Contractor acknowledges that it is subject to 42 U.S.C. 1320d-5 and 1320d-6 in the same manner as such sections apply to a Hybrid Entity, to the extent that Contractor violates §§ 13401(a), 13404(a), or 13404(b) of the HITECH Act and 45 C.F.R. §164.502(e) and 164.504(e). Furthermore, Contractor is liable for the acts of their business associates under 45 C.F.R. §160.402(c).
- D. **Assignment:** Contractor shall not assign or transfer any right or interest in this BAA. Any attempt by Contractor to assign or transfer any right or interest in this BAA is void and has no effect.
- E. **Forum:** The laws of the State of North Carolina shall govern this BAA and any and all interpretations of this BAA. The venue for any claim, demand, suit, or causes of action shall be in the state and federal courts located in North Carolina.
- F. **Hybrid Entity:** HIPAA defines a hybrid entity as one that uses or discloses PHI for only a part of its business operations. DST has taken the designation of hybrid entity because it includes the Plan as a division.
- G. **Indemnification:** Any breaches of HIPAA or this BAA shall be subject to the Indemnification clause which can be found in Section 15, "General Indemnity of Attachment C, "North Carolina General Contract Terms and Conditions" of the Contract.
- H. **Regulatory References:** Any reference in this BAA to a federal or state statute or regulation (whether specifically or generally) means that statute or regulation which is in effect on the date of any action or inaction relating to the BAA section which refers to such statute or regulation.
- I. **Stricken Provisions:** In the event any portion of this BAA is determined by a court or other body of competent jurisdiction to be invalid or unenforceable, that portion alone will be deemed void, and the remainder of the BAA will continue in full force and effect.
- J. **Termination of BAA:** Except as otherwise provided below, either Party shall have the right to terminate this BAA and the Contract if either Party determines that the other Party has violated any material term of this BAA. Upon either Party's belief of a material Breach of this BAA by the other Party, the non-breaching Party:
1. Shall give written notice of belief of material breach within a reasonable time after forming that belief. The non-breaching Party shall provide an opportunity for the breaching Party to cure the Breach or end the violation and, if the breaching Party does not cure the Breach or end the violation within the time specified by the non-breaching Party, the non-breaching Party may terminate this BAA and the Contract; or

2. May immediately terminate this BAA and the Contract if the breaching Party has breached a material term of this BAA and cure is not possible; or
3. Shall report the violation to the Secretary of the United States Department of Health and Human Services if neither termination nor cure is possible. The Plan shall abide by Federal reporting regulations.

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

- A. Contractor acknowledges and agrees that all Protected Health Information that is created, maintained, transmitted or received by the Plan, and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Plan or its operating units to Contractor, or PHI which, on behalf of the Plan, is created, maintained, transmitted or received by Contractor or a Subcontractor, shall be subject to this BAA. This obligation to protect the Plan Member privacy and to keep such PHI confidential survives the termination, cancellation, expiration, or other conclusion of the BAA as set forth below.
- B. Contractor agrees it is aware of and will comply with all provisions of HIPAA that are directly applicable to business associates.
- C. Contractor shall use or disclose any Protected Health Information solely as would be permitted by HIPAA if such use or disclosure were made by Covered Entity: (1) for meeting its obligations as set forth in the Data Use Agreement, or any other agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Data Use Agreement (if consistent with this Agreement and HIPAA), or HIPAA. All such uses and disclosures shall be subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and 45 CFR § 164.502(b) regarding the minimum necessary requirements.
- D. Contractor shall develop, document, implement, maintain, and use appropriate administrative, physical, and technical safeguards to prevent unauthorized use or disclosure of PHI, and to protect the integrity, availability, and confidentiality of that PHI. The safeguards that Contractor implements shall meet the requirements set forth by the United States Department of Health and Human Services including, but not limited to, any requirements set forth in the HIPAA and North Carolina state law requirements as applicable.
- E. Contractor shall implement security policies and procedures and provide the Plan's HIPAA Privacy and Security Officer with a copy of such.
- F. Contractor agrees that if it enters into an agreement with any agent or subcontractor, under which PHI could or would be disclosed or made available to the agent or subcontractor, Contractor will have an appropriate BAA, that conforms to applicable law and is consistent with this Agreement, in place with the agent or subcontractor before any PHI is disclosed or made available to the agent or subcontractor.
- G. Contractor shall disclose to the Plan a list of any and all agents or subcontractors who have access to or use of PHI on behalf Contractor for the benefit of the Plan.
- H. If Contractor provides PHI created, maintained, transmitted, or received by the Plan to any agent or subcontractor, the agent or subcontractor shall agree that with respect to such information, the same

restrictions and conditions that apply through this BAA to Contractor shall also apply to the agent or subcontractor.

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

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

- A. Upon discovery by Contractor of a suspected or actual breach of unsecured PHI, Contractor must notify the Plan’s HIPAA Privacy and Security Officer (“PSO”), in writing, within ten State Business Days. For purposes of this section “discovery” means having obtained knowledge in any manner from any source and in any form, including from an agent or subcontractor. See “Attachment A” for PSO contact information.
- B. If Contractor determines that a breach of unsecured PHI has occurred, Contractor shall provide written notice, on behalf of the Plan, without unreasonable delay, but no later than sixty days following the

date the breach of unsecured PHI is discovered by Contractor, or such later date as is authorized under 45 C.F.R. §164.412, to:

1. each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed as a result of the Breach; and
  2. the media, to the extent required under 45 C.F.R. §164.406.
- C. Contractor shall send notices to individuals using the last known address of the individual on file with Contractor, unless the individual has agreed to electronic notice as set forth in 45 C.F.R. §164.404. If the notice to any individual is returned as undeliverable, Contractor shall take such action as is required by the Breach Notification Rule.
- D. Contractor shall be responsible for the drafting, content, form, and method of delivery of each of the notices required to be provided by Contractor under this section. Contractor shall comply, in all respects, with 45 C.F.R. §164.404 and any other applicable notification provisions of the Breach Notification Rule, including without limitation 45 C.F.R. Part 164 Subpart D, Section 13402 of the HITECH Act and applicable state law, as interpreted by Contractor.
- E. Contractor notices must be reviewed by the Plan's PSO before being sent to State Health Plan Members.
- F. Any notices required to be delivered by Contractor shall be at the expense of Contractor; provided that Contractor has: 1) made the determination, in its sole discretion, that notices are required pursuant to this section; and 2) maintained control of the drafting, content, form, and method of distribution of the notices pursuant to this section.
- G. Contractor shall conduct any risk assessment necessary to determine whether notification is required and will maintain any related records in accordance with Contractor's internal policies and procedures and the applicable provisions of the Breach Notification Rule as interpreted by Contractor. The risk assessment must consider the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; the unauthorized person who used the PHI or to whom the disclosure was made; whether the PHI was actually acquired or viewed; and the extent to which the risk to the PHI has been mitigated. The risk assessment must be thorough, conducted in good faith, and reach a reasonable conclusion. Contractor shall provide the Plan with a copy of the risk assessment or report.
- H. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BAA. Contractor shall submit a formal report to the PSO (at the address listed in the signature block below) as soon as possible, but no later than within ten State Business Days from the time the Breach or Security Incident is discovered or initially reported or learns of such non-permitted use or disclosure. The formal report shall include, to the extent possible, the following:
1. A brief description of what happened (identify the nature of the non-permitted use or disclosure), including the date of the breach and the date of the discovery of the Breach;
  2. A description of the types of unsecured PHI that were involved in the breach (e.g., Member's full name, Social Security number, date of birth, home address, account number, etc.);

3. Identify who made the non-permitted use or disclosure;
  4. Identify who received the non-permitted use or disclosure;
  5. A brief description of what Contractor did or is doing to investigate the Breach;
  6. A brief description of what Contractor did or will do to mitigate any and all harmful effects and losses of the non-permitted use or disclosure;
  7. Identify what corrective action Contractor took or will take to prevent and protect against further breaches;
  8. Identify the steps Members should take to protect themselves from potential harm resulting from the breach;
  9. Contact procedures for Members to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address; and
  10. In addition to a written report, provide such other information as the Plan may reasonably request.
- I. Contractor shall provide to the Plan or an Individual, in the reasonable time and manner requested by the PSO, information collected in accordance with Section III of this BAA, to permit the Plan to respond to a request by an Individual or that Individual's Personal Representative for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- J. Contractor shall provide the Plan with an annual report of all suspected or actual breaches of unsecured PHI by Contractor or by any agent or subcontractor of Contractor.

#### **IV. ACCOUNTING FOR DISCLOSURES AND SALE OF PHI**

- A. If applicable, Contractor shall comply with HITECH Act provisions regarding accounting for disclosures of PHI and Electronic Health Records (EHR).
- B. Contractor shall comply with the prohibition on the sale of EHR and PHI set forth in 42 U.S.C. § 17935(d).
- C. Contractor shall use and disclose PHI for marketing purposes only as expressly directed by the Plan, and in accordance with 42 U.S.C. § 17936(a).
- D. Contractor agrees that the Plan shall review all marketing materials given to, prepared, or assembled by Contractor prior to its disclosure in order to meet obligations under ARRA, Title XIII, Subtitle D, Section 13406 and 45 C.F.R. §§ 164.501, 164.508, and 164.514.

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

- A. Except as otherwise limited in this BAA, Contractor may use or disclose PHI on behalf of, or to provide services to, the Plan as described in RFP # 270-20191001TPAS Third Party Liability Recovery Services.

- B. Except as otherwise limited in this BAA, Contractor may use PHI for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor.
- C. Except as otherwise limited in this BAA, Contractor may disclose PHI for the proper management and administration of the Contract, if disclosures are required by law; or if Contractor obtains reasonable assurances by means of a written agreement from the person to whom the information is disclosed that it shall remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person. The person must notify Contractor of any instances it is aware of that the confidentiality of the information has been breached.
- D. To the extent provided for under the Contract, and except as otherwise limited in this BAA, Contractor may use PHI to provide Data Aggregation services to the Plan as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- E. Contractor may use PHI to report violations of law to appropriate federal and state authorities, as permitted by 45 C.F.R. § 164.502(j)(1).
- F. Contractor shall make internal practices, books, and records - including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by Contractor on behalf of the Plan - available to the PSO, or to the Secretary, in a time and manner requested or designated by the Secretary, for purposes of the Secretary determining the Plan's compliance with HIPAA.
- G. If an individual or an individual's personal representative requests an accounting of disclosures of PHI (in accordance with 45 C.F.R. § 164.528), Contractor shall provide documentation of disclosures of PHI (and information related to such disclosures) in the same manner as would be required of the Plan.
- H. Contractor shall make reasonable efforts to limit the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request if performing any function or act on behalf of the Plan. 45 C.F.R. §164.502(b).
- I. Contractor shall be in compliance with the HIPAA minimum necessary provision (45 C.F.R. § 164.502) if it limits its uses, disclosures, or requests of PHI to a limited data set ("LDS") to the extent practicable or, if needed, to the minimum necessary to accomplish an intended purpose.
- J. The Minimum Necessary Standard does not apply to such uses, disclosures, and requests set forth in 45 C.F.R. § 164.502(b)(2).
- K. Contractor is prohibited from receiving direct or indirect remuneration (subject to certain enumerated exceptions) in exchange for any PHI of a Member, unless a valid authorization has been obtained from the Member in accordance with 45 C.F.R. § 164.508. A valid authorization includes, in accordance with such Section, a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Member.

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

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

- B. The Plan shall notify Contractor of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Contractor's use or disclosure of PHI.
- C. The Plan shall notify Contractor of any restriction to the use or disclosure of PHI that the Plan has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Contractor's use or disclosure of PHI.
- D. The Plan shall not request that Contractor use or disclose PHI in any manner that would be impermissible by the Plan under HIPAA.

## VII. RETENTION AND DESTRUCTION OF RECORDS

- A. **Retention Period**: Unless otherwise specified in this BAA, Contractor shall retain any and all documentation (including documentation in electronic form) required under 45 C.F.R. § 164.530(j)(1) for six years from the date of its creation or the date when it last was in effect, whichever is later. 45 C.F.R. §164.530(j)(2).
- B. **Return or Destruction of Records**: Upon termination, cancellation, expiration, or other conclusion of the BAA, Contractor shall:
  - 1. Return to the Plan or destroy any and all PHI, in whatever form or medium (including any electronic medium under Contractor's custody or control), that Contractor created or received from the Plan, or created or received while carrying out a function on behalf of the Plan. Such return or destruction shall occur in a reasonable time period, but no later than thirty days after the termination, cancellation, expiration, or other conclusion of the Contract and/or BAA.
    - a) **Guidelines for Destruction**: Contractor and its agents or subcontractors shall destroy PHI in accordance with the recommendations outlined by the National Institute of Standards and Technology (NIST) Special Publication 800-88 Revision 1, or the most current subsequent update.
    - b) **Certificate of Data Sanitization**: After all PHI has been destroyed, an authorized representative of Contractor with knowledge of the data destruction shall complete and return to the Plan an attestation of destruction supplied by the Plan no later than thirty days after the end of the BAA and/or Contract. Upon completion, Contractor shall return the attestation by email to the Manager of Contracts and Compliance, or designee, and mail the original to the Plan.
  - 2. If return or destruction of such information is not feasible, then Contractor shall extend the protections of this BAA to the information retained, and limit its further use or disclosure of such information to those purposes that make return or destruction of that information infeasible. Contractor shall sign an attestation as to why the information cannot be returned or destroyed, and that the protections of this BAA will be extended to the retained information.

## VIII. SECURITY OF PHI

- A. Contractor shall comply with the provisions of 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 relating to implementation of administrative, physical, and technical safeguards with respect to Electronic PHI in the same manner that such provisions apply to a HIPAA Covered/Hybrid Entity.

- B. Contractor shall obtain security-related written assurances from HIPAA covered subcontractors by way of business associate agreements conforming to applicable law and consistent with the terms under this Agreement.
- C. Contractor shall implement and maintain policies and procedures for compliance with the Security Rule.
- D. Contractor shall follow all documentation and maintenance requirement under the Security Rule.
- E. Contractor shall also comply with any additional security requirements contained in the HITECH Act that are applicable to a HIPAA Covered/Hybrid Entity.

**[SIGNATURE PAGE FOLLOWS]**

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

**North Carolina Department of State Treasurer**

By: Dale R. Folwell, CPA

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

Title: State Treasurer of North Carolina

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

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

By: Dee Jones

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

Title: Executive Administrator

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

**[INSERT NAME OF CONTRACTOR]**

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

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

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

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

**Attachment A: Department of State Treasurer HIPAA Privacy and Security Officer**

Chris Almborg, Esq.  
HIPAA Privacy Officer  
3200 Atlantic Avenue  
Raleigh, NC 27604  
(919) 814-4428  
Chris.Almborg@nctreasurer.com

**ATTACHMENT H: HIPAA QUESTIONNAIRE**

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

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

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

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

If the Vendor maintains that any information contained in requested documentation is proprietary or otherwise confidential, the Vendor may supply a redacted version of that documentation for review.

**Vendor Information**

Company name:

Address (city, state, and zip code):

Website URL:

Name of person completing form, and role:

Email address:

Phone number:

Fax number:

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

Date you are completing this form:

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

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

## Compliance Questionnaire

1. Details of the individual responsible for HIPAA Compliance (if this designated position does not exist, provide the details of the employee who typically handles HIPAA privacy and security issues within your company or organization).

Name:

Title:

Address:

Phone number:

E-mail address:

Certification designation (e.g., CHC, CISSP, CIPP, CHP, CHPSE, etc.):

Date certified:

2. If they are not certified, provide detailed information regarding training that has been provided to the person responsible for HIPAA compliance (e.g., date last received training, name of company or person that provided training, etc.).

### Employee HIPAA Training

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

- 13. Are employees required to sign an agreement stating they have read and understand the security policies and procedures? Yes  No
- 14. Can you provide documentation that all employees have completed training? Yes  No
- 15. Has your organization received any certifications regarding HIPAA compliance? (If yes, please provide copies of the certification and the date when the certification was awarded.)
- 16. When was the last time your company was audited to determine HIPAA compliance? Provide date the audit was performed and the name of the company who performed it. Provide copies of the audit findings.

**Data Security**

- 17. Provide details of the methods the company employs to secure and render PHI unusable, unreadable, or indecipherable to unauthorized individuals.
- 18. Describe security procedures – physical, technical, and administrative – in place to ensure the confidentiality of PHI internally, and when transmitting data externally to the Plan or to Plan vendors.
- 19. Do you have procedures to identify and respond to suspected or known security incidents; mitigate (to the extent possible) harmful effects of known security incidents; and document incidents and their outcomes? Please describe.
- 20. Has the company conducted a risk assessment and gap analysis to address any findings? Yes  No

If yes: Date:            Performed by:

- 21. Can you provide a copy of a SOC2, Type 2 security assessment report or a report performed under another security framework that can be cross-walked to the appropriate NIST-800-53 security control requirements (e.g. ISO 27001, HITRUST) for each service component used/involved in the proposed services?

Yes (*please attach*)  No

a. How often does the company conduct these types of audits?

- 22. Provide the number of HIPAA violations reported to the Office of Civil Rights (OCR) in the last five years, the details of the violation, and include the amount of the fine incurred (if any).

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

<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>? Yes  No

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

**Subcontractor Information**

- 24. Do you outsource work to Subcontractors who would have access to Plan data and PHI and who may qualify as Business Associates as defined by HIPAA? Provide the names of the companies, contact information, and details of what they are contracted to do.
- 25. Have you entered into Business Associate Agreements (BAAs) with all Subcontractors who may qualify as Business Associates to your company or the Plan for this work? If yes, provide copies of the executed BAA(s).
- 26. How do you enforce and monitor HIPAA policies with Subcontractors and Business Associates? What penalties or fixes are in place for violations?
- 27. Have you conducted an audit of any Subcontractors or Business Associates? Can you provide information as to whether they are HIPAA complaint at this time? Include all available SOC2, Type 2 or substitute reports for Subcontractors and Business Associates.

**Emergency/Contingency Plans**

- 28. Describe the company’s disaster recovery plan for data backup, data recovery, and system testing should a disaster occur (e.g., flood, fire, or system failure).
  - a. Provide the details of any incident that that has required activating the disaster recovery plan within the last two years, and any changes to the plan that were made as a result.
- 29. Describe the company’s business continuity plan in the event of a disaster (e.g., flood, fire, power failure, system failure).
  - a. Provide the details of any incident that that has required activating the business continuity plan within the last two years.

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

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

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

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

### ATTACHMENT I: NONDISCLOSURE AGREEMENT

By signing and returning this document, the Vendor (*insert company name* \_\_\_\_\_), understands and agrees to the following:

1. Upon the Plan's determination that the Vendor has met the Minimum Requirements, the Vendor will be provided access to Plan Data.
2. This Data is being provided for the sole purpose of assisting the Vendor in preparing a responsive and responsible proposal to the TPA Services RFP (**RFP # 270-20191001TPAS**) and is for the purpose of Plan Operations.
3. The Vendor shall not use the Data for any purpose other than to assist in preparing a response to the TPA Services RFP and shall treat the Data as confidential.
4. The Vendor shall not distribute or share the Data with any person or entity not assisting the Vendor in preparing a response to the TPA Services RFP. The Vendor shall hold any person or entity assisting in preparing the response to the TPA Services RFP to the same terms of this Nondisclosure Agreement as the Vendor is held.
5. If the Vendor does not bid on the TPA Services RFP, the Vendor shall, upon making that decision, immediately destroy the Data from Vendor's files or records. The Vendor shall not retain or maintain any copies of the Data.
6. If the Vendor submits a proposal in response to the TPA Services RFP, the Vendor shall immediately destroy the Data from the Vendor's files or records upon notification that an award has been made or the TPA Services RFP has been cancelled.
7. The Vendor shall destroy and dispose of Plan Data using the guidelines outlined in the National Institute of Standards of Technology (NIST) Special Publication 800-88 Revision 1 located at: <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-88r1.pdf>.
8. After all Data has been destroyed, an authorized representative of the Vendor with knowledge of the Data destruction shall complete and return one original of the Plan's Certificate of Data Sanitization within 30 days of the event giving rise to the Vendor's obligation to destroy the Data. The Vendor can obtain a copy of the certificate by e-mailing Sharon Smith at [Sharon.Smith@nctreasurer.com](mailto:Sharon.Smith@nctreasurer.com) with a copy to [SHPCContracting@nctreasurer.com](mailto:SHPCContracting@nctreasurer.com).
9. Provide the Name and email address of the individual designated to receive Data and Attachment A: PRICING.

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Vendor agrees to the above restrictions on the use of the data:

BY: \_\_\_\_\_  
(Person authorized to bind the Vendor)

**ATTACHMENT J: MINIMUM REQUIREMENTS SUBMISSION INFORMATION**  
**RFP#270-20191001TPAS THIRD PARTY ADMINISTRATIVE SERVICES**

**Vendor Name:**

Street Address:

City, State, Zip Code:

Telephone Number:

**AUTHORIZED REPRESENTATIVES TO BIND VENDOR:**

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

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

**AUTHORIZED REPRESENTATIVE TO RESPOND TO QUESTIONS:**

List individual with the authority to answer questions and provide clarifications concerning the Vendor's proposal.

Name:	Title:	Email:
-------	--------	--------

**Signature:**

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

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

### ATTACHMENT K: REPORTS

Number	Name	Frequency
<b>Claims Reports</b>		
CLM001	Processed Claims Report	Monthly-20 <sup>th</sup>
CLM002	Deductible & Out of Pocket Maximums by Plan and Month	Quarterly-due forty five (45) days after the end of each quarter
CLM003	Monthly COB Report	Monthly-20 <sup>th</sup>
CLM004	Quarterly Summary of Denied Claims Report	Quarterly-due forty five (45) days after the end of each quarter
CLM005	High Claimant Report	Quarterly-due forty five (45) days after the end of each quarter
CLM006	Appeals Reports	Monthly-20 <sup>th</sup>
CLM007	Monthly Pharmacy Appeals Detail Report	Monthly-20 <sup>th</sup>
CLM008	Monthly Pharmacy Appeals Resolution Report	Monthly-20 <sup>th</sup>
<b>Customer Experience Reports</b>		
CUS001	Operations Dashboard	Weekly-Thursday-End of Day
CUS002	Web Trends Report	Monthly-20 <sup>th</sup>
<b>Finance Reports</b>		
FIN001	Accounts Receivable Aging Report	Monthly-13 <sup>th</sup>
FIN002	Uncollectible Accounts Report	Quarterly-due forty five (45) days after the end of each quarter
FIN003	Prepaid Premiums Report	Monthly-15 <sup>th</sup>
FIN004	Daily Deposit Report	Daily-Receive by 10:00 a.m. ET
FIN005	Not Sufficient Funds Report	Daily-5:00 p.m. ET
FIN006	Misapplied Deposits and/or Collections Report	Monthly-20 <sup>th</sup>
FIN007	Net Disbursement Reporting Package	Weekly-due by 9:30 a.m. ET - 1st State Business day of week
FIN008	Deposit Reconciliation Report	Monthly-5 <sup>th</sup>
FIN009	Reconciliation of Claims and Other Disbursements Report	Monthly-13 <sup>th</sup>
FIN010	Escheats	Annually and as Otherwise Needed- no less than 20 calendar days prior to BCBSNC's planned date for escheating funds to the state based on the State's required deadline
FIN011	PPO Summary of Billed Charges by State Fiscal Year Report	Monthly-20 <sup>th</sup>
FIN012	Statement of Account (SOA) by State Fiscal Year Report	Monthly-20 <sup>th</sup>
<b>Financial Performance Reports</b>		
FP001	Performance Guarantee Report	Monthly-20 <sup>th</sup>
FP002	Performance Guarantee Report	Quarterly-due forty five (45) days after the end of each quarter
FP003	Performance Guarantee Report	Annually - due forty five (45) days after the end of the calendar year

FP004	Triangulation Report by Plan Option	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
FP005	Triangulation Report by Service	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
FP006	Prompt Pay Interest Report	Monthly-20 <sup>th</sup>
FP007	Open Invoice Report	Weekly-Thursday-End of Day
<b>Matrix Reports</b>		
MAT001	Charge Summary Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT002	Charge Summary Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT003	Charge Summary Trend Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT004	Charge Summary Trend Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT005	Coinsurance & Deductible, Full Population-Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT006	Coinsurance & Deductible, Full Population-Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT007	Coinsurance & Deductible, Closed Population-Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT008	Coinsurance & Deductible, Closed Population-Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT009	Copay-Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT010	Copay-Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT011	Copay--Incurred (Claims Runout) Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT012	Claims Experience Summary by Age and Sex-Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT013	Claims Experience Summary by Age and Sex-Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT014	Financial Summary-Paid Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th
MAT015	Financial Summary-Incurred Report	Monthly-20 <sup>th</sup> · Except the fiscal year end report (June) which must be received by July 15th

Proposal Number: 270-20191001TPAS

Vendor:

MAT016	Financial Reconciliation-Paid Report	Monthly-20 <sup>th</sup> - Except the fiscal year end report (June) which must be received by July 15th
MAT017	Financial Reconciliation-Incurred Report	Monthly-20 <sup>th</sup> - Except the fiscal year end report (June) which must be received by July 15th
MAT018	Premium Billing Report	Monthly-20 <sup>th</sup> - Except the fiscal year end report (June) which must be received by July 15th
MAT019	Member Utilization and Cost-Share by Type of Service Report	Monthly-20 <sup>th</sup> - Except the fiscal year end report (June) which must be received by July 15th
<b>Membership Reports</b>		
MEM001	Monthly Member Reporting Package	Monthly-15 <sup>th</sup>
<b>Operations Reports</b>		
OPS001	Weekly Membership report	Weekly-due by 10:00 a.m. ET - 1st State Business day of week
OPS002	PCP Election Report	Monthly-20 <sup>th</sup>
<b>Network Management Reports</b>		
NM001	GeoAccess Report	Quarterly-due forty five (45) days after the end of each quarter
<b>Pharmacy Reports</b>		
PHM001	Specialty Pharmacy Rebates Report	Quarterly-due forty five (45) days after the end of each quarter
PHM002	Medical Specialty Pharmacy Utilization Report	Quarterly-due forty five (45) days after the end of each quarter
<b>Medical Management Reports</b>		
MM001	Medical Costs and Clinical Outcomes	Quarterly-to coincide with the Program Performance Meeting
MM002	Case Management Clinical Outcomes	Quarterly-to coincide with the Program Performance Meeting
MM003	Preventive Care Services Utilization	Quarterly-to coincide with the Program Performance Meeting
MM004	Utilization Management	Quarterly-to coincide with the Program Performance Meeting
MM005	Utilization Management	Annually-to coincide with the fourth-quarter Program Performance Meeting
MM006	Clinical Quality Improvement	Quarterly-to coincide with the Program Performance Meeting
MM007	Annual Medical Policy Change Review Report	Annually - Due in October for Plan's review and approval for January 1 implementation
<b>Recovery and Special Investigation Unit Reports</b>		
REC001	Recovery Reporting Package	Monthly-20th
REC006	Special Investigation Reporting Package	Monthly-20th
REC007	Audit Repayment Reporting Package	Thirty (30) days after the final medical claims audit report is issued

1 NORTH CAROLINA IN THE OFFICE OF  
 2 COUNTY OF DURHAM 23 INS 738  
 3 BLUE CROSS AND BLUE SHIELD OF )  
 NORTH CAROLINA, )  
 4 )  
 Petitioner, )  
 5 )  
 vs. )  
 6 )  
 NORTH CAROLINA STATE HEALTH )  
 7 PLAN FOR TEACHERS AND STATE )  
 EMPLOYEES, )  
 8 )  
 Respondent, )  
 9 and )  
 )  
 10 AETNA LIFE INSURANCE COMPANY, )  
 )  
 11 Respondent-Intervenor )  
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DEPOSITION OF TREASURER DALE R. FOLWELL  
(Taken by Petitioner)  
Raleigh, North Carolina  
Thursday, September 21, 2023

Reported in Stenotype by  
Amy A. Brauser, RPR, RMR, CRR

1 director of the State Health Plan, nor do I work in  
2 the State Health Plan.

3 Q. Do you have any view about what makes a  
4 letter of intent binding?

5 A. I'm not -- I'm not trained to have a  
6 view on what makes a letter of intent binding.

7 Q. Do you have any view on that, whether  
8 or not you're trained?

9 A. I think letters of intent should --  
10 every one of those words means something, and it  
11 should be abided by in any issue.

12 Q. I'm sorry, I'm not sure I understand  
13 your answer. Every one of the words should --

14 A. I think "letter" is an important word,  
15 "of" is an important word, and "intent" is an  
16 important word.

17 Q. And "binding," is that an important  
18 word?

19 A. Yes.

20 Q. Did you give any direction to the  
21 evaluation committee about forming or making a  
22 recommendation to award the State Health Plan TPA  
23 contract to Aetna?

24 A. No.

25 Q. Did you do anything -- excuse me -- to

1 supervise the evaluation committee in forming or  
2 making its recommendation to award the State Health  
3 Plan --

4 A. No.

5 Q. -- TPA contract to Aetna?

6 A. No.

7 Q. When deciding which bidder should be  
8 awarded the third-party administrator contract, is  
9 the State Health Plan permitted to consider its  
10 experiences with a particular bidder?

11 MR. HEWITT: Object to form.

12 MR. THOMPSON: Object to form.

13 THE WITNESS: I'm sure that when the  
14 decision to go out for RFP, and the State  
15 Health Plan director, Dee Jones, said that  
16 this is the direction that we need to go in,  
17 that -- my experience is that the objectivity  
18 of what they did is -- became -- was very  
19 important.

20 BY MS. JOSEPH:

21 Q. What do you mean by "the objectivity of  
22 what they did"?

23 A. Well, because you're asking me about  
24 something called "experience," and experience can  
25 be objective or subjective. And I think that

1 anything that we do, that a focus needs to be on  
2 objective measures, objective scoring, objective  
3 benchmarks. You can't remove objectivity -- I mean  
4 objectivity from every transaction because of  
5 people's experience, and -- but I have no knowledge  
6 that any of that found its way into this  
7 transaction or this RFP or the awarding of the  
8 contract.

9 Q. So the past performance of Blue Cross  
10 did not influence the RFP process or award process  
11 in this case?

12 A. The State Health Plan has the authority  
13 to issue an RFP. The State Health Plan has the  
14 authority to design an RFP process which is  
15 transparent and where the rules don't change. And  
16 I'm confident that that occurred.

17 Q. To your knowledge, did the past  
18 performance of Blue Cross influence the  
19 recommendation in decision to award the third-party  
20 administrator contract to a bidder other than Blue  
21 Cross?

22 A. No.

23 Q. No, it did not?

24 A. Correct.

25 Q. You mentioned objectivity. What is

1 "objectivity"?

2 A. The way that the presentation was made  
3 to the State Health Plan by the evaluation  
4 committee on how they came up with their  
5 recommendation to the State Health Plan Board.

6 Q. And what qualities make something  
7 objective or objectivity?

8 A. I don't know.

9 Q. You're using the word, and I'm trying  
10 to understand what you mean by it.

11 A. Okay. I think that when you're dealing  
12 with something that is this important, that as much  
13 objectivity as you can have in the scoring process,  
14 the better the process is. That's all I'd have to  
15 say about the word "objectivity."

16 Q. What is "subjectivity"?

17 A. Subjectivity is where factors that you  
18 can't manage what you can't measure, and factors  
19 that are not in the questions, not in the RFP could  
20 play a part in the decision on anything. And I  
21 don't think that occurred here.

22 Q. And so subjectivity is bad?

23 MR. HEWITT: Object to form.

24 THE WITNESS: Yes.

25

1 BY MS. JOSEPH:

2 Q. It's important to have a fair and  
3 impartial RFP process, right?

4 A. Correct.

5 Q. And what I hear you saying is that  
6 objectivity plays an important part of having a  
7 fair and impartial RFP process?

8 A. Yes. And this is not the first RFP on  
9 the State Health Plan in the last half century.  
10 It's happened many, many, many times. And I  
11 presume in every instance, your client was awarded  
12 the contract. So that's -- this is not the first  
13 RFP we've ever done on the State Health Plan. It's  
14 not the first RFP I have done on the State Health  
15 Plan since I've been the treasurer either.

16 Q. Generally, the more objective, the  
17 better?

18 A. Correct.

19 Q. And if there were subjective  
20 considerations for the scoring of the RFP, does  
21 that affect the goal of having a fair and impartial  
22 RFP?

23 MR. HEWITT: Object to form.

24 MR. THOMPSON: Object to form.

25 THE WITNESS: I don't have anything to

1 say other than that I think and trust that  
2 the -- what I know about the individuals who  
3 were responsible for this process, both  
4 personally and professionally, that they had  
5 a process that was transparent, number one;  
6 number two, that was highly communicated to  
7 any and all individuals who wanted to bid on  
8 this contract; and that once the RFP was  
9 awarded, that there were opportunities that  
10 no changes were made in the process.

11 BY MS. JOSEPH:

12 Q. And if there were subjective  
13 considerations for the scoring of the RFP, would  
14 that affect whether the RFP was as fair and  
15 impartial as it could be?

16 MR. HEWITT: Object to form.

17 MR. THOMPSON: Object to form.

18 THE WITNESS: I don't think that  
19 it's -- it's a worthy goal to remove --  
20 reduce and remove all subjectivity.

21 BY MS. JOSEPH:

22 Q. Because subjectivity can affect  
23 impartiality?

24 MR. THOMPSON: Object to form.

25 THE WITNESS: That's just how I feel

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STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF DURHAM

23 INS 738

-----  
BLUE CROSS AND BLUE SHIELD  
OF NORTH CAROLINA,

Petitioner,

v.

NORTH CAROLINA STATE HEALTH  
PLAN FOR TEACHERS AND STATE  
EMPLOYEES,

Respondent,

and

AETNA LIFE INSURANCE COMPANY,

Respondent-Intervenor.  
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VIDEO INDIVIDUAL AND 30(b)(6) DEPOSITION OF  
AIMEE BLYTHE FOREHAND  
September 7, 2023  
9:10 a.m.  
Raleigh, North Carolina

Reported by: Audra M. Smith, FCRR

Video by: John Roberts

1 now, but we will come back to it. Thank you.

2 MR. WHITLEY: I'm going to enter as  
3 Exhibit 27, what is marked -- what is Bates  
4 numbered Blue Cross NC\_0002875 and the  
5 following pages...

6 MR. THOMPSON: Is that attorneys' eyes  
7 only?

8 MR. WHITLEY: It is.

9 (Exhibit Number 27 marked for  
10 identification as of this date.)

11 BY MR. WHITLEY:

12 Q I'll give you a moment to look that over.  
13 I'll give you more than a moment. It's a long  
14 string.

15 Have you had an opportunity to look it  
16 through?

17 A I have.

18 Q Okay. What do you recall personally about  
19 this exchange?

20 A I remember that when we were getting some  
21 clarifications from the Plan, we were struggling a  
22 bit to understand some of the questions they were  
23 asking because we felt we had answered the questions  
24 and then the Plan came back and basically sort of  
25 asked the same question a different way several

1 times. So I think this was related to that  
2 exchange.

3 Q And just so I'm clear, this was an  
4 exchange in response to a request for clarifications  
5 about the pricing and repricing?

6 A Correct.

7 Q Okay. And there's some mention in here  
8 about -- I'm just going to quote from it -- from  
9 your email: I'm not clear if the issue is that we  
10 did not include letters of intent and should  
11 actually say we do not have any letters of intent to  
12 include.

13 Did I read that correct?

14 A Correct.

15 Q So a couple questions. What is -- what is  
16 this issue of letters of intent, to your  
17 recollection?

18 A So we didn't include any letters of intent  
19 in our proposal because it's not something that Blue  
20 Cross really uses. We don't rely upon letters of  
21 intent because we don't consider them to really be  
22 -- they're not contracts, so you can't count on  
23 them.

24 Q And at this time, and this is in response  
25 to Request for Clarification Number 4, was it your

1 thought that the Plan was confused about whether or  
2 not Blue Cross' response included letters of intent  
3 or did not include letters of intent?

4 A No. I was certain that we didn't include  
5 the letters of intent. We were struggling to  
6 understand where the Plan was confused, and so I was  
7 throwing out, I think, numerous possibilities to try  
8 to understand that.

9 Q And I'm looking down to the next email.  
10 It would be the one you had responded to from Mr.  
11 Montero-Michaels. And his first bullet point there  
12 is, he asks: Is there any intel on where we need to  
13 "sharpen our pencil"? The tone here seems to be  
14 focused on discounts.

15 What do you recall about y'all's  
16 discussion about that point?

17 A I think we were all just sort of figuring  
18 out what the Plan was asking. And any time we get a  
19 clarification like this, we're trying to figure out,  
20 what is the Plan looking for? And you know, what is  
21 the best way we can respond to have the strongest  
22 proposal?

23 Q And then I'm looking down at the fifth  
24 bullet point where Mr. Montero asks: Was our lack  
25 of compliance in the repricing due entirely to the

1 assigned a lower point value, which then again  
2 caused another ranking, basically. And that -- we  
3 didn't understand that.

4 Q I'm looking at Cost Proposal being  
5 numerette (c) there, (c)1(c), the way I read this is  
6 that the highest ranked proposal on network pricing  
7 received six points, but a lower price proposal  
8 could still receive six points as well, if they fell  
9 within 5 percent, I'm sorry, .5 percent.

10 Was that Blue Cross' understanding?

11 A And where, I'm sorry, specifically are you  
12 looking?

13 Q I'm looking at (c) -- (c)1(c).

14 A Yes.

15 Q Okay. And then I just want to point to  
16 one other page in the RFP before I ask more  
17 questions. I'm looking at page 83.

18 MR CHASE: I'm sorry, Jeff, 83?

19 MR. WHITLEY: Eighty-three, yes. And on  
20 83, I'm looking at Section 1.2 Network Pricing.

21 A Okay.

22 BY MR. WHITLEY:

23 Q I'm sorry, I'm looking at 1.2.1, third  
24 paragraph. First, can you give me just a general  
25 statement of what you understood the claims

1 repricing file is?

2 A Yeah, so that was -- the claim provided us  
3 with basically their claims from calendar year 2021,  
4 and then each vendor provided a repriced file of  
5 that amount.

6 Q Okay. And reading in the third paragraph  
7 there of 1.2.1, Claims for Pricing File, second  
8 sentence says: Vendors are expected to reprice each  
9 claim line based on provider contracts in place, or  
10 near-future contract improvements bound by letters  
11 of intent at the time of repricing.

12 A Yes.

13 Q Did I read that correct? What did Blue  
14 Cross understand that instruction to mean?

15 A So we basically repriced that '21 file to  
16 -- for us, near-future contract improvements, the  
17 closest we could get was our '23 network pricing.  
18 So we took that file and basically repriced it to  
19 '23.

20 Q And what -- how do you calculate the '23  
21 network pricing if you weren't in '23 yet?

22 A So we, at this time, would have had most  
23 of those contracts finalized, so we basically work  
24 with Anthem, and they help us to -- basically, based  
25 on that claims file, they have all the access to all

1 Blue Cross data and pricing and run it through a  
2 tool which then, you know, gives us these repriced  
3 amounts.

4 Q And the instruction says that you can  
5 reprice on near-future contract improvements bound  
6 by letters of intent, correct?

7 A (Nonverbal response.)

8 Q Did Blue Cross utilize any contracts or --  
9 contracts that were bound by letters of intent?

10 A No.

11 Q Okay. And I think you said that earlier,  
12 in your individual deposition, but Blue Cross just  
13 doesn't typically use letters of intent, right?

14 A We don't, correct.

15 Q Why is that?

16 A I think our -- we don't use them because  
17 it isn't locked in, and usually for us instead of  
18 negotiating a letter of intent we would just  
19 negotiate a contract so that we have a locked in  
20 amount because I don't think for us the letters of  
21 intent are -- they're not always binding. I'm not  
22 sure what -- you know I think the terms can change  
23 so you can't really count on them. So that's, I  
24 think -- our position has just been if we are going  
25 to contract with a provider, we're going to contract

1 with a provider and get them under contract.

2 Q But your understanding of the instructions  
3 of this was that you could utilize near-future  
4 contracts that were bound by letters of intent,  
5 correct?

6 A Yes.

7 Q Blue Cross just didn't?

8 A Just not a practice we use.

9 Q And so Blue Cross submitted a network  
10 pricing as part of their RFP, right?

11 A Yes.

12 Q Okay. And you may have said this  
13 somewhat, but can you generally explain to me how  
14 Blue Cross came up with those numbers? What was the  
15 methodology?

16 A So for the repricing, like, file that we  
17 sent in, we basically took the claims file the State  
18 sent to us. There were certain fields that were  
19 required and we basically reproduced that file and  
20 uploaded it to Segal.

21 Q Just one second. I'm sorry. And earlier  
22 you had mentioned that -- something about the  
23 clarifications. But the Plan ultimately sent some  
24 requests for clarifications about Blue Cross'  
25 network pricing, right?

1 call it the UDS, Uniform Data Standards, trend here  
2 is a projection of what providers will charge so  
3 that you can compare that against what you're  
4 expected to pay providers; is that right?

5 A Correct. And we would -- potentially if  
6 we don't have a known future rate, we would apply  
7 those same amounts to bottom and top of the  
8 equation, right? Because you'd have to in order for  
9 the math to work.

10 Q And keep these handy because we may have  
11 to go back and forth some. But I'm going to hand  
12 you the next clarification, which we'll mark as  
13 Exhibit 31.

14 (Exhibit Number 31 marked for  
15 identification as of this date.)

16 BY MR. WHITLEY:

17 Q Have you had a chance to look at it?

18 A I have.

19 Q And just to confirm, this appears to be  
20 Blue Cross' response to the State Plan's Request for  
21 Clarification Number 3.

22 A Yes.

23 Q And what was Blue Cross' sort of  
24 understanding of what the Plan was seeking to  
25 clarify here?

1           A     Yes.  So this is kind of, again, where I  
2     think we were trying to understand what the Plan was  
3     trying to clarify because we were, I think -- it  
4     didn't make sense to us what they were asking.  So I  
5     think we tried to just confirm in our answer kind of  
6     what I've described so far, that we used our 2023  
7     contractual reimbursement rates because that was the  
8     nearest known amount we have which would be standard  
9     for any type of projection like this.  And then we  
10    applied, like I said, industry accepted, approved  
11    methodologies using the UDS to do the calculation to  
12    get to the discount numbers that we provided.

13                 So I think at this point we were -- I felt  
14    like we had kind of answered that in the first  
15    clarification.  It sort of seemed like we got a  
16    second clarification, kind of getting at the same  
17    things, and we tried to more concisely say what we  
18    said the first time, to respond to what they were  
19    asking.

20           Q     Internally, did Blue Cross feel like the  
21    two parties just weren't speaking the same language  
22    at the time?

23           A     We were struggling to understand what the  
24    Plan was after, certainly, because again, as we were  
25    interpreting it, you couldn't -- we did what you

1 would have to do to make the math work so we  
2 couldn't understand how you would affect one part of  
3 the fraction and not the other.

4 And so at this point, I think, we were  
5 still thinking maybe they just want to be super  
6 clear we used 2023 contractual rates. We're clear  
7 to say that. And then that we applied, you know,  
8 the standards at that point. So we tried to sort of  
9 very concisely say that to see, "Does this answer  
10 your question?"

11 Q The -- at this point -- so this is  
12 November 15, had Blue Cross internally considered  
13 whether or not the State was asking to not include  
14 billed charge trends in their analysis?

15 A No. I think at this point we were still  
16 trying -- kind of scratching our heads going, What  
17 are they trying to get to?

18 And we said, Okay, so let's just very  
19 clearly -- and this is just as I remembered -- very  
20 clearly say what we did, and so we very clearly said  
21 what we did.

22 Q Again, we may return to it, but I want to  
23 go ahead and get on Exhibit 32, which is  
24 Clarification Number 4.

25 (Exhibit Number 32 marked for

1 was this was not consistent with the cost proposal  
2 instructions?

3 A So let me just reread that.

4 Q Yeah, sure.

5 A Yeah. So I think at this point, we were,  
6 again, scratching our heads a bit. But thinking  
7 that we just needed to provide a breakdown of like  
8 when we went up, right? What our adjustments were  
9 at what points, and so we completed their chart  
10 based on our understanding of that.

11 I think for the question -- again, we were  
12 struggling a bit because we were doing this in a  
13 very standard, industry accepted way, and like math  
14 is math, right? So I think our -- we were trying to  
15 figure out how do we respond and answer their  
16 question and do it in a way that mathematically  
17 makes sense, and I think that's where we were sort  
18 of -- we were -- we were you know, trying to figure  
19 that out.

20 Q And if you need to look back to it, you  
21 can, but this Request for Clarification is dated  
22 November 18th. Do you know if that's the date the  
23 request was sent?

24 A I would imagine, yes. It looks like it  
25 was due -- looks like dated the 18th and then noted

1 that it's due on the 22nd.

2 Q And do you recall earlier -- we talked  
3 about it in Exhibit 27, a back and forth between you  
4 and Richard Montero-Michaels --

5 A Yes.

6 Q -- about Request for Clarification 4?

7 A Yes.

8 Q And there was, in that email exchange,  
9 there was some discussion about whether or not  
10 including LOIs was part of the problem or whether or  
11 not our assumed increase in billed charges?

12 A Right.

13 Q So this is -- this is around the time that  
14 Blue Cross is starting to understand what the -- the  
15 Plan was trying to clarify with respect to how to --  
16 to analyze or how to -- sorry -- the correct  
17 methodology they were asking for to -- to have their  
18 network pricing proposals; is that right?

19 MR CHASE: Objection to form.

20 (Stenographer requested clarification.)

21 BY MR. WHITLEY:

22 Q Around the time of Request for  
23 Clarification 4, you know, submitted November 18th,  
24 the email communication that you had with -- with  
25 Rich Montero on November 20th, that was around the

1 time that Blue Cross was starting to wonder about  
2 the correct methodology for their response; is that  
3 right?

4 MR CHASE: Objection to the form.

5 You can answer.

6 A Yeah. I think -- I think our -- to be  
7 honest, our internal discussions were not  
8 necessarily about wondering about the methodology  
9 because discount calculation methodology is discount  
10 calculation methodology, and it's relatively known  
11 and consistent.

12 I think what we were debating about is  
13 what was the Plan trying to get us to answer here,  
14 and we were struggling to get to that answer,  
15 because again, from our perspective, the math is the  
16 math, and you can't adjust a fraction in that way.  
17 And we were like, That can't be what they were  
18 trying to say because then they would be misstating  
19 a discount percentage.

20 So we were trying to understand what are  
21 they asking, what are they saying based on the  
22 information we had in this, and I think we answered  
23 to the best of our ability.

24 BY MR. WHITLEY:

25 Q If you weren't to use the billed charge

1 trends, what would the input be for that portion of  
2 the fraction?

3 A So I think the problem would be if you  
4 don't adjust the top and bottom of the fraction,  
5 you're going to misstate everybody's discounts,  
6 right?

7 Q But would you misstate everybody's  
8 discounts equally?

9 A I don't know because I have no idea how  
10 anyone else did this.

11 Q Fair. Let me ask it a different way. If  
12 one applicant used billed charge trends and one used  
13 the static data as the data repricing, would that be  
14 an apples-to-apples comparison of discount?

15 A No.

16 Q Because the billed charge trend increases  
17 the amount charged, correct?

18 A Yes.

19 Q And so a greater increase in charge versus  
20 a static discount yields a bigger delta; is that  
21 right?

22 MR CHASE: Objection to the form.

23 A If you're increasing -- so are you asking  
24 if you're increasing charge, but you're not  
25 increasing the amount you're --

1 BY MR. WHITLEY:

2 Q Billed.

3 A -- reimbursing?

4 Q Yes.

5 A Okay.

6 Q That -- that would be a greater discount,  
7 correct?

8 A Yeah, right. If -- yeah, I think that was  
9 our -- that was kind of our point was, we wanted to  
10 provide an accurate reflection of what we believed  
11 our 2025 discount to be, and we could not do that  
12 the way it was being described.

13 Q Okay. I think I understand. To clarify,  
14 would the comparison be appropriate if all  
15 applicants used the billed charged trends or none of  
16 the applicants used the billed charged trends?

17 MR CHASE: Objection to form.

18 You can answer.

19 A I think that's difficult to answer,  
20 because again, I think our intent was to provide an  
21 accurate reflection, like our actuary had to sign  
22 off on this, so what do you believe our discount to  
23 be in 2025?

24 So I think we were doing this and  
25 answering it in a way that enabled us to provide the

1 most accurate reflection of what we believed our  
2 true discount, based on actual allowed amounts and  
3 actual billed charges for providers would be in 2025  
4 and the best way we could project to that number.

5 BY MR. WHITLEY:

6 Q These are finite numbers, and we'll come  
7 to an end of these, but we'll come to the next  
8 clarification.

9 This is going to be Exhibit 33.

10 (Exhibit Number 33 marked for  
11 identification as of this date.)

12 BY MR. WHITLEY:

13 Q I'll give you a moment to look it over.

14 A Yep.

15 Q And does this appear to be Blue Cross'  
16 response to the Plan's Request for Clarification 5?

17 A Yes.

18 Q Okay. Again, sort of the same exercise,  
19 what do you recall about receiving this request and  
20 the internal deliberations on how to respond?

21 A Yep. I remember when we got this and I  
22 remember having discussion around, like, providing  
23 the writeup in the example that we included in  
24 figure 5.1, because again, we were sort of  
25 scratching our heads to say, We're not really sure

1 what they're trying to get to here, but, you know,  
2 this is the way you calculate a discount.

3 So we continued to focus on, like, this is  
4 how you would have to calculate a discount and tried  
5 to illustrate -- for them specifically because then  
6 we were thinking maybe they're trying -- it looks  
7 like they were getting at like how do we start to  
8 finish, so like what represents '21, what represents  
9 '23, and then what represents what we got to in '25  
10 to what we believed our discount to be.

11 So that's where we came up with this, you  
12 know, exhibit to sort of say, This is what that  
13 represents, this is what this represents, and this  
14 is what this represents.

15 Q If it's easier, there's a slightly larger  
16 version of the table on the last page.

17 A Yep.

18 Q I didn't realize that type was small. So  
19 in the first question here, where the Plan is  
20 essentially asking Blue Cross to confirm whether or  
21 not the 54 percent discount as of the November 1,  
22 2022 repricing date did or did not include those  
23 assumed billed charge increases, correct?

24 A Correct.

25 Q Okay. And based on your review of this,

1 Q But ultimately, through the clarification  
2 process, you supplied what you thought the Plan was  
3 asking for, correct?

4 A Yes. We tried to at least get the  
5 answers, even if we didn't think that the context of  
6 the answers made sense, we tried to at least answer  
7 their specific questions to the best of our ability.

8 Q And on that portion of the cost proposal  
9 at least, Blue Cross was awarded the highest points  
10 possible; is that correct?

11 A Yeah, we got the 6 points. Is that what  
12 you're referencing?

13 Q Yes.

14 A Yes.

15 MR. WHITLEY: I think that's all I have to  
16 wrap up this section. If we want to go ahead  
17 and take a break for lunch.

18 THE VIDEOGRAPHER: The time is 11:41 a.m.  
19 We're off the record.

20 (A recess was taken from 11:41 a.m. to  
21 12:15 p.m.)

22 THE VIDEOGRAPHER: The time is 12:15 p.m.  
23 We're on the record.

24 BY MR. WHITLEY:

25 Q Welcome back, Ms. Forehand. On the

1 record, I'm officially the first one to mess up a  
2 microphone move. I think we have wrapped up on the  
3 Topic Number 7 in your -- in the 30(b)(6)  
4 deposition, so I want to move on to Topic Number 6.

5 A Okay.

6 Q And that has some subparts, and we may  
7 jump around a little bit. But the first subpart,  
8 6(b), is asking about Blue Cross' reliance on  
9 letters of intent and repricing claims. We've  
10 talked a little bit about that, but I just want to  
11 clarify. Does Blue Cross never enter into LOIs with  
12 providers, or do they just not use LOIs with  
13 providers as part of its repricing or bid exercise?

14 A I have not seen us recently, in any  
15 activity that I have, use a letter of intent. I  
16 could not speak fully because I'm not in our  
17 contracting area, but I have not seen us, for any of  
18 the State bids that I've been a part of, use letters  
19 of intent.

20 Q So to your recollection of the bid for the  
21 current contract, did Blue Cross use any letters of  
22 intent in that exercise?

23 A To my recollection, we did not.

24 Q Okay. And Blue Cross still won the bid  
25 despite not using letter of intent contract

1 improvements, I guess?

2 A Yes.

3 Q But your recollection of the instructions  
4 for the RFP is that future contract improvements  
5 based on LOIs was possible?

6 A Yes.

7 MR. CHASE: Are we muted here?

8 (Discussion off the stenographic record.)

9 MR. WHITLEY: Hey, Maggie, sorry we had --  
10 we had about 30 seconds of questions before we  
11 realized the mic was muted so you're now  
12 unmuted.

13 MS. MCLAUGHLIN: Wonderful, thank you.

14 MR. WHITLEY: Sorry about that, Maggie.

15 BY MR. WHITLEY:

16 Q So I want to move on to Blue Cross'  
17 Network Pricing Guarantees. And can you just give  
18 me, especially as someone who doesn't have any  
19 expertise in this, just a general idea what the  
20 network pricing guarantee is?

21 A So there were several guarantees in the --  
22 in the -- are you asking specifically about the  
23 discount guarantee?

24 Q Yes.

25 A So, yeah, the discount guarantee, it's

1 BY MR. WHITLEY:

2 Q On 26, do you remember this back-and-forth  
3 with Mr. Montero about the amount of the scoring for  
4 the guarantee and Rich's suggestion about being a  
5 bit conservative?

6 A Yes.

7 Q Okay. And I ask that in context with a  
8 statement you just made about finding a balance of  
9 aggressiveness and meeting the target. Who is the  
10 ultimate decision maker on what the final number is  
11 going to be?

12 A Roy.

13 Q Okay. And what discussions do you  
14 remember with Roy about how aggressive to be on both  
15 the discount percentage and the amount at risk?

16 A Yeah. I think our intent here was to be  
17 as aggressive as we could be, but also to set it at  
18 a level where we felt comfortable that we would  
19 deliver on what we were promising.

20 Q And correct me if I'm wrong, just in the  
21 way you phrased that, as a target, to me the way I  
22 understand that, that's the discount percentage; is  
23 that right?

24 A Right. It's the -- it's the discounts  
25 that we -- the percentage that we talked about, like

1 in those clarifications. Although in the actual  
2 guarantee, I believe they break it down by service,  
3 like inpatient, outpatient, professional, if I  
4 remember correctly.

5 Q So when you say "set it at a level where  
6 we felt comfortable we could deliver," that doesn't  
7 refer to the amount at risk; is that right?

8 A Correct.

9 Q Okay. So is there a -- is there a  
10 separate consideration or analysis for determining  
11 how much to put there on the amount at risk?

12 A Yeah. And I think -- I don't remember us  
13 having a ton of discussion on that point. So I  
14 think that the way we did that was it was worth a  
15 total of -- each measure was worth a total of 5  
16 percent, so I believe on those 7 measures we put 35  
17 percent at risk, and I think we were all very  
18 comfortable with that. So I don't think we had a  
19 lot of discussion on that. I think we felt that was  
20 kind of where we started and where we ended.

21 Q Did Blue Cross have to bid -- make a  
22 similar bid on the guarantee in the prior RFP that  
23 led to the current contract?

24 A Yes.

25 Q Was the guarantee percentage and amount at

1 risk similar to the current RFP?

2 A I don't remember that offhand.

3 Q I'm going to run out of table room here  
4 shortly.

5 I'm going to give you what I'll mark as  
6 Exhibit 36.

7 (Exhibit Number 36 marked for  
8 identification as of this date.)

9 MR CHASE: For the folks on the phone,  
10 this is SHP 0004437.

11 BY MR. WHITLEY:

12 Q Thank you.

13 A Did you already give me the current -- the  
14 one for the '25 bid so I can compare the two? Is  
15 this -- is this, oh, this is the '25. Okay.

16 Q I was going to ask if you can confirm.  
17 What I understand this to be is the current RFP,  
18 what you're calling the '25 RFP, best and final bid,  
19 attachment A8.

20 A Yes.

21 Q Does that look like this?

22 A Yes.

23 Q And a couple minutes ago we looked in the  
24 RFP about the components of the scoring. Looking  
25 here in sort of the first page of -- of attachment

1 question.

2 Do you know a dollar amount how much was  
3 at risk?

4 A No, I don't offhand.

5 Q Do you remember any changes in the target  
6 sort of across the course of deliberations before  
7 the final submission amount?

8 A If I remember correctly, I think we did  
9 get slightly more aggressive, or at least we had  
10 discussions around that. From like the very first  
11 number that came out of underwriting and actuary  
12 from where we landed --

13 Q Right.

14 A -- I think we had at least one  
15 enhancement.

16 Q And I think if you look back at  
17 Exhibit 26, that's a comparison of that draft -- you  
18 can compare the draft that Mr. Montero sent  
19 initially and then the final that we have on  
20 Exhibit 36.

21 A Yep.

22 Q Okay. Can -- so just give me sort of an  
23 overview of what was initially proposed and what was  
24 finally proposed?

25 A Yep. So it looks like in our initial

1 proposal, we were looking at a 51.6 as the  
2 percentage we were guaranteeing, and we went up to a  
3 54.3 for inpatient, and then it looks like we did  
4 the same for outpatient; and professional, going up  
5 at varied amounts but everything increased.

6 Q Everything in the discount guarantees  
7 increased, there's a section below Medicare  
8 Guarantees, those don't appear to have increased,  
9 correct?

10 A Correct.

11 Q So the target increased from the sort of  
12 initial back-and-forths to what was finally  
13 submitted, correct?

14 A Yes.

15 Q So fair to say Blue Cross was more  
16 aggressive on the discount target; is that right?

17 A Yes.

18 Q Okay. Do you recall any change in the  
19 amount at risk from the initial proposal to the  
20 final?

21 A I don't. And looking at this it does not  
22 look like those changed.

23 Q Was there any discussion about being more  
24 aggressive on the amount at risk?

25 A I don't think so. I think we felt -- what

1 I remember the discussions is we felt 5 percent per  
2 measure, so 35 percent of the administrative fees in  
3 total for this portion was a good amount.

4 Also considering that we have additional  
5 performance guarantees outside of these where we  
6 have administrative fees at risk. So it wasn't just  
7 35 percent of our total administrative fee at risk.  
8 There's more than that.

9 Q What are those additional performances?

10 A So the State has an exhibit in the RFP  
11 that details the additional performance guarantees  
12 that we have to adhere to, and we put a percentage  
13 of our administrative fees at risk as well.

14 Q Is this exercise in coming up with a  
15 target and then amount at risk, is it a balancing  
16 act?

17 A I think -- I don't know if I would  
18 describe it as a balancing act. I mean, I think the  
19 discussions that we typically have internally, are  
20 again, when we're setting these, we want to set them  
21 in a way we can meet them. We don't just want to  
22 like overshoot and pay out on guarantees. We want  
23 to, you know, use a number that we truly think we  
24 can deliver on.

25 You know, with a corridor for there are

1 things that can affect this guarantee that happen in  
2 utilization and stuff, and so we want to leave room  
3 for that.

4 And then I do think we have discussions  
5 about the overall, you know, administrative fee and  
6 how much money are we putting at risk in total based  
7 on all of the guarantees that we have to, you know,  
8 do as a part of a bid.

9 Q You talk about the corridor. I just want  
10 to make sure I understand that, a "corridor" meaning  
11 there's a range of potential discounts that is going  
12 to depend on the amount of utilization in the  
13 future; is that --

14 A Correct. Yeah, it depends on the amount  
15 of utilization, where that utilization happens. So  
16 as you can see, like discounts can vary,  
17 inpatient/outpatient facilities. So let's say, like  
18 last year, a client had very small inpatient  
19 utilization but the next year it quadruples, that's  
20 going to affect -- and also where they got those  
21 services, were all the services at Duke or were they  
22 at WakeMed or were they -- that all is going to  
23 affect the actual discount that is achieved, and so  
24 we have to make assumptions for that. It's not like  
25 we know exactly what your claim set is going to be

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STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF DURHAM

23 INS 738

-----  
BLUE CROSS AND BLUE SHIELD  
OF NORTH CAROLINA,

Petitioner,

v.

NORTH CAROLINA STATE HEALTH  
PLAN FOR TEACHERS AND STATE  
EMPLOYEES,

Respondent,

and

AETNA LIFE INSURANCE COMPANY,

Respondent-Intervenor.  
-----

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\*\*PORTIONS CONTAIN ATTORNEYS' EYES ONLY\*\*

VIDEO DEPOSITION OF

GREGORY RUSSO

NOVEMBER 28, 2023

9:21 a.m.

Raleigh, North Carolina

Reported by: Audra M. Smith, FCRR

Video by: John Roberts

1 it with both the billed charges and then run it with  
2 the eligible charges to confirm what you just said,  
3 that you felt that they were so close as to be  
4 congruent?

5 A They were within \$1,000 of each other, so  
6 it wasn't necessary to rerun it, because what we  
7 were talking about with respect to these three  
8 providers is as detailed in my report, 496,  
9 '7 million dollars of charges. So \$1,000 isn't  
10 going to have a material impact.

11 MR. WHITMAN: So, okay. Let me mark and  
12 ask you to look at Mr. Vieira's report. We're  
13 going to mark that as Exhibit 419, Mr. Russo.

14 (Exhibit Number 419 marked for  
15 identification.)

16 BY MR. WHITMAN:

17 Q Just let me know if you recognize this.  
18 And then the amended report -- whoops,  
19 that's your rebuttal report.

20 Do you recognize that as the amended  
21 report of Mr. Vieira that was issued in this case?

22 A It appears to be. It doesn't look like  
23 it's signed, but it appears to be.

24 Q Okay. And I take it you've reviewed this  
25 amended report before today?

1 A Yes, I have.

2 Q This is one of the reports you reviewed in  
3 connection with preparing your rebuttal report,  
4 correct?

5 A Yes. I reviewed this, as well as the  
6 prior report that Mr. Vieira had produced.

7 Q Okay. What differences in the reports did  
8 you notice, if any?

9 A There were wording changes that were made  
10 to several sections of the report. I don't remember  
11 what those were, though.

12 Q Okay. Let me ask you to turn to page 30  
13 of Mr. Vieira's amended report, 30 of 38.

14 A Yes.

15 Q And on page 30 of that report, Mr. Vieira  
16 included a table in which he showed your alleged  
17 difference in Aetna's claims cost over the  
18 three-year base years of the contract being  
19 30 million, correct?

20 A Yes.

21 Q Three years would be 90 million, right?

22 A That is what Mr. Vieira assumed for  
23 purposes of this table. I disagree with that,  
24 though.

25 Q All right. And over the three-year base

1 period of the contract, then, under what Mr. Vieira  
2 has presented here, \$90 million would represent less  
3 than 1 percent difference in Aetna's claims cost.

4 Would you agree?

5 A While I agree with his calculation, I  
6 disagree with his addition of \$90 million.

7 Q Okay. Why do you disagree with that?

8 A As I have identified in Opinion 2 of my  
9 initial report, I identified a  
10 \$30 million difference in one year.

11 As Mr. Vieira has identified on page 24 of  
12 his report, he indicates that the medical costs  
13 increase over time, and he relied on data from both  
14 the State Health Plan and also The Segal trend  
15 survey. He found that there is roughly about a  
16 6 percent increase in medical costs year over year.

17 So if you take \$30 million and increase it  
18 by 6 percent each year, you get \$95 million. If you  
19 were to add \$95 million to Aetna's overall claims  
20 cost, the present difference from the lowest claims  
21 cost is not .46, but .51 and, therefore, would  
22 generate different scores.

23 Q So you're referring to the portion of the  
24 relationship which indicates that if Blue Cross Blue  
25 Shield or Aetna were within .5 percent of each other

1 on claims cost, each company would receive the same  
2 number of points, correct?

3 A Yes. That was one of the things that was  
4 referenced in my answer.

5 Q And under Mr. Vieira's analysis he  
6 concludes that it would have made no difference to  
7 either of your opinions in which you indicated in  
8 your initial report -- would have made no difference  
9 to the overall scoring because under Mr. Vieira's  
10 calculations it's less than .5 percent, right?

11 MS. JOSEPH: Objection to form.

12 BY MR. WHITMAN:

13 Q Is that what you understood him to be  
14 saying?

15 A That's what I understand him to be saying.  
16 As I mentioned, I disagree with that because we know  
17 that medical costs trend, as Mr. Vieira himself  
18 provided in his report.

19 MR. WHITMAN: Okay. Let's look -- let's  
20 go ahead and mark your rebuttal report as well.

21 This is going to be 420.

22 (Exhibit Number 420 marked for  
23 identification.)

24 BY MR. WHITMAN:

25 Q And do you recognize and can you identify

1 that as your rebuttal report, Mr. Russo?

2 A Yes, it appears to be my rebuttal report.

3 Q Okay. Let me ask you to turn to page 16  
4 of your rebuttal report, Mr. Russo.

5 A Yes.

6 Q And at the top of page 16 of your rebuttal  
7 report, you make the point that Mr. Vieira ignores  
8 discrepancies that you found and identified in your  
9 initial report could be the tip of the iceberg,  
10 right?

11 A I believe that it reads "Mr. Vieira  
12 ignores the possibility" --

13 Q Right.

14 A -- "that the discrepancies identified may  
15 be the tip of the iceberg."

16 I don't remember if you said -- whether  
17 you said possibilities or not.

18 Q Okay. But it's equally possible that  
19 those discrepancies are not the tip of the iceberg,  
20 correct?

21 A I think that it is both possible that they  
22 are the tip of the iceberg and possible that they  
23 are not the tip of the iceberg. What I have  
24 reviewed is -- I have reviewed the contracts for  
25 three providers, and I found nearly \$30 million in