



### Contract Preparation and Submission Checklist

*This checklist is a guide to assist you in preparing and submitting your contract. All items listed must be completed and/or returned with the contract.*

**Vendor Name:** \_\_\_\_\_  
**Data Universal Numbering System (DUNS) Number:** \_\_\_\_\_  
*To make updates to your vendor profile, please visit [MeckProcure.com](http://MeckProcure.com)*

**Requirements for Submission (check all included)**

	Document	Requirement
<input type="checkbox"/>	Certificate of Insurance  Click Here for an example	Must be <b>current</b> , list Mecklenburg County as the <b>certificate holder</b> , and include the following coverages <input type="checkbox"/> Automobile Liability <input type="checkbox"/> Commercial General Liability * <b>Mecklenburg County must be listed as additional insured</b> <input type="checkbox"/> Worker’s Compensation (If less than three employees a statement on your company letterhead is required) <input type="checkbox"/> Professional Errors and Omissions <input type="checkbox"/> Sexual Abuse and Molestation <input type="checkbox"/> Network Security and Privacy Liability <input type="checkbox"/> Fidelity Bond
<input type="checkbox"/>	Conflict of Interest Policy	<ul style="list-style-type: none"> <li>• Must be on your letterhead/stationary</li> <li>• Must include original signature</li> </ul>
<input type="checkbox"/>	Attachment A – Business Associate Agreement	Must include original signature and dated
<input type="checkbox"/>	Signature Page	Must include original signature and dated

**Methods of Submission**

Email		Hand Deliver/Mail
Submit a PDF copy to: Procurement Analyst: Paul Walker <a href="mailto:Paul.Walker@MeckNC.Gov">Paul.Walker@MeckNC.Gov</a>	<b>OR</b>	Mecklenburg County Government Procurement Division Financial Services Department 700 East 4 <sup>th</sup> Street, 4 <sup>th</sup> Floor Charlotte, NC 28202



State of North Carolina  
Mecklenburg County

County Funds   
 State Funds   
 Federal Funds  CFDA # Number(s)  
 Other Funds  Type of Other Funding.

This Contract, entered into as of the \_\_\_\_\_ of \_\_\_\_\_, by and between the COUNTY OF MECKLENBURG, hereinafter referred to as "County", and \_\_\_\_\_, hereinafter referred to as "Vendor"

The section headings contained in this contract are for reference purposes only and shall not affect the meaning or interpretation of this contract.

The Department and Provider agree as follows:

**1. ENGAGEMENT, TERM AND CONTRACT DOCUMENT**

**1.1 Purpose and Contract Amount**

The Department is engaging the Provider for the purpose of \_\_\_\_\_, as further described in Exhibit A – Scope of Work, payable as provided in Section 4, in an amount not to exceed \$ \_\_\_\_\_.

**1.2 Effective and Ending Dates**

This Contract shall be effective \_\_\_\_\_ or the last party signature date, whichever is later. The contract term is for the fiscal year ending June 30, 2021 but the contract terms and conditions may be renewed for two (2) additional one-year terms up to and until June 30, 2023, unless the Contract is sooner terminated in accordance with the terms as provided herein.

**1.3 Official Payee and Party Representatives**

**1.3.1** The name, address, telephone number and e-mail address of the Vendors' Contract Administrator:

Name:  
 Address:  
 City: State: Zip Code:  
 Phone: Ext: E-mail:

**1.3.3** The name, address, telephone number and e-mail of the Project Manager for the Department for this Contract:

Name:  
 Address:  
 City: State: Zip Code:  
 Phone: E-mail:

**1.3.2** The name, address, telephone number and e-mail of the Vendor's representative responsible for administration of the program under this Contract (and primary point of contact):

Name:  
 Address:  
 City: State: Zip Code:  
 Phone: Ext: E-mail:

**1.3.4** The name, address, telephone number and e-mail address of the Procurement Analyst for this Contract:

Name:  
 Address:  
 City: State: Zip Code:  
 Phone: E-mail:

**2. APPLICABILITY**

- 2.1** This Contract constitutes the entire agreement between the parties with respect to the subject matter herein. There are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral with respect to the subject matter herein.
- 2.2** Each of the parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard of the benefits and rights intended to be conferred upon the parties.

**3. INCORPORATION**

The following Exhibits are attached to this Contract and incorporated herein and made a part of this Contract by reference:  
 Exhibit A: Scope of Work

## Attachment B: Conflict of Interest Policy

Each reference to the Contract shall be deemed to include all Exhibits. Any conflict between the language in an Exhibit to this Contract and the main body of this Contract shall be resolved in favor of the main body of this Contract; provided, however, if the parties have executed a Business Associate Agreement, either as an Exhibit to this Contract or as a separate agreement, any conflict between the Business Associate Agreement and this Agreement shall be resolved in favor of the Business Associate Agreement.

### 4. METHOD AND CONDITION OF PAYMENTS

4.1 Rates are determined as follows:

4.1.1 Total Cost \$

4.2 The County has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Agreement unless specified and agreed to by both parties. If reimbursement is required by the County:

4.2.1 All travel expenses must be in accordance with the County Travel Policy and Procedures and must be preapproved in writing by the County.

4.2.2 The County will only pay coach/economy rate airline fares; and

4.2.3 The Vendor's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the forgoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the Vendor so long as the County is not charged for or asked to reimburse the upgrade charge or the value of the miles, points or credits used.

4.3 The County and the Vendor agree that the fees for Products and/or Services performed under this Contract are set forth in the **Pricing Sheet attached** hereto and incorporated herein. These prices constitute the maximum total fees and charges payable to the Vendor under this Agreement and shall not be increased except by a written instrument duly executed by both parties.

4.4 The Vendor signifies its understanding and agreement by signing this document that this Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when the County identifies a need and issues a purchase order or SOW under this Contract.

4.5 Submit monthly detailed invoices via electronic format to the email address below:

4.6 Electronic invoices must be submitted in accordance with the privacy and security requirements set forth in SECTION 7 – SAFEGUARDING CUSTOMER AND COUNTY INFORMATION.

4.7 Payment will be made via electronic funds transfer.

4.8 Prepare and submit with invoice each month a financial report documenting actual monthly expenses per the line item budget. The total amount paid under the terms of this Contract shall not exceed the actual expenditures incurred by the Vendor.

4.9 **Line items in the budget, not to exceed the maximum amount payable under the terms of this contract, may be adjusted by mutual written consent between the Vendor and County. In such case, the Vendor shall provide an updated budget to be placed on file with all parties.**

4.10 The first invoice will be due no later than \_\_\_\_\_ for services rendered from \_\_\_\_\_ through \_\_\_\_\_ of the current year and will be paid providing the contract has been fully executed.

4.11 Upon receipt, the invoice will be validated and verified for accuracy and submitted to finance for payment. Incorrect invoices will be clarified with Vendor with corrections/changes made on a revised invoice.

4.12 The date of the revised invoice will be considered as the original date of the invoice.

4.13 County will authorize approved amounts to be paid to Vendor.

4.14 Failure to send requests to the appropriate person may result in payment being delayed beyond thirty (30) calendar days.

4.15 For services rendered from June 1<sup>st</sup> through June 30<sup>th</sup> of the previous year, the invoice will be due no later than July 5<sup>th</sup> of the current year. Late billings must be submitted for payment no later than sixty (60) calendar days from the date of service. If billing is over (60) calendar days, the County may deny payment.

### 5. COMPENSATION

5.1 **PRICE PROTECTION.** The Company warrants that prices extended to the County under this Agreement are comparable to or better than those being offered to any other customer purchasing similar quantities. During the term of this agreement, if the Company enters into a contract with another entity that provides better pricing and

terms than this Agreement, then the Company shall be obligated to provide the same to the County for subsequent purchases and the County shall be notified of changes to the Agreement pricing. During any term of this Agreement, if lower prices and rates become effective for like quantities of Products and/or Services, through a reduction in list prices, promotional discounts, or other circumstances, the County must be given immediate benefit of such lower prices and rates, and the County shall be notified of changes in Agreement pricing.

- 5.2 PRICE ADJUSTMENT.** The price(s) stated in this Agreement shall not increase for the initial term. The Company shall provide the County with one hundred eighty (180) days prior written notice of the revised price(s), if any, for subsequent Agreement periods for which the County may elect to renew beyond the initial term. If the County agrees to the revised price(s), such changes will become effective the first day of the new applicable term and be reflected in a new Pricing Sheet Exhibit provided by the Company, which will replace the existing Pricing Sheet Exhibit for the successor term.

Price increases shall only be allowed when justified in the County's sole discretion based on legitimate, bona fide increases in the cost of providing the Products and/or Services covered under this Agreement. No adjustment shall be made to compensate the Company for inefficiency in operation, increase in labor costs or for additional profit.

**AUDIT REQUIREMENTS – Not Applicable**

**6. LEGAL RESPONSIBILITIES OF BOTH PARTIES**

Compliance with Federal and State Laws and Regulations and Authority to Contract

**6.1 Vendor Responsibilities:**

- 6.1.1** Have all the requisite power and authority to execute, deliver and perform its obligations under this Contract and to provide the service(s) stipulated in this Contract as described in the Vendor Responsibilities (Section I), in accordance with applicable standards for the service(s);
- 6.1.2** Comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 6.1.3** Accept fiscal responsibility for deviations from the terms of this Contract as a result of acts of Vendor or any of its officers, employees, agents or representatives.
- 6.1.4** Certify that no approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by Vendor in order for Vendor to enter into and perform obligations under this Contract.
- 6.1.5** Not violate any contract with any third party by entering into or performing this Contract.
- 6.1.6** Certify that it has identified to the County all jobs related to the Contract that have been outsourced to other countries, if any. The Vendor further agrees that it will not outsource any such jobs during the term of this Contract without obtaining prior written approval from the County.
- 6.1.7** Agree to make itself aware of and comply with, and cause its subcontractors to comply with all Federal, State, and local laws, regulations and ordinances, to the extent any apply, relating to the performance of this Contract and to the products and Services delivered hereunder, including without limitation, **E-Verify (Article 2 of Chapter 64 of the North Carolina General Statutes)**, Workers' Compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and all applicable regulations of the Occupational Safety and Health Administration (OSHA). The Vendor further agrees to obtain all verifications, permits and licenses applicable to the performance of this Contract. If any violation of this section has occurred or does occur, the Vendor will indemnify, defend and hold harmless the County from all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, interest charges and other liabilities (including settlement amounts) incurred on account of such violation.
- 6.1.8** Represent and warrant that neither it nor any of its employees or subcontractors relevant to this Contract are excluded from any State or Federal health care programs. In the event Vendor is excluded from a State or Federal health care program, Vendor shall promptly notify the Department and this Contract shall immediately terminate. In the event an employee or subcontractor of Vendor is excluded from a State or Federal health care program, Vendor shall immediately notify the Department and immediately cease using that individual or subcontractor for this Contract.
- 6.1.9** Make available all services under this Contract to all persons without discrimination on the grounds of race, color, creed, national origin, religion, age, sex, disability or any other status protected by law.
- 6.1.10** Agrees to notify the County within five (5) days upon the receipt of notification from the North Carolina Secretary of State that the business charter, articles of incorporation, articles of organization, or certificate of authority of the corporation or limited liability company is under suspension pursuant to N.C.G.S. §105-230 for failing to file any

report or return or to pay any tax or fee required by the North Carolina Department of Revenue or to sign an agreement for repayment within ninety (90) days after it is due.

- 6.1.11 Comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104).
- 6.1.12 Iran Divestment Act Prohibition - Iran Divestment Act Prohibition – Vendor represents that as of the date of this Contract or purchase order, Vendor is not currently listed on the Final Divestment List created and maintained by the North Carolina State Treasurer pursuant to G.S.143-6A-4. Further, pursuant to G.S. 143C-6A-5(b), Vendor further agrees to notify the County Procurement Department if at any time during the term of this agreement, it is added to the "List." The Divestment List may be found on the State Treasurer's website at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran).
- 6.1.13 Comply with the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

### **Digital Accessibility Compliance**

## **7. SAFEGUARDING CUSTOMER AND COUNTY INFORMATION**

- 7.1 Both parties hereto agree to comply with any and all applicable laws and regulations concerning the confidentiality of customer records, files or communications in addition to the terms of this Contract.
- 7.2 Both parties agree to secure privacy, confidentiality and integrity of customer, employee, and administrative data on automated systems and to install antivirus protection and a firewall as well as any other industry standard security measures.
- 7.3 Electronic exchange of confidential information, including any email which will include invoices, customer billing information, employee or administrative data, or any information regarding the delivery of services to customers/clients/patients, must be sent and received via encrypted methods. Vendor is responsible for determining how to send encrypted emails to the County.
- 7.4 Vendor agrees to keep confidential any information about a customer or the County pursuant to the Confidentiality and Non-Disclosure Agreement which is incorporated herein as part of this Contract as follows:

### **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

Vendor has obtained or may need to obtain confidential information from the County or its licensors, contractors or suppliers in connection with the provision of Services to the County or the discussions of such a proposed relationship.

The County and Vendor desire to stipulate and agree that any disclosure of confidential information in connection with the provision of Services or the discussion of such a proposed relationship has occurred or will occur under circumstances and conditions that will protect and preserve the confidentiality of the information.

In consideration of the pursuit of current discussions and payment for the Services, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

- 1. DEFINITIONS. As used in this Contract, the following terms shall have the meanings set forth below:

Confidential Information. The term "Confidential Information" shall mean any information, in any medium, whether written, oral or electronic, not generally known is obtained from the County or any of its suppliers, contractors or licensors which falls within any of the following general categories:

- (1) Trade Secrets. For purposes of this Contract, trade secrets consist of information of the County or Vendor or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

(2) Highly Restricted Information. Vendor acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) Vendor will also comply with any more restrictive instructions or written policies that may be provided by COUNTY from time to time to protect the confidentiality of Highly Restricted Information, as defined below:

- i. Information of COUNTY or its suppliers, contractors or licensors marked "Confidential" or "Proprietary."
- ii. Information relating to criminal investigations conducted by COUNTY, and records of criminal intelligence information compiled by COUNTY.
- iii. Information contained in COUNTY's personnel files, as defined by N.C. Gen. Stat. 153A-198. This consists of all information gathered by COUNTY about employees, except for that information which is a matter of public record under North Carolina law.
- iv. Citizen or employee social security numbers collected by COUNTY.
- v. Computer security information of COUNTY, including all security features of electronic data processing, or information technology systems, telecommunications networks and electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.
- vi. Local tax records of COUNTY that contain information about a taxpayer's income or receipts.
- vii. Any attorney/client privileged information disclosed by either party.
- viii. Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.
- ix. The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.
- x. Protected health information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), and any other health information that is designated as confidential under Federal or State law.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one year prior to the date of this Contract.

2. RESTRICTIONS. Vendor shall keep the Confidential Information in the strictest confidence, in the manner set forth below:
  - a. Vendor shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information, except as authorized by COUNTY in writing.
  - b. Not directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information to any third party, other than an employee, agent, subcontractor or Vendor of the County or Vendor having a need to know such Confidential Information for purpose of performing work contemplated by this Contract between the County and Vendor, and who has executed a confidentiality agreement incorporating substantially the form of this Confidentiality and Non-Disclosure Agreement. Vendor shall not directly or indirectly, disclose, divulge, reveal, report or transfer Highly Restricted Information to any third party without the County's prior written consent.
  - c. Vendor shall not use any Confidential Information for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written Contracts between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
  - d. Vendor shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information.
  - e. Vendor shall use reasonable efforts (including but not limited to seeking injunctive relief where reasonably necessary) to prohibit its employees, agents and subcontractors from using or disclosing the Confidential Information in a manner not permitted by this Contract.

- f. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, Vendor shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
  - g. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential Information, and unless otherwise agreed, all such materials shall be returned to COUNTY or destroyed upon satisfaction of the purpose of the disclosure of such information.
  - h. Vendor shall restrict employee access to the Confidential Information to those employees having a need to know for purposes of their jobs.
  - i. Vendor shall take reasonable measures to prevent the use or disclosure of Confidential Information by its employees in a manner not permitted by this Contract.
3. EXCEPTIONS. COUNTY agrees that Vendor shall have no obligation with respect to any Confidential Information that Vendor can establish:
- a. was already known to Vendor prior to being disclosed by COUNTY;
  - b. was or becomes publicly known through no wrongful act of Vendor;
  - c. was rightfully obtained by Vendor from a third party without similar restriction and without breach hereof;
  - d. was used or disclosed by Vendor with the prior written authorization of COUNTY;
  - e. was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, Vendor shall first give to the other party notice of such requirement or request;
  - f. was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that Vendor shall take reasonable steps to obtain an agreement or protective order providing that this Contract will be applicable to all disclosures under the court order or subpoena.
4. REMEDIES. Vendor acknowledges that the unauthorized disclosure of the Confidential Information will diminish the value of the County's proprietary interests therein. Accordingly, it is agreed that if Vendor breaches its obligations hereunder, COUNTY shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.

#### 7.5 Data Security

The Vendor shall adopt and apply data security standards and procedures that comply with all applicable federal, state, and local laws, regulations, and rules.

The Vendor shall report a suspected or confirmed security breach to the County Department Procurement Analyst within twenty-four (24) hours after the breach is first discovered, provided that the Vendor shall report a breach involving Social Security Administration data or Internal Revenue Service data within one (1) hour after the breach is first discovered.

If any applicable Federal, State, or local law, regulation, or rule requires the Vendor to give written notice of a security breach to affected persons, the Vendor shall bear the cost of the notice.

### 8. **INDEMNIFICATION**

To the fullest extent permitted by law, the Vendor shall indemnify, defend and hold harmless each of the "Indemnitees" (as defined below) from and against any and all "charges" (as defined below) paid or incurred by any of them as a result of any claims demands, lawsuits, actions or proceedings either: (i) alleging violation, misappropriation, or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the County pursuant to this Contract ("infringement claims"); (ii) seeking payment for labor or materials purchased or supplied by the Vendor or its subcontractors in connection with this Contract; or (iii) arising from the Vendor's failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Vendor or any of its agents, employees or subcontractors relating to the performance of this Contract, including but not

limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness, or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from a violation of any Federal, State or local law, regulation or ordinance by the Vendor or any of its subcontractors, including without limitation E-Verify or other immigration laws; or (v) arising from any claim that the Vendor or an employee or subcontractor of the Vendor is an employee of the County, including but not limited to claims relating to workers' compensation, failure to withhold taxes, and the like. For purposes of this section: (a) the term "Indemnitees" means the County and each of the County's officers, officials, employees, agents and independent contractors, excluding the Vendor; and (b) the term "charges" means any and all losses, damages, costs, expenses (including reasonable attorneys' fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities including settlement amounts.

**9. TREATMENT OF ASSETS**

Treatment of assets acquired under this Contract shall be subject to the following:

- 9.1 Ownership of property purchased by Vendor under the terms of this Contract for which reimbursement by COUNTY is based upon the actual purchase cost of the property shall immediately vest with the County upon such reimbursement.
- 9.2 County shall have no claim to property purchased by Vendor under the terms of this Contract for which reimbursement by County is based upon an approved depreciation schedule or use allowance.
- 9.3 Vendor shall provide an annual accounting to County of available property and administer in accordance with sound business practice a program for the maintenance, repair, protection and preservation of property purchased under the terms of this Contract to assure its continued availability.
- 9.4 Property purchased under the terms of this Contract shall be used only for the performance of this Contract. A fixed assets inventory must be kept current by the Vendor.

**10. RECORDS AND REPORTS**

Vendor agrees to maintain customer records which date and document the service delivered for the individual customer, a valid authorization for service, program records, documents and other evidence which reflect program operations.

- 10.1 Furnish information to COUNTY, as requested, to support provision of service(s) pursuant to this Contract and the full cost of the service. Service Provide agrees to submit requested changes to the contract, or approved supporting information, for prior review, as needed or required.
- 10.2 Maintain books, records, documents and other evidence and accounting procedures that reflect all direct and indirect costs expended under this Contract for a minimum of five years after final payment or until all audits continued beyond this period are completed or longer if required by funding source. The record retention period for Temporary Assistance for Needy Families (TANF) and MEDICAID and Medical Assistance grants and programs must be retained for a minimum of ten years. Upon request, Vendor shall make available such books, records and other documents necessary to certify the nature and extent of the cost of the Services to the Secretary of Health and Human Services and the Comptroller General of the United States or their duly authorized representatives. A fixed assets inventory must be kept current by the Vendor.
- 10.3 Maintain a separate accounting system, including ledgers and journals, which clearly identify income, expenditures, assets and liabilities for this contracted service. Federal, State and County auditors and any other persons authorized by Department shall have the right to examine any of these materials. In the event Vendor dissolves or otherwise goes out of existence, records produced under this Contract will be turned over to the County.

**11. RIGHT TO AUDIT**

During the term of this Agreement and for a period of two years after expiration or termination, the County shall have the right to audit, either itself or through an independent auditor, all books, records, and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Agreement or the County's payment obligations. The County shall pay for its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs to the Company.

**12. NON-EXCLUSIVITY.**

The Company acknowledges that the County is not obligated to solely contract with the Company for the Products and/or Services covered under this Contract.

**13. EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.**

The Company represents and warrants that all Company Representatives provided by the Company to perform the services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company Representative. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and



other payments and deductions which are required by law for each Company Representative. The Company agrees that the Company Representatives are not employees of the County.

14. **SUBCONTRACTING**

Vendor shall not subcontract any of the work contemplated under this Contract without obtaining prior written approval from the County. Any approved subcontract shall be subject to all conditions of this Contract. Vendor shall be responsible for the performance of any subcontractor.

15. **MONITORING AND EVALUATION**

- 15.1 Vendor agrees to participate in program, fiscal and administrative audits, making records and staff time available to Federal, State, and County staff.
- 15.2 Vendor agrees to take the necessary steps for corrective action, as required within a corrective action plan, for any items found to be out of compliance with Federal and State laws, regulations, standards and/or terms of this Contract.
- 15.3 During the term of this Contract and for a period of four (4) years after termination or expiration of this Contract for any reason, in addition to the County, Federal and State government shall have the right to audit, through either itself or a third party, the books and records (including but not limited to the technical records) of Vendor in connection with this Contract, to ensure Vendor's compliance with all the terms and conditions of this Contract.

16. **AMENDMENT**

This Contract may be amended at any time with mutual consent of the parties hereto, but any amendment shall be in writing and signed by the parties hereto.

17. **SEVERABILITY**

In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, the remaining provision or requirement shall continue to be enforced to the extent they are not in violation of law or not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.

18. **WAIVER**

No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.

19. **NOTICES**

Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the Procurement Analyst the address set forth in Section 1.3.4.

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which is sent by telefax or electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

20. **SALES/USE TAX REFUNDS AND TAXES**

Vendor shall pay all applicable federal, state and local taxes chargeable against the performance of the services.

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

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

**21. REDUCTION OR NON-APPROPRIATION OF FUNDS**

The parties to this Contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation and availability of funds for this purpose to the County. In the event that Federal, State, Local or Grant funding is no longer available or has been reduced, the County shall notify the Vendor and shall not be obligated to continue this Contract or any part thereof.

If the Board of County Commissioners does not appropriate the funding needed by the County to make payments under this Contract for a given fiscal year, the County shall not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the County will notify Vendor of the non-appropriation and this Contract will be terminated at the end of the last fiscal year for which funds were appropriated. No act or omission by the County, which is attributable to non-appropriation of funds, shall constitute a breach of or default under this Contract.

Any unexpended grant funds shall revert to the County Department upon termination of this Contract.

**22. CHANGE IN CONTROL**

In the event of a change in "Control" of Vendor (as defined below), the County shall have the option of terminating this Contract by written notice to Vendor as specified under the terms of Section 23. The Vendor shall notify the County within ten (10) days after it becomes aware that a change in Control is imminent or has occurred. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either: (i) the ownership of or ability to direct the voting of, as the case may be fifty-one percent (51%) or more of the equity interests, value or voting power in Vendor; or (ii) the power to direct or cause the direction of the management and policies of Vendor whether through the ownership of voting securities, by Contract or otherwise; (iii) the position of Executive Director, Board Chairman or more than 25% of the Board of Directors.

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

**23. TERMINATION**

**23.1 Termination Without Cause**

The County or Vendor may terminate this Contract at any time without cause by giving thirty (30) calendar days prior written notice to the other party deliverable in person or by certified or registered mail to the persons identified as the Contract Administrator/Analyst for each party as set forth in Section 1.3. In the event the County terminates this Contract, the Vendor shall continue performing the service or work on the deliverable item until the termination date designated by the County in its termination notice. The County shall pay the Vendor for satisfactory work completed through the date of termination under the terms of this Contract.

**23.2 Termination With Cause**

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

**23.2.2** The filing of a petition for bankruptcy by the Vendor shall be an act of default under this Contract, and the County shall have the right to terminate this Contract by giving written notice to the Vendor and specifying the effective date thereof.

**23.2.3** The County shall have shall have the right to terminate this Contract by giving written notice to the Vendor and specifying the effective date thereof if the Vendor takes or fails to take any action which constitutes grounds for termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract. County shall be entitled to all rights and benefits of the Federal Intellectual

Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

**23.3 Obligations Upon Expiration or Termination**

Upon expiration or termination of this Contract, Vendor shall promptly (a) return to the County all computer programs (with the exception of software that Vendor provided as part of the equipment requirements), files, files in storage, documentation, data, media, related material and any other material and equipment and/or any other property acquired as referenced in Section that is owned by the County; and (b) allow the County or a new Vendor access to the systems, software, infrastructure, or processes of Vendor that are necessary to complete delivery of services. The return of files relative to the delivery of services in storage will be at no cost to the County. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information", as defined in the Section .

**23.4 Authority to Terminate**

The County Manager or the County Manager's designee, including but not limited to the Director and the Assistant County Manager for the Consolidated Human Services Agency, is authorized to terminate this Contract on behalf of the County.

**23.5 Cancellation of orders and subcontracts**

In the event this Contract is terminated by the County for any reason prior to the end of the term, Vendor shall upon termination immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, Vendor shall submit a Statement to the County showing in detail the services performed under this Contract to the date of termination.

**23.6 No Effect on Taxes, Fees, Charges, or Reports**

Any termination of this Contract shall not relieve Vendor of the obligation to pay any fees, taxes or other charges then due to the County, nor relieve Vendor of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve Vendor from any claim for damages previously accrued or then accruing against Vendor.

**24. REMEDIES**

**24.1 RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth, due to no fault of the County, the County may take any of the following actions with or without terminating this Agreement, and in addition to and without limiting any other remedies it may have:

**24.1.1** Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Agreement; and

**24.1.2** Deduct any and all expenses incurred by the County in obtaining or performing the Services from any money then due or to become due the Company and, should the County's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.

**24.2 RIGHT TO WITHHOLD PAYMENT.** The County reserves the right to withhold any portion, or all, of a scheduled payment if the Company fails to perform under this Agreement until such breach has been fully cured.

**24.3 SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.** The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Products and/or Services required by this Agreement, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of competent jurisdiction within the State of North Carolina. The Company further consents to the County obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Agreement.

**24.4 SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Agreement all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Agreement.

**24.5 LIQUIDATED DAMAGES.** The County and the Company acknowledge that the County will incur damages for inconveniences and delay if the Company fails to meet the deadlines set forth by Agreement (excluding any damages which the County may incur in the event it elects to terminate this Agreement). The parties further acknowledge that the damages that might be reasonably anticipated to accrue as a result of such failure are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, the Company agrees that it will pay Liquidated Damages in accordance with the schedule attached hereto and incorporated herein by Exhibit.

- 24.5.1 Liquidated damages may be assessed or waived at the discretion of the County. No failure on the County's part to timely assess Liquidated Damages for any given incident or set of incidents shall be considered either a waiver of such damages or a modification of this Agreement. Waiver of Liquidated Damages for one particular violation or set of violations shall not constitute a waiver of damages for any violation not specifically stated in such waiver.
- 24.5.2 The Liquidated Damages set forth herein are not intended to compensate the County for any damages other than the inconvenience and loss of use or delay of the Products and/or Services. The existence or recovery of such Liquidated Damages shall not preclude the County from recovering other damages which the County can document as being attributable to a failure to meet one or more deadlines.
- 24.5.3 Notwithstanding anything contained herein to the contrary, the County will not impose Liquidated Damages for any failure that could not have been prevented through the exercise of reasonable precaution or that is due to a Force Majeure Event.
- 24.5.4 It is the responsibility of the Company to notify the County immediately should the Company believe that Liquidated Damages should not be assessed in a particular situation and to provide at the same time all information in which the company believes justifies a waiver. The Company agrees that failure to provide such notice and information within twenty-four (24) hours after a particular incident occurs will constitute a waiver of any right the Company may have to contest the imposition of Liquidated Damages in connection with such incident.
- 24.5.5 Liquidated Damages shall be assessed via withholding of the proper total amount from the payment due to the Company for that particular billing period. The assessment of Liquidated Damages shall not limit the County's right to exercise any termination options it may have under this Agreement.
- 24.6 **OTHER REMEDIES.** Upon breach of this Agreement, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.
- 24.7 **NO LIENS.** All Products shall be delivered and shall remain free and clear of all liens and encumbrances.

25. **INSURANCE REQUIREMENT**

Throughout the Term, Vendor and any of its subcontractors will comply with the insurance requirements described in this section. In the event that Vendor fails to maintain required insurance, the County shall be entitled to terminate or suspend the Contract immediately.

The Vendor agrees to purchase and maintain the following insurance coverage during the Term:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> <b>Automobile Liability</b><br>Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.  | per policy limit, \$100,000 disease each employee limit.  |
| <input checked="" type="checkbox"/> <b>Commercial General Liability</b><br>Insurance with a limit not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.<br>The County shall be named as the holder of the insurance policy and as an additional insured under Vendor's commercial general liability insurance policy for operations or services rendered under this Contract. | <input type="checkbox"/> <b>Professional Errors &amp; Omissions</b><br>Insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Vendor and the Vendor's employees for negligent acts, errors or omissions in performing the professional services under this contract.         |
| <input checked="" type="checkbox"/> <b>Workers' Compensation</b><br>Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease  | <input type="checkbox"/> <b>Sexual Abuse and Molestation</b><br>Insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Vendor and the Vendor's employees for negligent acts in performing the professional services under this contract.                                     |
|   | <input type="checkbox"/> <b>Network Security and Privacy Liability</b><br>Network Security and Privacy Liability as shall protect the Company and its employees from claims alleging from the failure: (1) to provide adequate electronic or physical security to safeguard against the theft, loss or other threat |

to confidential information; or, (2) to protect information of Mecklenburg County in any format. This policy shall be specific to the performance of this Contract and shall provide combined single limit each occurrence/aggregate of \$3,000,000. Policy will include acts of rogue employees and have a retroactive date of no later than the first date services under this contract are to be performed.

Insuring the Vendor and/or his employees that have access to monies or properties of the County. Providing employee dishonesty coverage on all employees at a limit of not less than \$500,000, with the addition of Loss Payable endorsement (CR 20 14 08 07), Mecklenburg County named as loss payee; actual required coverage will vary according to the amount of money or property handled and will be determined by the County during processing of the Contract.

**Fidelity Bond**

Vendor shall not commence any work in connection with the Contract until it has obtained all of the types of insurance set forth in this section and has furnished corresponding certificates of insurance to the County with the Contract. Vendor shall be responsible for notice to the County of any material changes (including renewals) to or cancellation of required insurance coverage. Vendor shall not allow any subcontractor to commence work without proof of the same insurance coverage required of Vendor under this Contract.

All insurance policies shall be written by insurers qualified to do business in the State of North Carolina. If any of the coverage conditions are met by a program of self-insurance, the Vendor must submit evidence of the right to self-insure under North Carolina law.

Payment of any deductible or retention shall be the sole responsibility of the Vendor or, as applicable, Vendor's subcontractor. The County shall not be liable for any deductible or self-insured retention in any insurance policy of Vendor.

Vendor's insurance shall be primary of any self-insurance or insurance policy carried by the County for all loss or damages arising from the Vendor's operations under this Contract. The Vendor and each of its subcontractors shall waive all rights of subrogation against the County and each of the Indemnitees.

**26. GOVERNING LAW AND JURISDICTION**

The parties acknowledge that this Contract is made and entered into in Charlotte, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the terms and provisions, as well as the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern the interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles).

Each party consents to the exclusive jurisdiction of the State and Federal courts located in Charlotte, Mecklenburg County, North Carolina in any proceeding arising out of or relating to this Contract, and waives any defense related to venue or inconvenient forum.

**27. FORCE MAJEURE**

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God constituting a Force Majeure Event.

An event which satisfies all of the conditions set forth above shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, Vendor shall be excused from any further performance of those of its obligations which are affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) Vendor continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

Upon the occurrence of a Force Majeure Event, Vendor shall immediately notify the County through its designated Program Manager by telephone or email as identified in Section (to be confirmed by written notice within two (2) business days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents Vendor from performing

its obligations for more than five (5) business days, the County shall have the right to terminate this Contract by written notice to Vendor.

Strikes, slowdowns, lockouts, walkouts, industrial disturbances and other labor disputes shall not constitute Force Majeure Events and shall not excuse Vendor from the performance of its obligations under this Contract.

**28. CERTIFICATION REGARDING LOBBYING**

- 28.1** No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal Contract, continuation, renewal, amendment or modification of any Federal Contract, grant, loan or cooperative Contract.
- 28.2** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan or cooperative Contract, Vendor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 28.3** Vendor shall require that the language of this certification be included in the award document for sub-awards at all tiers (including subcontracts, sub-grants and Contracts under grants, loans and cooperative Contracts) and that all sub-recipients shall certify and disclose accordingly.
- 28.4** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**29. DRUG-FREE WORKPLACE**

- 29.1** The County is a drug-free workplace employer. For any employee assigned by the Company to provide services under this contract, on behalf of the County, the following shall be required:
  - 29.1.1** Notifying assigned employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and the actions that will be taken against employees for violations of such prohibition;
  - 29.1.2** Notifying each assigned employee that as a condition of the assignment, the employee will be expected to (i) abide by the terms of this provision and (ii) notify the Company of any criminal drug statute conviction not later than five (5) days after such conviction;
  - 29.1.3** Notify the County within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
  - 29.1.4** As a condition of continued assignment with the County provide to the County any measures implemented by the Company to address the issues of rehabilitation, counseling or participation in a drug treatment program; and
  - 29.1.5** Requiring any party to which it subcontracts any portion of the Services under the Contract to comply with these provisions.
- 29.2** Failure to comply with the above drug-free requirements for assigned employees during the performance of this Contract shall be grounds for suspension, termination or debarment

**30. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE**

Public Law 103-227, Part C-Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned, leased, or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, Contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this Contract, Vendor certifies that it will comply with the requirements of the Act. Vendor further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-grantees shall certify accordingly

31. **WORK ON COUNTY'S PREMISES.** The Company will ensure that its employees and agents shall, whenever on the County's premises, obey all instructions and directions issued by the County with respect to rules, regulations, policies and security procedures applicable to work on the County's premises. The Company agrees that its personnel and the personnel of its subcontractors will comply with all such rules, regulations and security procedures when on the County's premises including but not limited to:

31.1 Comply with the Mecklenburg County Tobacco Use Policy, which prohibits County contractors and others performing services for the County, including Vendor, from smoking, using smokeless tobacco (chew, dip, snuff) and/or electronic or other nicotine delivery devices (electronic cigarettes, cigars, hookahs, pipes, etc.) in County, City and Town Buildings; County, City and Town Grounds; County, City and Town Vehicles; the County Park System; and Buildings located within the County Park System.

31.2 Weapons are not permitted at County facilities (the exception are weapons possessed by law enforcement officials).

32. **NON-ENDORSEMENT AND PUBLICITY.** The County is not endorsing the Company's Products and/or Services, nor suggesting that they are the best or only solution available. No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the County in any manner without the prior written consent of the County. Notwithstanding the forgoing, the parties agree that the Company may list the County as a reference in responses to requests for proposals, and may identify the County as a customer in presentations to potential customers.

33. **GIFTS AND FAVORS REGULATED.**

Comply with the provisions of North Carolina Executive Order 24 and NCGS§ 133-32, which provide that it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any officer or employee of a governmental agency or State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor) charged with the duty of preparing plans, specifications, or estimates for a public contract or awarding or administering a public contract. This prohibition covers those vendors and contractors who have a contract with a governmental agency; or have performed under such a contract within the past year; or anticipate bidding on such a Contract in the future.

#### **BUSINESS ASSOCIATE AGREEMENT.**

34. **CONCLUSION**

34.1 It is understood and agreed that the provisions of services to the Contract shall be subject to the limitations and conditions contained in the laws, regulations, guidelines and plans cited in this Contract, and that this Contract is subject to re-negotiation or revision to meet any new or revised rules, regulations or policies that may be issued by the Federal, State or County government, or any agency thereof. In the event of any new or revised rules, regulations or policies that prohibit the continuation of this Contract, or are otherwise in conflict with any provision of this Contract or any activity hereunder, the parties shall use their best efforts during a thirty (30) day period to mutually agree to amend the Contract so as to permit its valid and legal continuation. If after such thirty (30) day period, the parties are unable to amend this Contract, the Contract shall automatically terminate.

34.2 The parties agree that this Contract, with any Attachments incorporated herein, is the entire Contract between the parties with respect to its subject matter and there are no other representations, understandings, or contracts between the parties relative to such subject matter.

34.3 It is expressly understood and agreed that the Services provided to eligible customers/clients/patients pursuant to this Contract shall consist exclusively of those services specified in the program description incorporated into this Contract.

**34.4** To the extent applicable, nothing in this Contract shall be construed as payment by either party to the other for patient referrals. Notwithstanding the anticipated effect of any of the provisions herein, neither party shall intentionally conduct itself under the terms of this Contract in a manner to constitute a violation of the Medicare and Medicaid Fraud and Abuse Provisions (42 USC 1395nn(b), 1396h(b), including the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 and the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 USC 1320a-7 et seq.)) or any other applicable state or federal laws



In WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this contract.

**Vendor:**

**Name** (*Print/Type*): \_\_\_\_\_

**Title** (*Print/Type*): \_\_\_\_\_

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**MECKLENBURG COUNTY AUTHORIZED OFFICER SIGNATURES TO FOLLOW ON  
SEPARATE PAGE**

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## Exhibit A – Scope of Work

### A-1. FOCUS AREA

### A-2. PROGRAM RESPONSIBILITIES OF BOTH PARTIES

#### A. BOTH PARTIES AGREE

#### B. County RESPONSIBILITIES

1. Provide a Project Manager who will manage the programmatic area of the contract.
  - i. The Project Manager will:
    1. Be the point of contact for the Service Provider.
    2. Maintain communication with Service Provider and Procurement Analyst
    3. Keep Service Provider and Procurement Analyst informed of any policy changes.
    4. Monitor the Contract. Monitoring includes, but not limited to: review of monthly progress reports forwarded by provider or project manager, review of quarterly expenditures, random sampling of invoices and payments, may randomly conduct announced and unannounced site visits, annual monitoring to include review of customer records, eligibility, attendance/participation, expenditures and review of contract procedures.
    5. Attend scheduled meetings with Procurement Analyst and Service Provider to discuss Contract programmatic and/or administrative matters.

#### C. VENDOR RESPONSIBILITIES

1. Make a good faith effort to include environmental considerations supporting waste reduction, recycling purchase recycled and other environmentally preferable products whenever practical.
2. Employees and/or volunteers of Service Provider performing services under this contract must undergo a criminal background check and may be required to submit to drug screening at time of employment and/or random drug screening.
3. Comply with the Mecklenburg County Tobacco Use Policy, which prohibits County contractors and others performing services for the County, including Service Provider, from smoking, using smokeless tobacco (chew, dip, snuff) and/or electronic or other nicotine delivery devices (electronic cigarettes, cigars, hookahs, pipes, etc.) in County, City and Town Buildings; County, City and Town Grounds; County, City and Town Vehicles; the County Park System; and Buildings located within the County Park System.

#### D. PERFORMANCE STANDARDS

Performance standards are a set of expectations that DSS has for Service Providers. The purpose of performance standards is to state what results are expected for performance to be considered satisfactory. These are expectations that DSS has for Service Providers in addition to the description of services agreed to by the Service Provider in each Contract. The additional expectations include tracking outcomes, monitoring progress and presenting evidence to demonstrate that services are efficient and effective, and they are delivered using the County's Customer Service Standards which include: Service Quality, Timeliness, Courtesy and Respect, Clear Communication and Ethical Integrity.

DSS is committed to providing technical assistance to Service Providers for the achievement of continuous quality improvement. By agreeing to the terms and conditions of the Contract, Service Providers are required to accept this assistance when it is offered and implement systems that target ongoing quality improvement. It is the intention of DSS to give Service Providers sufficient opportunity to improve performance as it relates to the following Performance Standards and avoid the need to impose the consequences in each Contract.

#### E. Issue Tracking and Escalation:

Noncompliance issues are problems identified in evaluations that reflect a lack of adherence to applicable duties, responsibilities, performance standards, terms and conditions of this contract. In the event of noncompliance issues, resolution shall be sought in accordance with the following escalation mechanisms to ensure that the appropriate level of management can resolve the issue:

1. Project Manager should attempt to resolve the problem by working with the Vendor's onsite supervisor/lowest possible management level.
2. Project Manager should attempt to resolve the problem by working with the Vendor's next level manager
3. Vendor submits a corrective action that includes the following:

4. If the issues still persist, the contract shall be terminated based on the termination language above.

**Exhibit B – Pricing Schedule**

**Exhibit C – Conflict of Interest Policy**

**Cover Page for Vendor Conflict of Interest Policy**  
**Insert behind this page.**  
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## CONFLICT OF INTEREST

**Instructions: Each organization that chooses to use this template should take care to make changes that reflect the individual organization, put this on your letterhead which includes name and address and sign.**

### **Conflict of Interest Defined:**

A conflict of interest is defined as an actual or perceived interest by a (staff member/Board member) in an action that results in, or has the appearance of resulting in, personal, organizational, or professional gain. A conflict of interest occurs when an employee/Board member has a direct or fiduciary interest in another relationship. A conflict of interest could include:

- Ownership with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Employment of or by a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Contractual relationship with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Creditor or debtor to a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.
- Consultative or consumer relationship with a member of the Board of Directors/Trustees or an employee where one or the other has supervisory authority over the other or with a client who receives services.

The definition of conflict of interest includes any bias or the appearance of bias in a decision-making process that would reflect a dual role played by a member of the organization or group. An example, for instance, might involve a person who is an employee and a Board member, or a person who is an employee and who hires family members as consultants.

### **Employee Responsibilities:**

It is in the interest of the organization, individual staff, and Board members to strengthen trust and confidence in each other, to expedite resolution of problems, to mitigate the effect and to minimize organizational and individual stress that can be caused by a conflict of interest.

Employees are to avoid any conflict of interest, even the appearance of a conflict of interest. This organization serves the community as a whole rather than only serving a special interest group. The appearance of a conflict of interest can cause embarrassment to the organization and jeopardize the credibility of the organization. Any conflict of interest, potential conflict of interest, or the appearance of a conflict of interest is to be reported to your supervisor immediately. Employees are to maintain independence and objectivity with clients, the community, and organization. Employees are called to maintain a sense of fairness, civility, ethics and personal integrity even though law, regulation, or custom does not require them.

### **Acceptance of Gifts:**

Employees, members of employee's immediate family, and members of the Board are prohibited from accepting gifts, money or gratuities from the following:

- a. Persons receiving benefits or services from the organization;
- b. Any person or organization performing or seeking to perform services under contract with the organization; and
- c. Persons who are otherwise in a position to benefit from the actions of any employee of the organization.

Employees may, with the prior written approval of their supervisor, receive honoraria for lectures and other such activities while on personal days, compensatory time, annual leave, or leave without pay. If the employee is acting in any official capacity, honoraria received by an employee in connection with activities relating to employment with the organization are to be paid to the organization.

Signature of Authorized Official must be the same as the person signing contract.

Conflict of Interest Policy was adopted by the Board of Directors/Trustees or other governing body in a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.