STATE OF NEW MEXICO
HUMAN SERVICES DEPARTMENT
PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the State of New Mexico, Human Services Department, hereinafter referred to as the “HSD” or the “Department”, and New Mexico Alliance for School Based Health Care, hereinafter referred to as the “Contractor”.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**
   The Contractor shall perform all services detailed in Exhibit A, Scope of Work, attached hereto.

2. **Compensation.**
   A. The HSD shall pay to the Contractor in full payment for services satisfactorily performed such compensation not to exceed $48,811 including gross receipts tax. The New Mexico gross receipts tax levied on the amounts payable under this Agreement totaling (AMOUNT) shall be paid by the HSD to the Contractor. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed (AMOUNT). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the HSD when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

   B. Payment in FY16 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work and to approval by the DFA. All invoices MUST BE received by the HSD no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

   C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the HSD finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the HSD that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the HSD shall not
incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. **Term.**
   THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE HSD. This Agreement shall terminate on **June 30, 2016** unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. **Termination.**
   A. **Grounds.** The HSD may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the HSD’s uncured, material breach of this Agreement.

   B. **Notice; HSD Opportunity to Cure.**
   1. Except as otherwise provided in Paragraph (4)(B)(3), the HSD shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

   2. Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD’s material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor’s notice of termination shall only be effective (i) if the HSD does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

   3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Paragraph 5, “Appropriations”, of this Agreement.

   C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the HSD’s sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor’s receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party’s liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. **THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE HSD’S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR’S DEFAULT/BREACH OF THIS AGREEMENT.**

   D. **Termination Management.** Immediately upon receipt by either the HSD or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the HSD; 2) comply with all directives issued by the HSD in the notice of termination as to the performance of work under this Agreement; and 3) take such
action as the HSD shall direct for the protection, preservation, retention or transfer of all property
titled to the HSD and records generated under this Agreement. Any non-expendable personal
property or equipment provided to or purchased by the Contractor with contract funds shall
become property of the HSD upon termination and shall be submitted to the HSD as soon as
practicable.

5. **Appropriations.**
   The terms of this Agreement are contingent upon sufficient appropriations and
authorization being made by the Legislature of New Mexico for the performance of this
Agreement. If sufficient appropriations and authorization are not made by the Legislature, this
Agreement shall terminate immediately upon written notice being given by the HSD to the
Contractor. The HSD's decision as to whether sufficient appropriations are available shall be
accepted by the Contractor and shall be final. If the HSD proposes an amendment to the
Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the
Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed
amendment.

6. **Status of Contractor.**
   The Contractor and its agents and employees are independent contractors performing
professional services for the HSD and are not employees of the State of New Mexico. The
Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding,
use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as
a result of this Agreement. The Contractor acknowledges that all sums received hereunder are
reportable by the Contractor for tax purposes, including without limitation, self-employment and
business income tax. The Contractor agrees not to purport to bind the State of New Mexico
unless the Contractor has express written authority to do so, and then only within the strict limits
of that authority.

7. **Assignment.**
   The Contractor shall not assign or transfer any interest in this Agreement or assign any
claims for money due or to become due under this Agreement without the prior written approval
of the HSD.

8. **Subcontracting.**
   The Contractor shall not subcontract any portion of the services to be performed under
this Agreement without the prior written approval of the HSD. No such subcontract shall relieve
the primary Contractor from its obligations and liabilities under this Agreement, nor shall any
subcontract obligate direct payment from the Procuring HSD.

9. **Release.**
   Final payment of the amounts due under this Agreement shall operate as a release of the
HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and
obligations whatsoever arising from or under this Agreement.
10. **Confidentiality.**
Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the HSD.

11. **Product of Service -- Copyright.**
All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the HSD no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. **Conflict of Interest; Governmental Conduct Act.**
A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any HSD employee while such employee was or is employed by the HSD and participating directly or indirectly in the HSD’s contracting process;

2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the HSD's making this Agreement;

4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator’s
family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the HSD.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the HSD relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the HSD if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD and notwithstanding anything in the Agreement to the contrary, the HSD may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.
A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the HSD proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.
The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
16. **Equal Opportunity Compliance.**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. **Applicable Law.**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. **Workers Compensation.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the HSD.

19. **Records and Financial Audit.**

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

20. **Indemnification.**

The Contractor shall defend, indemnify and hold harmless the HSD and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as
practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the HSD and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. **New Mexico Employees Health Coverage.**
   A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed $250,000 dollars.

   B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

   C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: http://insurenewmexico.state.nm.us/.

22. **Employee Pay Equity Reporting.**
   Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the
applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. **Invalid Term or Condition.**
If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. **Enforcement of Agreement.**
A party’s failure to require strict performance of any provision of this Agreement shall not waive or diminish that party’s right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. **Notices.**
Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the HSD: Helen (Bonnie) Priest, RN, Program Manager
Human Services Department
Medical Assistance Division
P.O. Box 2348
Santa Fe, NM 87504

To the Contractor: Nancy Rodriguez, Executive Director
New Mexico Alliance for School Based Health Care
3301-R Coors Blvd NW, Suite 288
Albuquerque, NM 87120

26. **Authority.**
If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

27. **Terms And Conditions Hierarchy**
The terms and conditions as stated in the main contract have precedence over any potentially conflicting terms and conditions in any exhibits, attached hereto.
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of HSD’s signature below.

By: [Signature]  
HSD Cabinet Secretary  
Date: 5/8/15

By: [Signature]  
HSD’s Chief Financial Officer  
Date: 5/12/15

By: [Signature]  
HSD’s Legal Counsel – Certifying legal sufficiency  
Date: 5/19/15

By: [Signature]  
Contractor  
Date: 5/12/15

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-189805-00-0  
By: [Signature]  
Taxation and Revenue Department  
Date: 5/19/15
Exhibit A
Scope of Work
FY16 School Based Health Care Services

I. The Contractor Shall:

A. Coordinate with Human Services Department (HSD)/Medical Assistance Division (MAD) in managing the Managed Care Organization (MCO)/School Based Health Center (SBHC) Advisory Committee. Responsibilities include but are not limited to:

1. Compiling and maintaining an Advisory Committee member list with contact information. The list will be updated quarterly and will be made available to each member before the Advisory Committee’s quarterly meetings and as necessary.

2. Facilitating the quarterly Advisory Committee meetings by:
   a) Following up on unaddressed items from previous meetings that will be “old business” on upcoming agenda. Soliciting suggestions from members of agenda topics for upcoming meetings;
   b) Drafting meeting agenda and submitting it to HSD/MAD for approval no later than thirty (30) days prior to each upcoming meeting;
   c) Preparing meeting room on day of meeting: chairs, attendance sign-in sheets, member name plates/tags, call-in set up, copies of agenda and minutes from previous meeting;
   d) Recording the minutes of the meetings and submitting a draft to HSD/MAD for approval within thirty (30) days after each meeting;
   e) Notifying members of upcoming meetings: dates, times, locations, call in information, and requesting confirmation of attendance from members. Notifications shall occur at least thirty (30) days prior to each meeting, with a reminder sent one (1) week before each meeting. The notifications shall be accompanied by the meeting agenda, minutes from the previous meeting and any other supporting documents relating to the agenda;
   f) Notifying HSD/MAD representative of member confirmation status the day before each meeting; and
   g) Assisting the HSD/MAD representative in chairing the meeting when necessary.

B. Perform duties as outlined in A.2. a) to g) for up to four (4) additional SBHC related meetings deemed necessary by HSD/MAD.

C. Collaborate with Department of Health (DOH)/Office of School and Adolescent Health (OSAH) and HSD/MAD in compiling and maintaining a current printable
directory of the New Mexico SBHCs that includes, minimally, for each SBHC: name, address, phone number, name and contact information of the SBHC coordinator and of the sponsoring entity.

D. Collaborate with DOH/OSAH and HSD/MAD in developing and/or disseminating Medicaid related information that supports SBHCs. Dissemination may occur through webinars, regional training workshops, handouts at events, and postings on appropriate websites. Submit all plans and materials to HSD for approval before dissemination. Topics of information may include but are not limited to:

1. SBHC certification process;
2. MCO credentialing process;
3. SBHC Standards and Benchmarks;
4. Medicaid Billing Guide;
5. Coding and billing issues specific to SBHCs;
6. PE/MOSAA services and training;
7. Encounter Forms
8. Fee For Service Schedule
9. Care Coordination

E. Meet with HSD/MAD monthly, in person or by telephone, to discuss topics related to this Scope of Work.

F. Submit invoices quarterly to HSD. Invoices shall:
   1. be submitted within 15 business days of the end of each quarter;
   2. tie back to the budget amounts that are outlined in this contract; and
   3. be accompanied with an activity report that serves as the basis for the billing invoices.

G. Educate and inform HSD on federal CMS/Medicaid related SBHC issues occurring at the national level, from the School Based Health Alliance or other federal resources.
Exhibit B

HSD Data Classification Directive

AUTHORITY
Federal regulations require all state agencies to establish a data classification.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, specifies requirements for data classification, privacy, and accountability for electronic protected health information (ePHI).

The Internal Revenue Service (IRS) Publication #1075, Tax Information Security for Federal, State, and Local Agencies and Other Entities, specifies requirements for data classification and controls for protecting the confidentiality of Federal Tax Information (FTI).

The Social Security Administration (SSA) Electronic Information Exchange Security Requirement, Guidelines, and Procedures for State and Local Agencies, specifies requirements for data classification and controls for protecting the confidentiality of SSA provided data.

PURPOSE
The purpose of this guideline is to provide a classification of HSD data based on its level of sensitivity, value and criticality to the HSD as required by the New Mexico Administrative Code NMAC 1.12.20. Classification of data will aid in determining baseline confidentiality, integrity, and availability controls for the protection of data.

SCOPE
This directive applies to all HSD employees, vendors and/or contractors who have access to critical systems, applications, databases, networks, information, and any other resources managed or maintained by HSD. Contractor access shall be granted based on need-to-know and least-privilege necessary as defined in the contract agreements.

BACKGROUND
Data and information with the highest risk need the greatest level of protection to prevent compromise; data with lower risk requires proportionately less protection. Data and information assets shall be protected according to the risk associated with data classification.

ROLES AND RESPONSIBILITIES
The ITD executive team shall have the responsibility of oversight and enforcement of these directives and procedures to ensure compliance.

The ITD Security Team is responsible for the review, issuance and the ongoing revision of this document every three years, or when there are significant changes, with coordination among organizational entities as required. Directives and associated changes must be approved in writing by the CIO, or designee, prior to implementation.
DIRECTIVE

A. Public Data
Data should be classified as Public when the unauthorized disclosure, alteration or destruction of that data would result in little or no risk to HSD and its affiliates. Examples of Public data include press releases, office locations, HSD website information and publications. While little or no controls are required to protect the confidentiality of Public data, some level of control is required to prevent unauthorized modification or destruction of Public data.

B. Internal Use Only/Restricted Data
This data is intended for internal HSD business use only with access restricted to a specific workgroup, office, division, group of individuals, or affiliates with a legitimate need. Data should be classified as Internal Use Only when the unauthorized disclosure, alteration or destruction of that data could result in a moderate level of risk to HSD or its affiliates. By default, all HSD Data that is not explicitly classified as Confidential or Public data should be treated as Internal Use Only data. A reasonable level of security controls should be applied to Internal Use Only data.

Internal data is generally not made available to parties outside the HSD community. Some portions of internal data may, however, be public. Disclosure of this data may occur in full or in a redacted form, as appropriate. The handling of this data should be in accordance with protecting the information as appropriate. Unauthorized disclosure could adversely impact the Agency, Affiliates, or Clients. Internal data generally has a low to moderate sensitivity. Examples include, but are not limited to, business program files such as:
- Internal memos
- Internal emails
- Contracts and Proposals prior to contract award

C. Confidential Data
This is highly sensitive data intended for limited, specific use by a workgroup, department, or group of individuals with a legitimate need-to-know. Explicit authorization by the Data Owner is required for access because of legal, contractual, privacy, or other constraints. Unauthorized disclosure could have a serious adverse impact on the business of HSD or affiliates, the personal privacy of individuals, or on compliance with federal or state laws and regulations or HSD contracts. Confidential data types require a very high level of security controls. Examples include:
- Social Security Number
- Income tax records (FTI)
- Date of birth
- Financial Information
- Place of birth
- Driver license numbers
- Mother's maiden name
- Credit card numbers
- Bank account numbers


- Personal address
- Medical records (ePHI)
- Authentication tokens (e.g., personal digital certificates, passwords, etc.)
- Personally Identifiable Information (PII). An individual's name (first name and last name, or first initial and last name) in combination with one or more of the following: a) social security number, b) driver's license number or state identification card number, or c) financial account number, or credit or debit card number, alone or in combination with any required security code, access code or password that would permit access to a consumer's financial account.

**TYPES OF CONFIDENTIAL HSD INFORMATION**

**A. IRS Federal Tax Information (FTI)**
FTI is defined as federal tax returns or federal tax information that has originated with the IRS. The FTI may be received directly or indirectly from the IRS. A Tax Return means any tax or information return, estimated tax declaration, or refund claim (including amendments, supplements, supporting schedules, attachments or lists) required by or permitted under the Code and filed with the IRS by, on behalf of, or with respect to any person. Examples of returns include forms filed on paper or electronically, such as Forms 1040, 941, 1099, 1120 and W-2.

**Definition of Return Information**
The definition of return information is very broad. It includes, but is not limited to:
- Any information, besides the return itself, that IRS obtained from any source or developed through any means that relates to the potential liability of any person under the Code for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.
- Information extracted from a return, including names of dependents, or the location of a business.
- The taxpayer's name, address, and identification number (SSN or Federal ID).
- Information collected by the IRS about any person's tax affairs, even if identifiers like name, address, and identification number are deleted.
- Whether a return was filed, is or will be examined, or subject to other investigation or processing, including collection activities.
- Information contained on transcripts of accounts.

IRS Pub 1075 stipulates that contractors may not access FTI that is used for the Title IV-A program. Provisions of the Affordable Care Act (ACA) allow contractors that have met the Pub 1075 security controls, and have taken the required IRS training, to have access to the MAGI FTI (Modified Adjusted Gross Income) if needed to support Medicaid and CHIP eligibility determinations. However, contractors may not have access to the IEVS data (Income and Eligibility Verification System). Contractors may have access to FTI as allowed by IRS Pub 1075 with 45 day advance notice and approval from the IRS.

**B. HIPAA Protected Health Information (PHI)**
The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)."
"Individually identifiable health information" is information, including demographic data, that relates to:
• The individual’s past, present or future physical or mental health or condition,
• The provision of health care to the individual, or
• The past, present, or future payment for the provision of health care to the individual,
and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number, member number, medical record number, and any number that uniquely identifies an individual in the system).
The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.
SAMHSA data as defined by CFR 42 requires additional disclosure restrictions. For purposes of data breaches, this data is PHI and follows the HIPAA rules for disclosure reporting.

C. Personally Identifiable Information (PII)
PII is any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and information which can be used to distinguish or trace an individual's identity, such as their name, social security number, date and place of birth, mother's maiden name, biometric records, etc., including any other personal information which is linked or linkable to an individual. Within HSD there are many examples of PII.

D. Federal Parent Locator Service Data
FPLS information consists of the National Directory of New Hires (NDNH) data, Debtor File data, and the Federal Case Registry (FCR) data. These are components of an automated national information system which locates employment, income, asset and home address information on parents in child support cases for state CS agencies. The NNDH contains new hire (W-4), quarterly wage (QW) and unemployment insurance (UI) information on employees in both the public and private sector. The Debtor File contains personal information in identifiable form including names, Social Security numbers, arrearages, and other private data. The FCR collects and maintains records provided by state CD agency registries, which include abstracts of support orders and information from child support cases with name, Social Security number, state case identification number, state Federal Information Processing Standard (FIPS) code, county code, case type, sex, date of birth, mother's maiden name, father's name, participant type (custodial party, noncustodial parent, putative father, child), family violence indicator (domestic violence or child abuse), order indicator, locate request type, and requested locate source.

E. Data Type Examples
Within HSD, several systems exist which contain confidential data. As stated previously, this data must be protected. For illustration purposes, the table below contains several examples of different types of data with their classification.

<table>
<thead>
<tr>
<th>HSD Data Type</th>
<th>Data Classification Type (Public, Internal, Or Confidential)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business data containing Federal Tax Information (FTI)</td>
<td>Confidential</td>
</tr>
<tr>
<td>Business data containing electronic Personal Health Information (ePHI)</td>
<td>Confidential</td>
</tr>
</tbody>
</table>

Page 15 of 22
<table>
<thead>
<tr>
<th>Business data containing personally identifiable information (PII)</th>
<th>Confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business data that does not contain FTI, ePHI, or PII, but should not be public</td>
<td>Internal</td>
</tr>
<tr>
<td>Business data that does not contain FTI, ePHI, or PII, and could be public</td>
<td>Public</td>
</tr>
<tr>
<td>Content on the HSD Public-Facing Website</td>
<td>Public</td>
</tr>
<tr>
<td>Administrative data for system access (passwords, etc)</td>
<td>Confidential</td>
</tr>
<tr>
<td>Technical data, system security architecture and settings</td>
<td>Confidential</td>
</tr>
<tr>
<td>Admin data, not security related (org charts, cell phone numbers, etc)</td>
<td>Internal</td>
</tr>
</tbody>
</table>

**REFERENCES**

- State Security Rule (TITLE 4 ORGANIZATIONAL AND FUNCTIONAL RESPONSIBILITIES, CHAPTER 3 STATE ENTITY)
- www.sans.org/projects/systemsecurity.php
- HSD Personnel Policy 044.7 Disciplinary Action
- National Institute of Standards and Technology (NIST) Special Publication 800-53 and NIST Special Publication 800-122
- CMS Catalog of Minimum Acceptable Risk Controls for Exchanges – Exchange Reference Architecture Supplement
- HIPAA Administrative Simplification Regulations, 45 CFR Parts 160, 162 and 164
- Public Law 74-271, *Social Security Act*, as amended, §1816, Use of public agencies or private organizations to facilitate payment to providers of services.
- IRS 1075 Publication
- FNS Handbook 901
- OCSE Security Requirements For State Agencies Receiving Federal Parent Locator Service Data, October 2009
- NMAC rule 1.12.20
Exhibit C

HSD’s Required Contract Language from Federal Partners, General Counsel and External Auditors, As Applicable

1. Debarment and Suspension

A. Consistent with either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and as a separate and independent requirement of this PSC the Contractor certifies by signing this PSC, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this PSC, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this PSC, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

B. The Contractor’s certification in Paragraph A, above, is a material representation of fact upon which the HSD relied when this PSC was entered into by the parties. The Contractor’s certification in Paragraph A, above, shall be a continuing term or condition of this PSC. As such at all times during the performance of this PSC, the Contractor must be capable of making the certification required in Paragraph A, above, as if on the date of making such new certification the Contractor was then executing this PSC for the first time. Accordingly, the following requirements shall be read so as to apply to the original certification of the Contractor in Paragraph A, above, or to any new certification the Contractor is required to be capable of making as stated in the preceding sentence:

1) The Contractor shall provide immediate written notice to the HSD’s Program Manager if, at any time during the term of this PSC, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances.

2) If it is later determined that the Contractor’s certification in Paragraph A, above, was erroneous on the effective date of this PSC or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the PSC.

C. As required by statute, regulation or requirement of this PSC, and as contained in Paragraph A, above, the Contractor shall require each proposed first-tier subcontractor whose subcontract will equal or exceed $25,000, to disclose to the Contractor, in writing, whether as of
the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. The Contractor shall make such disclosures available to the HSD when it requests subcontractor approval from the HSD. If the subcontractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal, state or local department or agency, the HSD may refuse to approve the use of the subcontractor.

2. **Additional Financial Audit Requirements For Non-Profit Organizations As Applicable**

   A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement’s term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement. The records shall be subject to inspection by the HSD, the Department of Finance and Administration and the State Auditor. The HSD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the HSD to recover excessive or illegal payments.

   B. Contract for an independent A-133 audit at the Contractor’s expense, as applicable. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor’s responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by OMB Circulars or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor’s report shall be made available to the HSD and any other authorized entity as required by law within fifteen (15) days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this if it determines that such an audit is warranted or desired.

   C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.

   D. Within thirty (30) days thereafter or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this
Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.

E. This audit shall contain a schedule of financial expenditures for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a schedule of depreciation for all property or equipment with a purchase price of $5,000 or more pursuant to OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circulars A-21, A-87, A-110, A-122 and A-133 where appropriate.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions
   A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93 or Subparts B and C of 7 C.F.R. Part 3018, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.

   B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:

       1) No 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 on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and

       2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

   C. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

   D. This certification is a material representation of fact upon which reliance is placed when this PSC is made and entered into. Submission of this certification is a prerequisite for making and entering into this PSC imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this PSC. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to: (1) a civil penalty of
not less than $10,000 and not more than $100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the PSC.

4. **Non-Discrimination**
   
   A. The Contractor agrees to comply fully with Title VI of the Civil Rights Act of 1964, as amended; the Rehabilitation Act of 1973, Public Law 93-112, as amended; and the Americans With Disabilities Act of 1990, Public Law 101-336; in that there shall be no discrimination against any employee who is employed in the performance of this PSC, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex, or marital status.
   
   B. This provision shall include, but not be limited to, the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
   
   C. The Contractor agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation or be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the Contractor. The Contractor further agrees to insert similar provisions in all subcontracts for services allowed under this PSC under any program or activity.
   
   D. The Contractor agrees to provide meaningful access to services for individuals with Limited English Proficiency (LEP) in accordance with Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency.”

5. **Drug Free Workplace**
   
   A. **Definitions.** As used in this paragraph—
   
   “Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C. 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
   
   “Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
   
   “Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
   
   “Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
   
   “Employee” means an employee of a contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.
   
   “Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.
B. The Contractor, if other than an individual, shall:

1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2) Establish an ongoing drug-free awareness program to inform such employees about:

(i) The dangers of drug abuse in the workplace;
(ii) The Contractor’s policy of maintaining a drug-free workplace;
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

i. Provide all employees engaged in performance of the PSC with a copy of the statement required by subparagraph B(1);

ii. Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this PSC, the employee will:

(i) Abide by the terms of the statement; and
(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;

iii. Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

iv. Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or
(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

v. Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.

C. The Contractor, if an individual, agrees by entering into this PSC not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing
this contract.

D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this PSC and subject the Contractor to suspension of payments under the PSC and/or termination of the PSC in accordance with paragraph 4, above.

6. **Findings and Sanctions**
   A. The Contractor agrees to be subject to the findings and sanctions assessed as a result of the HSD audits, federal audits, and disallowances of the services provided pursuant to this PSC and the administration thereof.

   B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor with the jurisdiction and authority finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.

   C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.