

# **REQUEST FOR PROPOSAL**

**ISSUED BY THE  
NEW MEXICO INTERAGENCY BEHAVIORAL  
HEALTH PURCHASING COLLABORATIVE  
FOR A**

**BEHAVIORAL HEALTH ENTITY**

**RFP# 15-630-7903-1000**



**Issue Date: June 11, 2014**

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## **I. INTRODUCTION**

### **A. PURPOSE OF THIS REQUEST FOR PROPOSAL**

The purpose of this Request for Proposal (RFP) is to select a qualified Offeror that has the experience and expertise to perform the requirements identified in the RFP.

### **B. SUMMARY SCOPE OF WORK**

The scope of work consists of providing administrative functions related to the delivery and payment of non-Medicaid behavioral health services covered by the New Mexico Interagency Behavioral Health Purchasing Collaborative (the Collaborative).

### **C. SCOPE OF PROCUREMENT**

The scope of the procurement shall encompass the requirements in the draft contract (Appendix B of this RFP). The effective date of the proposed contract is January 1, 2015.

It is the intent of the Collaborative to award a three and a half (3.5) year contract, pursuant to funding availability and satisfactory service provision as determined by the Collaborative. Amendments during the contract period will be necessary to revise budget allocations and specify service or programmatic changes.

### **D. OFFEROR QUALIFICATIONS AND CONFLICT OF INTEREST**

The RFP, when released, will be open to any Offeror capable of performing the work described in this RFP, subject to the following stipulations:

1. Pursuant to the Governmental Conduct Act, NMSA 1978, 10-16-1 et. seq., an Offeror will have no direct or indirect interest that conflicts with the performance of services covered under this RFP;
2. Pursuant to NMSA 1978, 13-19-191, 30-24-2, and 30-41-1, through 30-41-3, an Offeror may not provide or offer bribes, gratuities, or kickbacks to applicable State of New Mexico (State) personnel;
3. An Offeror shall ensure that no elected or appointed officer or other employee of the State, member of the Collaborative, or staff of the Collaborative agencies shall benefit financially or materially from the successful award of the contract to the Offeror and that no such individual shall be admitted to any share or part of the contract or to any benefit that may arise therefrom; and
4. The burden is on the Offeror to present sufficient assurance to the Collaborative that the award of the contract to the Offeror shall not create a conflict of interest.

### **E. PROCUREMENT MANAGER**

The Collaborative has designated a Procurement Manager who is responsible for the conduct of this procurement, who is the Offeror's sole point of contact regarding this RFP. From the date this RFP is issued until the behavioral health entity (BHE) is selected

and the contract award is announced, Offerors may contact only the Procurement Manager regarding the procurement. The RFP identification number shall be referenced in all communications with the Procurement Manager regarding the RFP. Offerors are prohibited from contacting any other State staff regarding this procurement. An Offeror that contacts another State employee or agent in violation of this requirement will be excluded from further participation in the procurement.

The decision of the Procurement Manager, subsequent to consultation with the Collaborative Executive Committee, on any matter having to do with this procurement shall be final.

Contact information for the Procurement Manager is as follows:

Charmaine Espinosa, Procurement Manager  
Human Services Department  
Behavioral Health Services Division  
P. O. Box 2348  
Santa Fe, NM 87504-2348  
Telephone Number: 505-476-9259  
Fax Number: 505-476-9272  
E-mail: Charmaine.Espinosa@state.nm.us

All deliveries via express carrier shall be addressed to the Procurement Manager:

Charmaine Espinosa, Procurement Manager  
Human Services Department  
Behavioral Health Services Division  
37 Plaza La Prensa  
Santa Fe, NM 87507

#### F. DEFINITION OF TERMINOLOGY

This section contains definitions and abbreviations that are used throughout this procurement document. See the draft Contract (Appendix B) for additional terminology.

“Behavioral Health Entity” or “BHE” means the entity that is awarded the Contract.

“Close of Business” means 5:00 P.M. Mountain Standard or Mountain Daylight Time (MDT), whichever is in effect on the date given.

“Collaborative Executive Committee” means a committee of the Collaborative comprised of the secretaries of Human Services Department, Department of Health and Children, Youth, and Families Department.

“Contract” means the written agreement between the contractor and the Collaborative that is included in draft form as Appendix B of this RFP.

“Contractor” means a successful Offeror who enters into a binding contract with the Collaborative.

“Desirable” means a discretionary item or factor (as opposed to “mandatory”) and is identified by the terms “may”, “can”, “should”, “preferably”, or “prefers”.

“Evaluation Committee” means a body appointed by the Collaborative to perform the evaluation of Offeror proposals.

“Evaluation Committee Report” means a document prepared by the Procurement Manager and the Evaluation Committee for submission to the Collaborative Executive Committee for Contract award. It contains all written determinations resulting from the procurement.

“Funding Member Agencies” means the agency members of the Collaborative that are funding parties to the Contract.

“Mandatory” means a mandatory item or factor and is identified by the terms “must”, “shall”, “will”, “is required”, or “are required”.

“Offeror” is any person, corporation, or partnership that chooses to submit a proposal in response to this RFP.

“Procurement Library” means the electronic website [www.bhc.state.nm.us/](http://www.bhc.state.nm.us/) where additional documents are located that may be helpful to an Offeror in preparing its proposal in response to this RFP.

“Procurement Manager” means the person or designee authorized by the Collaborative to manage or administer this procurement requiring the evaluation of competitive sealed proposals.

“Request for Proposal” or “RFP” means all documents, including those attached or incorporated by reference, used to solicit proposals for performing the scope of work in the draft Contract included in Appendix B.

“Responsible Offeror” means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

“Responsive Offer” or “Responsive Proposal” means an offer or proposal which conforms in all material respects to the requirements set forth in this RFP. Material respects of an RFP include, but are not limited to, price, quality, quantity, or delivery requirements.

“State” means the State of New Mexico.

## G. BACKGROUND INFORMATION

### 1. **Introduction and Vision**

New Mexico’s vision for its behavioral health system is a system in which:

1. Services, supports, and people are organized around individuals and their families based on sustainable financial supports;
2. Consumers and family members are assisted in participating fully in the life of their communities;
3. The focus is on an individual’s recovery and resiliency;
4. Behavioral health is promoted; and
5. Available funds are managed effectively and efficiently.

New Mexico seeks to continually strengthen the provision of behavioral health services that are:

1. Based on the expressed needs/assessment of the individual/family;
2. Strengths-based with the individual/family driving their own care;
3. Inclusive of the individual’s “array of care”, which consists of individuals and families, providers, and community partners that offer a full range of services and supports, including natural supports;
4. Delivered in a culturally competent, responsive, and respectful manner via the most appropriate, least restrictive means;
5. Timely, coordinated, accessible, accountable, and of high quality; and
6. Evaluated with system performance and individual and family outcomes in mind.

Through this procurement, New Mexico is seeking a BHE partner that will collaborate and work with the Collaborative to achieve a common vision of quality in service delivery as described above. The BHE plays a critical role in ensuring that behavioral health services in New Mexico are provided in accordance with this vision. Offerors should demonstrate an understanding and capacity to integrate these values and capacities into their proposals. To the maximum extent possible, the BHE will be expected to work with the Collaborative and its Funding Member Agencies to integrate administrative systems and to streamline administrative operations among services.

### 2. **The Collaborative and its Infrastructure**

The Collaborative was created during the 2004 Legislative Session. The Collaborative relies on its advisory body, the Behavioral Health Planning Council (BHPC) (see NMSA 1978, 24-1-28), to advise on substance use and mental health policies and the development of the behavioral health system in New Mexico. Originally established in the 1990s as a mental health advisory body to the Governor, the BHPC increased substantially in 2007 from 30 to 80 members diverse in geographic (rural, frontier, urban), cultural, economic, and professional backgrounds. The members of the BHPC understand local community priorities as well as statewide needs.

#### H. PROCUREMENT LIBRARY

Electronic documents and web links in the Procurement Library are located at the Collaborative’s website: [www.bhc.state.nm.us/](http://www.bhc.state.nm.us/). Offerors are encouraged to review documents in the Procurement Library. Offerors are also encouraged to review state agency websites to find additional information, including but not limited to: <http://www.hsd.state.nm.us/> (Human Services Department (HSD)), <http://corrections.state.nm.us/> (New Mexico Corrections Department (NMCD)), and <http://www.cyfd.org/> (Children, Youth, and Families Department (CYFD)).

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement and describes the major procurement events as well as the conditions governing the procurement.

#### A. SEQUENCE OF EVENTS

The Collaborative will make every effort to adhere to the following schedule. The dates are subject to change at the discretion of the Procurement Manager. Based on the number of proposals received, the schedule may be extended or accelerated. Any changes to the schedule will be e-mailed to Offerors who are on the procurement distribution list (see Section II, Paragraph B.3 below).

	<b>Action</b>	<b>Responsible Party</b>	<b>Date</b>
1.	Issue RFP	Collaborative	6/11/2014
2.	Pre-Proposal Conference	Collaborative and Potential Offerors	6/18/2014
3.	Acknowledgement of Receipt Form and Procurement Distribution List	Potential Offerors	6/20/2014
4.	Deadline to Submit Written Questions	Potential Offerors	6/25/2014
5.	Response to Written Questions, RFP Amendments	Procurement Manager	7/7/2014
6.	Submission of Mandatory Requirements, Technical Proposal and Cost Proposal	Offerors	7/11/2014

	<b>Action</b>	<b>Responsible Party</b>	<b>Date</b>
7.	Notification to Offerors That Do Not Meet Mandatory Requirements	Procurement Manager	7/16/2014
8.	Technical and Cost Proposal Evaluation	Evaluation Committee	7/16/2014 – 8/1/2014
9.	Oral Presentations, at the Collaborative's Discretion	Offerors and Collaborative	8/4/2014
10.	Best and Final Offers, at the Collaborative's Discretion	Offerors	8/6/2014
11.	Recommendation of Award to the Collaborative and Final Vote to Approve Recommendation	Evaluation Committee and Collaborative	8/11/2014
12.	Notice of Intent to Award Contract	Procurement Manager	8/12/2014
13.	Negotiate and Finalize Contract	Parties to the Contract	8/12/2014 – 8/22/2014
14.	Collaborative Executive Committee Approval of Contract	Collaborative Executive Committee	8/25/2014
15.	Contract Execution (Contract Effective Date)	Parties to the Contract	8/26/2014
16.	Protest Deadline	Offerors	15 calendar days from Offeror's receipt of Notice of Intent to Award Contract
17.	Readiness Review	Collaborative and Contractor	8/26/2014 – 12/31/2014
18.	Contract Implementation Date	Collaborative and Contractor	1/1/2015

**B. EXPLANATION OF EVENTS**

The following paragraphs describe the activities listed in the Sequence of Events shown in Section II, Paragraph A above.

**1. Issue of RFP**

This RFP is being issued by the New Mexico Interagency Behavioral Health Purchasing Collaborative. Additional copies of the RFP can be obtained from the Collaborative's web site at <http://www.bhc.state.nm.us/>.

**2. Pre-Proposal Conference**

A pre-proposal conference will be held to allow Offerors to ask questions and clarify issues concerning this RFP. The pre-proposal conference will be held on the date specified in the Sequence of Events (Section II, Paragraph A above), starting at 10 A.M. at the following location:

Human Services Department  
Behavioral Health Services Division  
37 Plaza La Prensa  
Conference Room  
Santa Fe, NM 87507

A public log will be kept of the names of potential Offerors that attended the pre-proposal conference.

Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal, but is strongly encouraged.

**3. Acknowledgement of Receipt Form and Procurement Distribution List**

Potential Offerors shall hand deliver or return by facsimile or by registered or certified mail or by e-mail at hsd.bhsd@state.nm.us the Acknowledgement of Receipt Form (see Appendix A) to have their organization placed on the procurement distribution list. The form shall be signed by an authorized representative of the organization, dated and returned to the Procurement Manager no later than Close of Business on the date specified in the Sequence of Events (Section II, Paragraph A above).

The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form by the deadline specified in the Sequence of Events (Section II, Paragraph A above) shall constitute a presumption of receipt and agreement that the potential Offeror's organization name shall not appear on the distribution list.

**4. Deadline to Submit Written Questions**

Potential Offerors may submit written questions as to the intent or clarity of this RFP until Close of Business on the date specified in the Sequence of Events (Section II, Paragraph A above). All written questions shall be submitted via e-mail to the Procurement Manager at hsd.bhsd@state.nm.us (See Section I, Paragraph E). Questions shall be clearly labeled and shall cite the section(s) in the RFP or other document that forms the basis of the question.

**5. Response to Written Questions/RFP Amendments**

Written responses to written questions and any RFP amendments will be distributed on the date specified in the Sequence of Events (Section II, Paragraph A above) to all potential Offerors whose organization's name appears on the procurement distribution list. An Acknowledgement of Receipt Form (see Appendix A) will accompany the distribution package. The form shall be signed by the Offeror's representative, dated,

and hand-delivered or returned by facsimile or by registered or certified mail or by e-mail at hsd.bhsd@state.nm.us by the date indicated thereon. Failure to return this form shall constitute a presumption of receipt.

**6. Submission of Mandatory Requirements, Technical and Cost Proposals**

ALL OFFEROR MANDATORY REQUIREMENTS, TECHNICAL PROPOSALS AND COST PROPOSALS SHALL BE HAND DELIVERED OR MAILED AND RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER NO LATER THAN 2:00 P.M. MDT ON JULY 11, 2014. Offerors mailing proposals shall allow adequate mail delivery time to ensure timely receipt of their proposals. The Procurement Manager will record the date and time of receipt on each proposal. *Proposals received after this deadline will not be accepted and an Offeror's failure to submit a proposal before the deadline shall cause the proposal to be disqualified.* Proposals shall be addressed and delivered to the Procurement Manager, identified in Section I, Paragraph E of this RFP.

Proposals shall be sealed and labeled on the outside of the package to clearly indicate that they are in response to the Behavioral Health Entity RFP #15-630-7903-1000. See Section III for additional information.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to NMSA 1978, 13-1-116, the contents of any proposal shall not be disclosed to the public or to competing Offerors prior to Contract award.

**7. Notification to Offerors That Do Not Meet Mandatory Requirements**

Offerors who submit proposals that do not meet mandatory requirements will be issued a letter notifying the Offeror that the technical proposal and cost proposal will not be reviewed due to failure to meet mandatory requirements.

**8. Technical and Cost Proposal Evaluation**

The evaluation of proposals will be performed by an Evaluation Committee appointed by the Collaborative Executive Committee. The evaluation process will take place during the period specified in the Sequence of Events (Section II, Paragraph A above). During this time, the Procurement Manager may initiate discussion with Offerors that submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by Offerors with any State employee.

**9. Oral Presentations**

At the Collaborative's discretion, Offerors may be required to (i) present their proposals and/or (ii) answer clarifying questions to the Collaborative Executive Committee or its designees in an oral presentation. If oral presentations occur, the Procurement Manager will schedule the time for each Offeror's oral presentation. All Offeror presentations will be in Santa Fe, New Mexico on the date specified in the Sequence of Events (Section II, Paragraph A above).

**10. Best and Final Offers**

Offerors may be asked, at the Collaborative’s discretion, to submit additional information for the purpose of obtaining best and final offers. Best and final offers may be submitted, clarified, and amended no later than Close of Business on the date specified in the Sequence of Events (Section II, Paragraph A above). The Procurement Manager shall notify the finalist Offeror(s) in writing and request a best and final offer from the Offeror(s). Offerors may not initiate contact seeking information about the finalists.

**11. Recommendation of Award to the Collaborative and Final Vote to Approve Recommendation**

The Procurement Manager with assistance from the Evaluation Committee will prepare and submit to the Collaborative Executive Committee an Evaluation Committee Report that summarizes the results of the technical evaluation and cost proposal and makes a recommendation to the Collaborative Executive Committee for Contract award. The Collaborative shall meet on approximately the date specified in the Sequence of Events (Section II, Paragraph A above) to make the selection of the successful Offeror.

The Contract will be offered to the Offeror whose proposal is most advantageous to the State and the individuals it serves, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points for its technical proposal or have presented the lowest cost proposal.

**12. Notice of Intent to Award Contract**

Based on the selection of the successful Offeror by the Collaborative Executive Committee (Section II, Paragraph B.11 above), the Procurement Manager shall send a Notice of Intent to Award to all Offerors on approximately the date specified in the Sequence of Events (Section II, Paragraph A above).

**13. Negotiate and Finalize Contract**

The Contract will be negotiated and finalized with the successful Offeror between the dates specified in the Sequence of Events (Section II, Paragraph A above). In the event that mutually agreeable terms cannot be reached within the time specified, the Collaborative Executive Committee reserves the right to finalize a contract with the next most advantageous Offeror without undertaking a new procurement process.

**14. Collaborative Executive Committee Approval of Contract**

The Collaborative Executive Committee will meet to review and approve the final Contract on the date specified in the Sequence of Events (Section II, Paragraph A above).

**15. Protest Deadline**

Any protest by an Offeror shall be timely and in conformance with NMSA 1978, 13-1-172 and applicable procurement regulations. The fifteen (15) calendar day protest period for Responsible Offerors shall begin on the day the Offeror receives the Notice of Intent to Award Contract and will end as of Close of Business (5:00 P.M. MDT) on

the date specified in the Sequence of Events (Section II, Paragraph A above). Any protests shall be in writing and shall include the name and address of the protestor and the RFP number. It shall also contain a statement of grounds for protest, including appropriate supporting exhibits, and it shall specify the ruling requested. The protest shall be addressed and delivered as follows:

Christopher Collins  
Office of General Counsel  
Human Services Department  
P. O. Box 2348  
Santa Fe, NM 87504-2348

Express Mail Address  
2009 S. Pacheco St  
Santa Fe, NM 87505

A copy of the protest shall also be sent to the Procurement Manager (see Section I, Paragraph E). **Protests received after the deadline will not be accepted.** The Collaborative reserves the right to implement the terms of the Contract with the successful Offeror during the pendency of the protest.

**16. Contract Execution (Contract Effective Date)**

The parties to the Contract will execute the Contract on or around the date specified in the Sequence of Events (Section II, Paragraph A above).

**17. Readiness Review**

The successful Offeror awarded the Contract shall demonstrate to the satisfaction of the Collaborative that it is able to meet the requirements of this RFP. The successful Offeror shall cooperate in this “readiness review” which will occur during the period specified in the Sequence of Events (Section II, Paragraph A above). This review may include, but is not limited to, desk and on-site review of documents provided by the successful Offeror, a walk-through of the successful Offeror’s operations, system demonstrations (including systems connectivity testing), and interviews with the successful Offeror’s staff. The scope of the review may include any and all requirements of this RFP, as determined by the Collaborative.

**18. Contract Implementation Date**

The Contract shall be effective on or about January 1, 2015.

**C. GENERAL REQUIREMENTS**

This procurement will be conducted in accordance with State procurement code NMSA 1978, 13-1-28 through 13-1-199.

**1. Acceptance of Conditions Governing the Procurement**

Offerors shall indicate their acceptance of the Conditions Governing the Procurement section in the Letter of Transmittal Form (see Appendix C). Submission of a proposal constitutes acceptance of the Evaluation Factors in this RFP.

**2. Incurring Cost**

Any cost incurred by the Offeror in preparation, transmittal, presentation of any proposal, or material submitted in response to this RFP shall be borne solely by the Offeror. The Offeror's costs associated with the readiness review and preparation for Contract implementation shall be borne solely by the Offeror.

**3. Prime Contractor Responsibility**

Any contract that may result from this RFP shall specify that the prime Contractor is solely responsible for fulfillment of the Contract with the Collaborative. The Collaborative will make Contract payments to only the prime Contractor.

**4. Subcontractors**

Proposed use of subcontractors shall be clearly explained in the proposal, and all suggested subcontractors shall be identified by name. The Contractor shall not assign, transfer, or delegate any functions to a subcontractor without the explicit prior written approval of the Collaborative. The prime Contractor shall be wholly responsible for the entire performance whether or not subcontractors are used.

**5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals shall be complete replacements for a previously submitted proposal and shall be clearly identified as such in the Letter of Transmittal Form (Appendix C). The Collaborative's personnel will not merge, collate, or assemble proposal materials.

**6. Offerors' Rights to Withdraw Proposal**

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror shall submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

**7. Proposal Offer Firm**

Responses to this RFP will be considered firm for one hundred twenty (120) calendar days after the due date for receipt of proposals.

**8. Disclosure of Proposal Contents**

The proposals will be kept confidential until the procurement process is complete, including any protest period. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for the material that is proprietary or

confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the Offeror has stamped or imprinted “proprietary” or “confidential” subject to the following requirements. Blanket labeling of the entire document as “proprietary” or “confidential”, however, shall result in the Offeror being determined non-responsive.

Proprietary or confidential data shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Confidential data is normally restricted to confidential financial information concerning the Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978, 57-3A-1 to 57-3A-7. The price of products offered or the cost of services proposed shall not be designated as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the Offeror’s request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data.

The State of New Mexico retains the right to use all ideas or adaptations of those ideas contained in any proposal received in response to this RFP. Selection or rejection of the proposal shall not affect this right.

**9. No Obligation**

This procurement in no manner obligates the State or any of its agencies to the use of any proposed professional services until a valid written contract is awarded and approved by the appropriate authorities.

**10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Collaborative determines such action to be in the best interest of the State.

**11. Sufficient Appropriation**

Any contract awarded as a result of this RFP process may be terminated or changed if sufficient appropriations or authorizations do not exist. Such termination will be effected by sending written notice to the Contractor. The Collaborative’s decision as to whether sufficient appropriations and authorizations are available will be accepted by the Contractor as final.

**12. Legal Review**

The Collaborative requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror concerns shall be promptly brought to the attention of the Procurement Manager.

**13. Governing Law**

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State.

**14. Basis for Proposal**

Only information supplied by the Collaborative in writing through the Procurement Manager or in this RFP shall be used as the basis for the preparation of Offeror proposals.

**15. Contract Terms and Conditions**

The Contract between the Collaborative and a Contractor will follow the format specified by the Collaborative and contain the terms and conditions set forth in the draft Contract included in Appendix B. However, the Collaborative Executive Committee reserves the right to negotiate with a successful Offeror provisions different than or in addition to those contained in this RFP. The contents of this RFP, as revised and/or supplemented, and the successful Offeror's proposal will be incorporated into and become part of the Contract.

Should an Offeror object to any of the Collaborative's terms and conditions, as contained in this Section or in Appendix B, that Offeror shall propose specific alternative language as part of its proposal. The Collaborative may or may not accept the alternative language. The Collaborative's decision on alternative language is final and nonappealable. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Collaborative and will result in disqualification of the Offeror's proposal. An Offeror shall not assume that Contract language changes will be entertained during Contract negotiations. If agreement cannot be reached within the timeframe stated in the Sequence of Events for Contract negotiations or otherwise set by the Collaborative, the Collaborative may proceed to Contract negotiations with the next most advantageous Offeror.

Offerors shall provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

**16. Offeror's Terms and Conditions**

Offerors shall submit with the proposal a complete set of any additional terms and conditions they wish to have included in a Contract negotiated with the Collaborative (See Section III, Paragraph E, Item 11). The Collaborative reserves the right to negotiate such requested terms and conditions. Only terms and conditions that are additional, and agreed to by the Collaborative, as evidenced by inclusion in a duly executed contract, will be included in the Contract between the parties.

**17. Contract Deviations**

Any proposed additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Collaborative and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

**18. Offeror Qualifications**

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a Responsible Offeror or fails to submit a Responsive Offer as defined in NMSA 1978, 13-1-83 and 13-1-85.

**19. Right to Waive Irregularities**

The Evaluation Committee reserves the right to waive irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise Responsive Proposals failed to meet the mandatory requirements and/or doing so does not otherwise materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

**20. Change in Contractor Representatives**

The Collaborative reserves the right to request a change in the Contractor's representatives if the assigned representatives are not, in the opinion of the Collaborative, meeting the Collaborative's needs adequately.

**21. Notice**

Offerors are advised that any violation of federal or State law and regulation regarding attempts to improperly influence this procurement may result in criminal and/or civil penalties.

**22. Collaborative Rights**

The Collaborative reserves the right to accept all or a portion of an Offeror's proposal.

**23. Right to Publish**

Throughout the duration of this procurement process and Contract term, potential Offerors, Offerors, and Contractors shall secure from the Collaborative written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the Contract.

**24. Ownership of Proposals**

All documents submitted in the proposal shall become the property of the Collaborative and the State.

**25. Electronic Mail Address Required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). The Offeror shall have a valid e-mail address to receive this correspondence.

**26. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Procurement Manager, the version maintained by the Procurement Manager shall govern.

**27. Suspension and Debarment Requirement**

The Offeror shall complete the certification form in Appendix F to certify compliance with federal regulations relating to suspension and debarment.

**28. Lobbying**

No federally appropriated funds can be paid at any time by or on behalf of the Offeror or any other person, for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal Contract, or the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any federal contract, grant, loan, or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Offeror shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

**III. RESPONSE FORMAT AND ORGANIZATION**

This section describes the format and organization of the Offeror's proposal. Failure to conform to these specifications may result in the disqualification of the proposal.

**A. NUMBER OF RESPONSES**

Offerors shall submit only one (1) proposal. Alternative proposals will not be accepted.

**B. NUMBER OF COPIES**

Offerors shall provide an original and fifteen (15) identical copies of their mandatory requirements, and an original and fifteen (15) identical copies of their technical and cost proposals to the location specified in Section I, Paragraph E, on or before the closing date and time for receipt of proposals. The original paper copy shall be identified as such on the front cover. In addition, Offerors shall provide electronic copies on five (5) CDs, each of which shall include a copy of the mandatory requirements, the technical proposal, and the cost proposal, all in PDF format.

### C. ECONOMY OF PREPARATION

Proposals shall be prepared simply and economically, providing a straightforward, concise description of Offeror's ability to meet the requirements of the RFP. Proposals shall comply with the page limits provided in the technical proposal specifications. Attachments specified in the technical proposal specifications will not be counted towards the page limits. Pages that exceed the specified page limits and attachments not specified in the technical proposal specifications will not be reviewed by the Evaluation Committee.

### D. MANDATORY REQUIREMENTS AND TECHNICAL PROPOSAL FORMAT

All proposals shall be typewritten on standard 8 1/2 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. The first section shall be the mandatory requirements. The second section shall be the technical proposal, organized according to the specifications in Section III, Paragraph F.

Pages shall have one (1)-inch margins and font size shall be no smaller than Times New Roman twelve (12). Smaller fonts are permissible for charts, diagrams and spreadsheets.

The pages in the mandatory requirements and technical proposals shall be numbered sequentially in each section such that the first page in each section starts with the number one (1).

### E. MANDATORY REQUIREMENTS CONTENT AND ORGANIZATION

The mandatory requirements section shall be organized and indexed in the following format and shall contain, as a minimum, all items listed below in the sequence indicated. The first page in the mandatory requirements section shall be a table of contents that contains a list of all the components of the mandatory requirements and the corresponding page numbers. The table of contents in the electronic file shall be linked to appropriate sections in the proposal.

1. Table of Contents for Mandatory Requirements Section
2. Letter of Transmittal (Appendix C)
3. New Mexico Employees Health Coverage Form (Appendix D): The Offeror shall agree with the terms and submit a signed New Mexico Employees Health Coverage Form with the submittal of their proposal (see Appendix D).
4. Campaign Contribution Disclosure Form (Appendix E): The Offeror shall complete and sign the Appendix E Campaign Contribution Form, whether any applicable contribution has been made or not. This form shall be submitted with the Offeror's proposal whether an applicable contribution has been made or not.

5. Suspension and Debarment Form (Appendix F): The Offeror shall complete the certification form in Appendix F to certify compliance with federal regulations relating to suspension and debarment.
6. Description of the Offeror's form of business (e.g., individual, sole proprietor, corporation, nonprofit corporation, limited liability company): The description shall include the names, addresses, and telephone numbers of the Offeror's officers and directors. Please also provide the Offeror's federal and State taxpayer identification numbers. In the case the Offeror does not have a State taxpayer identification number, provide a copy of the Offeror's application for a State taxpayer identification number.
7. A corporate organizational chart: The chart shall illustrate the lines of authority within the Offeror's organization, including parent, affiliated and/or related business entities, including but not limited to subsidiaries, joint ventures or sister companies and a description of the Offeror's relationship, including financial relationship, to parent, affiliated and/or related business entities that the Offeror anticipates will be providing services under the Contract.
8. A statement of whether the Offeror intends to use subcontractors, and if so, the names and mailing addresses of the intended subcontractors, a description of the scope and portions of the work the subcontractors will perform and the qualifications of the subcontractor to perform the work. Also describe how the Offeror intends to monitor and evaluate subcontractor performance.
9. The names, titles, job descriptions (including qualifications, education and experience requirements), and full-time equivalent requirements of key staff for the Contract. Include as an attachment resumes of key staff (if positions are filled).
10. Response to Collaborative Terms and Conditions: The Offeror shall explicitly indicate acceptance of the General Requirements (Section II, Paragraph C) and the draft Contract (Appendix B). As provided in Section II, Paragraph C.15, should the Offeror object to any of the Collaborative's terms and conditions, as contained in Section II, Paragraph C or Appendix B, the Offeror shall propose specific alternate language. The Offeror shall provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.
11. Offeror's Additional Terms and Conditions, if applicable: Offerors shall submit with the proposal a complete set of any additional terms and conditions they wish to have included in a contract negotiated with the Collaborative. For additional information, see Section II, Paragraph C.16.

#### F. TECHNICAL PROPOSAL CONTENT AND ORGANIZATION

The sections of the technical proposal are as follows, and shall be organized in the following order:

1. Table of Contents: The first page in the technical proposal shall be the table of contents. It shall contain a list of all sections of the technical proposal and the

corresponding page numbers. The table of contents in the electronic file shall be linked to appropriate sections in the technical proposal.

2. Proposal Summary: The proposal summary shall be five (5) pages or less. It shall provide the Evaluation Committee with an overview of the technical features of the proposal. This material will not be used in the evaluation process, but all or a portion of the summary may be used in public notifications regarding the successful Offeror's selection.
3. Response to Technical Proposal Specifications (see Section IV): Offerors shall respond in the form of a thorough narrative to each specification in the order in which they appear in Section IV of this RFP. The Offeror shall identify, in full, the question being answered (including the number and text of the question) and its response to that question. Responses shall comply with the specified page limits. Attachments/exhibits shall be clearly labeled, including the number of the question. Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

#### G. COST PROPOSAL FORMAT, CONTENT, AND ORGANIZATION

Offerors shall submit a cost proposal using the template and following the instructions provided as Appendix G.

### IV. TECHNICAL PROPOSAL SPECIFICATIONS

Offerors shall respond in the form of a thorough narrative to each technical proposal specification. The narratives, along with any exhibits, will be evaluated and awarded points accordingly. Exhibits must be referenced and described in the narrative and cannot contain a continued response. The Offeror shall refer the reader directly to an exhibit number. Exhibits shall not be counted toward the page limits for the technical proposal specifications.

**Failure to respond to technical proposal specifications will result in the disqualification of the proposal as non-responsive at the Procurement Manager discretion.**

#### A. QUALIFICATIONS AND EXPERIENCE

(There is no page limit for responses to specifications in this section.)

1. Describe in table format the Offeror's experience with state contracts in the past seven (7) years. For each contract listed in the table, please detail:
  - a. A brief statement of the contract's scope of work;
  - b. Duration of the contract;
  - c. Number of consumers served;
  - d. Whether the state required that the Offeror implement a corrective action plan or directed corrective action plan;

- e. Whether the Offeror was sanctioned;
  - f. The reimbursement structure under the contract (including a separate line for any administrative portions of the reimbursement);
  - g. If the Offeror's experience with the state contract included claims payment, also include:
    - i. Total number of annual claims processed/adjudicated;
    - ii. Percent of all clean claims paid within thirty (30) calendar days of date of receipt;
    - iii. Percent of all clean claims paid within ninety (90) calendar days of date of receipt;
    - iv. Claim denial rate (initial submission); and
    - v. Percent of clean claims for which interest or some other claim-specific penalty has been paid.
2. Provide, as an attachment, the Offeror's two (2) most recent independently audited annual financial statements (or consolidated financial statements for the Offeror's parent organization). In addition, provide, as an attachment, the Offeror's two (2) most recent quarterly financial statements (or consolidated financial statements for the Offeror's parent organization) with preparation dates indicated.
  3. Include a statement of whether, in the last ten (10) years, the Offeror, a predecessor company, the Offeror's parent organization, affiliates, and/or subsidiaries has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, provide an explanation detailing relevant facts, including the date on which the Offeror emerged from bankruptcy or expects to emerge. If still in bankruptcy, provide a summary of and anticipated timeframe for approval of a plan of reorganization.
  4. State whether there is any pending or recent (i.e., in the last five (5) years) civil, criminal, or administrative litigation against the Offeror (including parent, affiliated, and/or related business entities) where the amount in controversy is \$1 million or more OR any litigation that is related to a public sector contract (including, but not limited to, Medicaid, Medicare, CHIP, and public employees). If there is any such pending or recent litigation, provide the contract that is being litigated (if applicable), the damages being sought or awarded and the extent to which adverse judgment is/would be covered by insurance or reserves set aside for this purpose. Also include any outcomes, deferred prosecution agreements (or agreements whose effect is the same) and settlement agreements. Also include any Securities and Exchange Commission (SEC) filings discussing any pending or recent litigation. The Offeror does not need to divulge workers' compensation litigation, real estate litigation, internal contractual litigation (including labor litigation), and employment litigation if there is no Equal Employment Opportunity Commission (EEOC) cause finding (or state/local agency equivalent of cause finding).

5. State whether the Offeror is currently or has recently (within the past five (5) years) been the subject of a criminal or civil investigation by a state or federal agency. If yes, provide an explanation with relevant details and the outcome (if applicable). If the outcome was against the Offeror, provide the corrective action plan the Offeror implemented to prevent such future offenses. Include information for the Offeror's organization as well as any parent organization and any affiliated and/or related business entities that provide public sector services or will provide services under this Contract. The Offeror is not required to include information regarding EEOC investigations that did not result in a cause finding, unless those investigations are ongoing.
6. Identify and describe any debarment or suspension, regulatory action, or sanction (monetary or non-monetary sanctions) imposed by any federal or state regulatory entity against the Offeror within the last five (5) years. This shall include information on parent, affiliated, and/or related business entities.

## B. INFORMATION MANAGEMENT AND SYSTEMS SPECIFICATIONS

(The responses to the specifications in this section shall not exceed thirty (30) pages, not inclusive of exhibits.)

1. Describe the Offeror's existing systems and methodology for implementing new systems in support of this Contract, including at a minimum:
  - a. Capability and capacity assessment to determine if new or upgraded systems, enhanced systems functionality and/or additional systems capacity are required to meet the Contract's requirements;
  - b. Configuration of systems (e.g., provider contract provisions, other business rules, valid values for key data elements, data exchanges/interfaces) to accommodate the Contract's requirements;
  - c. System setup for intake, processing, and acceptance of one-time data feeds from the Collaborative and other sources (e.g., initial set of consumers, claims/service utilization history for the initial set of consumers, etc.);
  - d. Internal and joint (BHE and Collaborative) testing of one-time and ongoing exchanges of consumer eligibility/registration, provider network, claims/encounters, and other data;
  - e. Approach to implementing system and/or data interfaces with State eligibility systems and the Centennial Care Managed Care Organizations' (MCOs') systems for Medicaid eligibility inquiries (as may be required); and
  - f. Processes, procedures, and systems for providers to register consumers and determine funding source eligibility.

2. Describe how the Offeror will rapidly make changes to its system to incorporate programmatic changes such as adding new services, changing provider payment rates, or changing data collected and reported, without the necessity for manual processes or undue burden on providers or consumers. Include a full description of the Offeror's system change processes, from initial identification of change or change request to deployment and post-deployment testing.
3. Describe in detail how the Offeror will ensure that the availability of its systems will, at a minimum, be equal to the standards set forth for: information and telecommunications systems architecture, business continuity/disaster recovery strategies, availability and/or recovery time objectives by major system, monitoring tools and resources, continuous testing of all applicable system functions, and periodic and ad-hoc testing of the Offeror's business continuity/disaster recovery plan.
4. Provide a description and examples (annotated screen shots and narrative) of web based functionality the Offeror has used in other projects, or plans to develop to meet the needs of this Contract. At a minimum, include a description of the user registration and management process, examples of the claims status inquiry, and claim status response, eligibility inquiry and response, and the provider search/locator functionality.
5. Describe the Offeror's approach to demonstrating the readiness of its information and systems to the Collaborative prior to the start date of operations. At a minimum the Offeror's description shall address:
  - a. Provider contract loads and associated business rules;
  - b. Consumer eligibility/registration data loads and associated business rules;
  - c. Payment processing and adjudication logic;
  - d. Encounter generation and validation prior to submission to the Collaborative; and
  - e. "Self-service" information systems capacity and functionality including Web-accessible functionality.
6. Describe the transparencies in the Offeror's system that will enable the Collaborative's Funding Member Agencies to have read-only access to real-time information such as, but not limited to: provider fund balances, service utilization, expenditure rate, pending claims, and demographic statistics in the service registration system. In the response, please describe existing versus planned system capacity including timeframes for implementing any needed system changes.

### C. OTHER SPECIFICATIONS

(The responses to the specifications in this section shall not exceed forty (40) pages, not inclusive of exhibits.)

1. Describe the Offeror's vision for coordinating, implementing, and operating processes for collaboration with both the Collaborative and its Funding Member Agencies per Section 3.5.2 of the Contract, including any innovative strategies or approaches.
2. Describe the Offeror's planned approach for the timely credentialing of providers, including plans for working with the Centennial Care MCOs to verify credentials of Medicaid providers and strategies for coordinating with the Collaborative to credential non-Medicaid providers. Include any relevant experience.
3. Describe how the Offeror will approach training and ongoing technical assistance for its providers regarding submitting clean and timely claims and resolving claims submission and adjudication issues. The response should address at a minimum: (i) what are the typical barriers the Offeror anticipates a diverse provider network will encounter in submitting clean and timely claims, (ii) how the Offeror will work to overcome these barriers to improve claiming, (iii) how the Offeror will identify when a provider needs technical assistance, (iv) the Offeror's approach to working with the provider to improve claiming practices, and (v) any relevant past experience.
4. Describe the Offeror's plans for evaluating providers in accordance with Section 3.16.1.1. Please include a sample score card/evaluation template design that addresses areas including, but not limited to: (i) ability to submit timely and accurate claims, (ii) compliance with fraud, waste, and abuse standards and requirements, (iii) meeting access standards, (iv) number of complaints/concerns filed against the provider, etc. Describe the Offeror's rationale for selecting the evaluation elements and the methodology for data capture and scoring.
5. Describe the Offeror's detailed work plan for identifying and addressing overpayments, including how the Offeror identifies an overpayment, notifies the provider, addresses the recoupment of an overpayment, tracks the status of an overpayment while it is being addressed, and how the Offeror will work with the provider to identify the cause of an overpayment and make necessary adjustments to prevent future overpayments.
6. In the State of New Mexico where behavioral health services are funded by multiple funding streams, how will the Offeror ensure that the funding rules provided by the Collaborative are properly enforced such that the correct funding stream is charged for the service provided? Please be sure to address all funding sources. Please also describe how the Offeror will approach a situation where the incorrect funding source was charged.
7. Describe the Offeror's internal policies and procedures to review reports (a) before they are submitted to ensure data completeness and accuracy and (b) in the context of

ongoing performance improvement to detect trends and take corrective steps to address any issues identified both at the provider and the Offeror level.

8. The Collaborative plans to require the BHE to develop and submit a high-level dashboard report that captures performance on key program metrics. What elements will the Offeror include in the dashboard report and how frequently will the report be submitted? Please include a draft report template.
9. Describe the Offeror's strategy for detecting and reporting potential fraud, waste, and abuse in accordance with the requirements in Sections 3.18 of the Contract. In the answer, please describe:
  - a. The Offeror's methodology for using its information systems to detect elements and patterns that could indicate potential fraud, waste, and abuse; and
  - b. Any additional strategies and sources of information for ensuring program integrity.
10. The Collaborative anticipates a growth in the provision of services whose reimbursement does not fit the typical claims model. Currently, these services are reimbursed using an individualized provider invoice method. Please address the Offeror's current and future capacity for reimbursing these services. In the Offeror's response, please address:
  - a. What is the Offeror's current system capacity to accept and track provider invoices and interface with Collaborative Funding Member Agencies and their vendors?
  - b. What strategies and innovative ideas does the Offeror suggest to reimburse these services in the future?
11. Please address the following scenario: A provider calls the Offeror with a complaint that the provider has not received payment for claims submitted. Outline the steps and staff involved in addressing the provider's issue. Next, consider that upon further investigation it appears that the provider has not been submitting electronic claims appropriately. Outline the steps and staff involved in remedying this issue.
12. While not currently required under the Contract, what will the Offeror's approach be for payments made for services delivered during a consumer's ninety (90)-day retroactive Medicaid eligibility period, such that services are appropriately charged to Medicaid?
13. Please address the following scenario: NMCD receives a new federal grant during the Contract period to provide a new service to consumers. The new grant requires the BHE to, among other things, credential new providers, add new claims and invoice services to its system, and add a new field to the consumer registration system. Describe the Offeror's work plan (per week) to accomplish all the changes needed,

including timeframes and staff involved. How would the work plan change (if at all) if, at the same time, CYFD also receives a new federal grant?

14. Provide, as an attachment, a preliminary implementation work plan identifying (a) key activities and timeframes, (b) projected resource requirements for implementing the operational and information systems requirements for this Contract, and (c) any potential obstacles to full implementation by the implementation date and plans for overcoming these obstacles. The work plan should cover the period from Contract award to the implementation date (January 1, 2015). The work plan should indicate which activities will require Collaborative involvement, and how the Offeror will supply the Collaborative's staff with ongoing technical assistance regarding the Offeror's operations.
15. Provide a staffing plan explaining how services will be provided under this Contract, including:
  - a. Key functions;
  - b. Key staff (existing or projected) as listed in the Contract;
  - c. Reporting relationships showing lines of authority;
  - d. Lines of communication between functional areas;
  - e. Number of FTE positions (both existing and projected for start date of service delivery) per functional area; and
  - f. Location of staff (city and state).
16. Describe the Offeror's claims denial process with providers. Include in the response, among other things, the Offeror's communication process and any forms, templates, and information system processes the Offeror will use.

## **V. EVALUATION**

### **A. EVALUATION OF MANDATORY REQUIREMENTS**

The Evaluation Committee's review of the Offeror's response to the mandatory requirements will include verification that the Offeror has submitted complete versions of the materials specified in Section III, Paragraph E. The mandatory requirements review will also include a review of Offeror's compliance with the format and organization of the technical and cost proposals per the specifications in Section III, Paragraphs D and F (for technical proposals) and Section III, Paragraph G (for cost proposals). An Offeror's failure to submit complete versions of the materials specified, or to adhere to the technical format and organization, will result in failure to meet mandatory requirements and the Offeror's proposal will be disqualified on these grounds.

**B. TECHNICAL AND COST EVALUATION POINT SUMMARY**

The following is a summary of evaluation factors with point value assigned to each item. These weighted factors will be used in the evaluation of Offeror technical proposals.

<b>FACTOR</b>	<b>PERCENTAGE OF POINTS</b>
<b>TECHNICAL PROPOSAL SPECIFICATIONS</b>	
• Qualifications and Experience Specifications	20%
• Information Management and Systems Specifications	20%
• Other Specifications	40%
<b>TECHNICAL PROPOSAL SPECIFICATIONS TOTAL</b>	<b>80%</b>
<b>COST PROPOSAL TOTAL</b>	<b>20%</b>
<b>TOTAL</b>	<b>100%</b>

**C. EVALUATION FACTORS**

Mandatory requirements will be evaluated based on the Offeror’s compliance with the factors described in Section III. The technical proposal will be worth 80% of the total score. Points for the technical proposal specifications will be awarded on the basis of the adequacy and quality of the Offeror’s response to the questions (see Section IV, Technical Proposal Specifications). The cost proposal will be worth 20% of the total score. Cost proposals will be reviewed based on the degree to which the Offeror’s proposal maximizes funding available for this Contract and is most advantageous to the State of New Mexico.

**D. EVALUATION PROCESS**

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements in Section III. Offerors with proposals deemed non-responsive will be notified and eliminated from further consideration.
2. Responsive Proposals will undergo a technical and cost evaluation on the factors in Section IV.
3. Oral presentations, if required, will be used to clarify proposals, and a scoring methodology will be developed for the oral presentations.
4. Offerors who are asked to submit additional information for the purpose of obtaining best and final offers will have their proposals reviewed accordingly. A scoring methodology will be developed for best and final offers. The Collaborative reserves the right to require more than one (1) best and final offer from any or all Offerors.
5. The Responsible Offeror whose proposal is most advantageous to the Collaborative will be recommended for Contract award as specified in Section II, Paragraph B.11 above.

**APPENDIX A**  
**ACKNOWLEDGEMENT OF RECEIPT FORM**

## ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this RFP, the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix F.

The acknowledgement of receipt shall be signed and returned to the Procurement Manager no later than Close of Business on June 20, 2014. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the Collaborative's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ PHONE NO.: \_\_\_\_\_

E-MAIL: \_\_\_\_\_ FAX NO.: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

This name and address will be used for all correspondence related to the RFP.

Firm does/does not (**circle one**) intend to respond to this RFP.

Charmaine Espinosa, Procurement Manager  
Human Services Department  
Behavioral Health Services Division  
P. O. Box 2348  
Santa Fe, NM 87504-2348  
Telephone Number: 505-476-9259  
Fax Number: 505-476-9272  
E-mail: Charmaine.Espinosa@state.nm.us

**APPENDIX B**  
**DRAFT BHE CONTRACT (SUBJECT TO MATERIAL MODIFICATION)**



# **NEW MEXICO INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE**

## **Behavioral Health Entity Services Agreement**

**Among**

**New Mexico Interagency Behavioral  
Health Purchasing Collaborative Agencies**

**And**

**[ ]**

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**New Mexico Interagency Behavioral Health Purchasing Collaborative Agencies**

**BEHAVIORAL HEALTH ENTITY SERVICES AGREEMENT**

This agreement (the “Agreement” or the “Contract”) among the New Mexico Interagency Behavioral Health Purchasing Collaborative Agencies (the “Collaborative”), the New Mexico Human Services Department (“HSD”), the New Mexico Children, Youth and Families Department (“CYFD”), the New Mexico Corrections Department (“NMCD” and, collectively with HSD and CYFD, the “Funding Member Agencies”) and [xx], the behavioral health entity, including any successors and/or assignees and subcontractors (the “BHE”), is entered into by and among the Collaborative and the BHE on this [xx] day of [xx], 2014.

**RECITALS**

**WHEREAS**, the Collaborative is a legal entity created under the laws of the State of New Mexico, NMSA 1978, §9-7-6.4 with the authority to contract for the services as set forth in this Agreement and to make decisions regarding the administration, direction and management of State-funded Behavioral Health services and care for eligible populations;

**WHEREAS**, the BHE has the authority to enter into agreements and meet applicable requirements and/or standards delineated under this Agreement, State and federal statutes, regulations and rules;

**WHEREAS**, the BHE possesses the required expertise to meet the terms and conditions of this Agreement;

**WHEREAS**, the Parties will, in the administration of this Agreement, allow for continuity in the New Mexico Behavioral Health system, maximize Consumer access to care, minimize disruption to the Behavioral Health system, bridge gaps in pivotal service areas not otherwise covered under New Mexico’s Centennial Care Program (“Centennial Care”);

**WHEREAS**, HSD’s General Counsel, who, pursuant to statute, is also the Collaborative’s counsel, and Chief Financial Officer have made a determination that this Agreement is exempt from the provisions of the New Mexico Procurement Code [13-1- 28 NMSA 1978 *et seq.*] pursuant to NMSA 1978, §13-1-98.1, for the purpose of creating a network of healthcare providers to provide services to eligible recipients that will or is likely to reduce healthcare costs, improve quality of care or improve access to care;

**NOW THEREFORE**, and in consideration of the mutual promises contained herein, the Collaborative, the Funding Agencies and the BHE (each individually a “Party” and collectively the “Parties”) hereby agree as follows:

## **SECTION 1 INTRODUCTION**

- 1.1 References to the “State” shall mean the State of New Mexico, including but not limited to the Collaborative and any entity or agency of the State of New Mexico.**
- 1.2 All of the BHE’s responsibilities pursuant to this Agreement must be performed in the continental United States of America and, where specified, in the State of New Mexico.**
- 1.3 All services purchased under this Agreement shall be subject to the following provisions, which are incorporated herein by reference and shall include, but are not limited to:**
  - 1.3.1 All applicable statutes, regulations, and rules implemented by the Federal Government, the State of New Mexico, and the Collaborative, concerning Behavioral Health services;
  - 1.3.2 All applicable statutes, regulations, and rules related to any federal grant specified in this Agreement and any protocols or procedures relevant to implementation of such grant awards;
  - 1.3.3 Any and all consent decrees, legally-binding agreements, federal program improvement plans, and contracts related to Behavioral Health services entered into by the Collaborative or any Collaborative Agency;
  - 1.3.4 The Request for Proposal (RFP), all RFP amendments, the Collaborative’s answers to offerors’ questions, and the Collaborative’s written clarifications;
  - 1.3.5 The BHE’s proposal (including any and all written materials presented in the oral presentation during the procurement process, if any) where not consistent with this Agreement and subsequent amendments to this Agreement; and
  - 1.3.6 All applicable instruments the Collaborative may use from time to time to communicate, update, and clarify information, including but not limited to: Change Order Requests, policy manuals, guidance memoranda, correspondence, and other communication, including all updates and revisions thereto, or substitutions and replacements thereof. These instruments are governed by the provisions of this Agreement in the event of conflict.
- 1.4 The Parties understand and agree that references to specific statutes, regulations, dates, and other matters of a similar nature refer to currently existing and known statutes, regulations, and dates. The Parties understand and agree that such existing statutes, rules, regulations, and dates may change after execution of this Agreement, and that new enactments, adoptions, amendments, substitutions, replacements, successors, or the like shall be given full force and effect and shall govern this Agreement in the spirit in which this Agreement is made.**

- 1.5 The Parties to this Agreement acknowledge the need to work cooperatively to address and resolve problems that may arise in the administration and performance of this Agreement. The Parties agree to document agreements in writing prior to implementation of any new Contract requirements.**
- 1.6 The Collaborative may, in the administration of this Agreement, seek input on Behavioral Health related issues from any advisory group or steering committee. The Collaborative may seek the input of the BHE on issues raised by advisory groups or steering committees that may affect the BHE.**

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## SECTION 2 DEFINITIONS/ACRONYMS

Terms used throughout this Agreement have the following meaning, unless the context clearly indicates otherwise or as may be further defined herein:

**Abuse** means any intentional, knowing, or reckless act, or failure to act, that produces, or is likely to produce, physical or great mental or emotional harm, unreasonable confinement, sexual abuse, or sexual assault consistent with NMSA 1978, §30-47-1; or practices that are inconsistent with sound fiscal, business, medical, or service-related practices and result in an unnecessary cost to the program, or in reimbursement for services that are not medically or clinically necessary, or that fail to meet professionally recognized standards for Behavioral Health care.

**Administrative Services Organization (ASO)** means an entity that provides administrative services only. For purposes of this Agreement, the BHE will serve as the ASO for the Collaborative.

**Authorized Certifier** means one of the following: the BHE's Chief Executive Officer (CEO), Chief Financial Officer (CFO), or an individual with delegated authority to sign for and who reports directly to the CEO and/or CFO.

**Behavioral Health** is the umbrella term for mental health and substance abuse. It includes both mental health, including emotional disorders and substance abuse, including chemical dependency disorders. It also includes co-occurring mental health and substance abuse disorders.

**Behavioral Health Planning Council (BHPC)** is a body created to meet federal and State advisory council requirements and to provide consistent, coordinated input to the Behavioral Health service delivery system in New Mexico.

**Business Days** means Monday through Friday, except for State of New Mexico holidays.

**Calendar Days** means all seven days of the week, including State of New Mexico holidays.

**CAP** means corrective action plan developed by the BHE in collaboration with the appropriate Funding Member Agency.

**Centennial Care** means the State of New Mexico's Medicaid program operated under section 1115(a) of the Social Security Act waiver authority to provide physical, behavioral and long-term care services to the State's Medicaid eligible recipients.

**Change Order Request** means the process agreed to between the Collaborative and the BHE in Section [3.4.2] of the Agreement for the BHE to adjust the allocation of funds within the same funding stream.

**Claim** is a bill for services submitted to the BHE manually or electronically; a line item of service on a bill; or all services for one Consumer within a bill.

**Clean Claim** is a manually or electronically submitted Claim from a Provider to the BHE that contains substantially all the required data elements necessary for accurate adjudication without the need for additional information from outside of the BHE's System. It does not include a Claim from a Provider who is under investigation for Fraud, Waste or Abuse, or a Claim under review for medical or clinical necessity. [See, NMAC 8.305.1.7, 8.305.11.9.]

**Collaborative** is the Interagency Behavioral Health Purchasing Collaborative. The Collaborative, established under NMSA 1978, §9-7-6.4. Wherever the term "Collaborative" is used within this Agreement, the Collaborative may delegate that role to a subcommittee of the Collaborative, to the Collaborative CEO, or to a designated staff or group of staff from Collaborative Agencies, except for those matters specifically required to be a decision of the Collaborative itself.

**Collaborative Agencies** are the statutory and *ex officio* agencies who sit on the Collaborative.

**Collaborative Chief Executive Officer (CEO)** is the individual who acts as the primary agent of the Collaborative, directly or through a designee.

**Collaborative Executive Committee** means a committee of the Collaborative comprised of the secretaries of HSD, the New Mexico Department of Health (DOH), and CYFD.

**Confidential Information** means any communication or record – whether oral, written, electronically stored or transmitted, or in any other form – consisting of: (i) confidential Consumer information, including Health Insurance Portability and Accountability Act of 1996 (HIPAA)-defined protected health information; (ii) all non-public budget, expense, payment, and other financial information; (iii) all privileged work product; (iv) all information designated by the Collaborative or any other State agency as confidential, and all information designated as confidential under the laws of the State of New Mexico; and (v) information utilized, developed, received, or maintained by the Collaborative, the BHE, or participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been disclosed publicly.

**Consumer** is, for purposes of this Contract, a person with a mental health or substance abuse disorder who is receiving, has received, or is eligible to receive Behavioral Health services through this Agreement. References to Consumer include the Consumer's family, guardian, and/or Designated Representative as applicable and appropriate.

**Contract Manager** shall have the meaning ascribed to such term in Section [3.2.3] of this Agreement.

**Core Service Agencies (CSA)** means multi-service agencies that help to bridge treatment gaps in the child and adult treatment systems, promote the appropriate level of service intensity for Consumers with complex Behavioral Health service needs, ensure that community support services are integrated into treatment, and develop the capacity for Consumers to have a single point of accountability for identifying and coordinating their Behavioral Health, health, and other social services.

**Covered Services** are those services funded through the funding table listed in Appendix [A] (Funding Table) of this Contract and any additional funding sources identified during the term of the Contract.

**Critical Incident** means a reportable incident that may include, but is not limited to, abuse, neglect, or exploitation; death; environmental hazards; law enforcement intervention that encompasses the full range of Covered Services.

**Cultural Competence** is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables them to work effectively in cross-cultural situations. Cultural competency involves the integration and transformation of knowledge, information, and data about individuals and groups of people into specific clinical standards, service approaches, techniques, and marketing programs that match an individual's culture to increase the quality and appropriateness of Behavioral Health care and outcomes. [See, NMAC 8.305.1.7]. For purposes of this Contract, culture includes the deaf and blind communities.

**Custom Software** means any software developed by the BHE or the Collaborative in conjunction with this Agreement, and with funds received from the Collaborative. The term does not include the BHE's Proprietary Software or Third-Party Software.

**Day or Days** means calendar day, unless specified otherwise. In calculating time, the first day is included and the last day is excluded. Timeliness or due dates falling on a weekend or State or federal holiday shall be extended to the first business day after the weekend or holiday.

**Designated Representative** is a person designated under a valid mental health care treatment advance directive as an individual's authorized agent according to the provisions of the Mental Health Care Treatment Decisions Act (NMSA 1978, §24-7B et seq.) and who has personal knowledge of the respondent and the facts as required in Subsection B of the Act.

**Directed Corrective Action Plan (DCAP)** is a directed CAP developed for the BHE by the Collaborative.

**Electronic Health Record (EHR)** means a record in digital format that is a systematic collection of electronic health information. EHRs may contain a range of data, including demographics, medical history, medication and allergies, immunization status, laboratory test results, radiology images, vital signs, personal statistics such as age and weight, and billing information.

**Encounter** is a Covered Service or group of Covered Services delivered by a Provider to a Consumer during a visit between the Consumer and Provider.

**Encounter Data** are data elements from Encounters submitted in fee-for-service Claims, or from data submissions ("proxy Claims") for services not reimbursable on a fee-for-service basis.

**Force Majeure** means any event or occurrence that is outside of the reasonable control of the Party concerned and that is not attributable to any act or failure to take preventive action by the Party concerned.

**Fraud** means an intentional deception or misrepresentation by a person or an entity with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or State law, consistent with NMAC 8.305.13.10. [See, NMAC 8.305.1.7.]

**Funding Member Agencies** means HSD, NMCD, and CYFD.

**Health Information Exchange (HIE)** means the transmission of health care-related data among facilities, health information organizations, and government agencies according to national standards. HIE is also an entity that provides services to enable the electronic sharing of health information.

**Implementation Date** refers to [January 1], 2015.

**Information System(s)** is any combination of computing and telecommunications hardware and software that is used in the capture, storage, manipulation, movement, control, display, interchange, and/or transmission of information, i.e., structured data (which may include digitized audio and video) and documents as well as non-digitized audio and video for the purposes of enabling and/or facilitating a business process or related transaction.

**Invoice** means the workbook a Provider completes to receive payment for providing Covered Services in lieu of a Claim.

**Local Collaborative (LC)** is an advisory body, delineated by either judicial district or tribal grouping and recognized by the Collaborative, which provides input on local and regional Behavioral Health issues to the Collaborative and the BHE.

**Managed Care Organization (MCO)** is an organization that contracts with the State of New Mexico to provide a variety of health care services to individuals who are enrolled in Medicaid.

**Performance Measures** are a system of operational and tracking indicators specified by the federal government or the Collaborative, including but not limited to the Governor's Performance & Accountability Measures and the federal National Outcome Measures.

**Program Evaluation Officer** means an employee of the BHE who is charge of overseeing the elements of Section [3.16] of the Contract.

**Proprietary Software** means software: (i) developed by the BHE before the effective date of this Agreement; or (ii) software developed by the BHE after the effective date of this Agreement that is not developed for HSD, in connection with this Agreement, or with funds received by HSD.

**Provider** is an individual provider, clinic, group, association, or facility employed by or contracted with the BHE to furnish Covered Services to Consumers under the provisions of this Contract.

**Provider Attestation** means the requirement in the service registration system for Providers to attest that a Consumer meets the needs to receive certain Covered Services.

**Span of Control** are Information Systems and telecommunications capabilities that the BHE itself operates or for which it is otherwise legally responsible according to the Agreement. The BHE's span of control also includes Information Systems and telecommunications capabilities outsourced by the BHE.

**State** is the State of New Mexico, including any entity or agency of the State, and including but not limited to the Collaborative and Collaborative Agencies.

**System Unavailability** is measured within the BHE's Information Systems Span of Control, when a system user does not get the complete, correct full-screen response to an input command within three (3) minutes after depressing the "Enter" or other function key.

**Third-Party Software** means software that is developed for general commercial use, available to the public or not developed for HSD. Third-Party Software includes, without limitation: commercial off-the-shelf software; operating system software; and application software, tools, and utilities.

**Tribal Liaison** means an employee of the BHE who serves as a point of contact for Provider contracting and Claims payment for Indian Health Services and Tribal 638 facility Providers. The Tribal Liaison must have past experience in working with more than one (1) Tribe.

**Vendors** means the entities the Collaborative requires the BHE to contract with who do not provide Covered Services to Consumers.

**Waste** means the overutilization of services or other practices that result in unnecessary costs.

<b>ACRONYMS</b>	
<b>ACH</b>	Automated Clearinghouse
<b>ASO</b>	Administrative Services Organization
<b>ATR</b>	Access to Recovery
<b>BC-DR</b>	Business Continuity and Disaster Recovery
<b>BHE</b>	Behavioral Health Entity
<b>BHSD</b>	Behavioral Health Services Division
<b>CAP</b>	Corrective Action Plan
<b>CEO</b>	Chief Executive Officer
<b>CFO</b>	Chief Financial Officer
<b>CSA</b>	Core Service Agencies
<b>CYFD</b>	New Mexico Children, Youth and Families Department
<b>DCAP</b>	Directed Corrective Action Plan
<b>DOH</b>	New Mexico Department of Health
<b>ECM</b>	Electronic Claims Management
<b>EFT</b>	Electronic Funds Transfer
<b>EHR</b>	Electronic Health Record
<b>FAQ</b>	Frequently Asked Questions
<b>FEIN/SSN</b>	Federal Employer Identification Number/Social Security Number
<b>HIE</b>	Health Information Exchange
<b>HIPAA</b>	Health Insurance Portability and Accountability Act of 1996
<b>HITECH</b>	Health Information Technology for Economic and Clinical Health
<b>HSD</b>	New Mexico Human Services Department
<b>IPRA</b>	New Mexico Inspection of Public Records Act, NMSA 1978, 14-2-1 et seq.
<b>LC</b>	Local Collaborative
<b>MCO</b>	Managed Care Organization
<b>NIDA</b>	National Institute on Drug Abuse
<b>NMCD</b>	New Mexico Corrections Department
<b>NPI</b>	National Provider Identifier
<b>PFSII</b>	Partnership for Success II
<b>PPW</b>	Pregnant or Postpartum Women
<b>RFP</b>	Request for Proposals
<b>SAPT</b>	Substance Abuse Prevention and Treatment
<b>SBIRT</b>	Screening, Brief Intervention, and Referral to Treatment

<b>SEOW</b>	State Epidemiological Outcomes Workgroup
<b>SMI</b>	Serious Mental Illness

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## **SECTION 3 BHE's SCOPE OF WORK**

### **3.1 INTRODUCTION**

- 3.1.1 The BHE shall be responsible for the functions specified in this Agreement as an ASO for the Collaborative's non-Medicaid funded services. The Collaborative will provide all clinical functions and other functions not specified herein, and will provide oversight of the BHE.
- 3.1.2 The main functions of the BHE include the following (and such functions and responsibilities are further described in this Agreement):
  - 3.1.2.1 Contracting with all Providers and Vendors specified by the Collaborative, and providing non-clinical Provider contract oversight;
  - 3.1.2.2 Implementing and operating the registration system for Providers to register Consumers;
  - 3.1.2.3 Monitoring and reporting on both the program as a whole and Providers specifically for Fraud, Waste and Abuse;
  - 3.1.2.4 Providing proactive and responsive technical assistance and training to Providers on Claims submission;
  - 3.1.2.5 Managing and monitoring funds by source and by Provider, and providing real-time monitoring capabilities to the Collaborative in addition to regular reporting;
  - 3.1.2.6 Paying and managing Claims and Invoices under the funding rules provided by the Collaborative; and
  - 3.1.2.7 Providing sophisticated data analysis of registration and Claims data to the Collaborative for program evaluation.

### **3.2 GENERAL REQUIREMENTS**

- 3.2.1 The BHE shall comply with:
  - 3.2.1.1 All provisions of this Agreement; and
  - 3.2.1.2 All applicable federal and State statutes, laws, and regulations.
- 3.2.2 The BHE shall develop written policies and procedures that set forth the parameters of its compliance with the requirements of this Agreement and, unless otherwise directed or approved in writing by the Collaborative, shall administer this Agreement in accordance with those policies and procedures. The BHE shall submit its policies and procedures and any additional

documentation as detailed in Appendix [D] to the Collaborative for prior approval, in accordance with the schedule outlined in Appendix [D].

- 3.2.3 The BHE shall employ a qualified individual, residing in New Mexico, to serve as the Contract Manager for this Agreement. The Contract Manager shall be dedicated to this Agreement, hold a senior management position in the BHE's organization, and be authorized and empowered to represent the BHE on all matters pertaining to this Agreement. The Contract Manager shall be available to attend meetings in Santa Fe at the request of the Collaborative or the Funding Member Agencies. The Contract Manager shall act as a liaison between the BHE and the Collaborative and have the following responsibilities:
- 3.2.3.1 Ensuring the BHE's compliance with the requirements of this Agreement, including securing and coordinating resources necessary for such compliance;
  - 3.2.3.2 Overseeing all activities by the BHE, its subcontractors, Providers, and Vendors;
  - 3.2.3.3 Receiving and responding to all inquiries and requests by the Collaborative, Funding Member Agencies, and their respective single points of contact for this Agreement in timeframes and formats reasonably acceptable to the requesting entity;
  - 3.2.3.4 Meeting with the Collaborative's and the Funding Member Agencies' respective single points of contact and other Collaborative representatives and Collaborative Agencies on a periodic or as-needed basis;
  - 3.2.3.5 Attending and participating in regular meetings with the Collaborative and Collaborative Agencies;
  - 3.2.3.6 Attending and participating in stakeholder meetings as requested by the Collaborative; and
  - 3.2.3.7 Working cooperatively with other State contracting partners, including but not limited to Centennial Care MCOs and other identified contractors as, from time-to-time, may be identified by the State.

### **3.3 PERSONNEL REQUIREMENTS**

- 3.3.1 The BHE shall maintain sufficient qualified staff to fulfill the requirements of this Agreement.
- 3.3.2 Prior to implementation, the BHE shall submit to the Collaborative the names, resumes, and contact information of all key staff, including but not limited to staff who will have the following roles (multiple roles may be served by a single staff member if agreed to by the Collaborative):

- 3.3.2.1 CEO;
  - 3.3.2.2 CFO;
  - 3.3.2.3 Contract Manager;
  - 3.3.2.4 Tribal Liaison; and
  - 3.3.2.5 Program Evaluation Officer.
- 3.3.3 The BHE shall notify the Collaborative within fifteen (15) Calendar Days after changes to key staff (those individuals with the roles set forth herein) occur, or are anticipated, or there are significant changes in staffing. The BHE shall consult with, and receive the approval of, the Collaborative CEO and the Collaborative Executive Committee before any change of the CEO.
- 3.3.4 The Collaborative reserves the right to reasonably require the BHE to make changes to its staff, subject to applicable federal and State laws, rules, and regulations with thirty (30) Calendar Days written notice.

#### **3.4 COORDINATION WITH THE COLLABORATIVE**

- 3.4.1 The Collaborative will designate a single point of contact for the Collaborative and a single point of contact for each Funding Member Agency.
- 3.4.2 The BHE shall:
- 3.4.2.1 Notify the Collaborative of potential public relations issues of which the BHE becomes aware that could affect the State or this Agreement within twenty-four (24) hours of the BHE becoming aware of the issue;
  - 3.4.2.2 Receive approval from the Collaborative prior to providing any data or reports to any person or entity other than the Collaborative (including its Collaborative Agencies) with the exception of records requested pursuant to a court order, subpoena, by a law enforcement agency, or as may be otherwise required by applicable law;
  - 3.4.2.3 Prior to the Implementation Date, work with the Collaborative and the Funding Member Agencies to develop Change Order Request processes and protocols, both at the Collaborative level and the Funding Member Agency level;
  - 3.4.2.4 Negotiate in good faith any amendments to this Agreement required to support changes implemented by the Collaborative, as per Section [6.3] of this Agreement, and comply with any direction given by the Collaborative on implementation of those changes;

- 3.4.2.5 Participate in Behavioral Health system meetings, Provider meetings, legislative meetings, federal programmatic and fiscal reviews, or other committees or work groups, including meetings of the BHPC; and
- 3.4.2.6 In cases of emergency or natural disaster, coordinate with and assist the Collaborative and Centennial Care MCOs to ensure Consumers in affected areas have access to Behavioral Health services.

### **3.5 COORDINATION WITH THE FUNDING MEMBER AGENCIES**

- 3.5.1 The BHE shall designate a single point of contact for each of the Funding Member Agencies. One person may serve as the point of contact for more than one agency and may serve as the Collaborative single point of contact. This contact will be responsible for day-to-day communication and coordination with the agency where involvement is not required by the Collaborative, and for appropriate escalation where Collaborative input or approval is required as per the protocols developed to fulfill Section [3.5.2] of this Agreement.
- 3.5.2 Prior to the Implementation Date, the BHE shall work with the Collaborative and Funding Member Agencies as appropriate to establish a process for communication and escalation, including, for example, defining what interactions may take place between the Funding Member Agencies and the BHE and what interactions will require Collaborative involvement or approval.

### **3.6 READINESS**

- 3.6.1 The BHE shall cooperate in “readiness reviews” conducted by the Collaborative at dates and times to be determined by the Collaborative to review the BHE’s readiness to begin operations. These reviews may include, but are not limited to, desk and on-site reviews of documents provided by the BHE, walk-through(s) of the BHE’s operations, system demonstrations, and interviews with the BHE’s staff.
- 3.6.2 Based on the results of the readiness review activities, the Collaborative will issue a letter of findings and, if needed, will request a CAP or issue a DCAP in accordance with Section [5] of this Agreement.
- 3.6.3 If the BHE is unable to demonstrate its ability to meet the requirements of this Agreement as determined by the Collaborative, within the timeframes specified by the Collaborative, the Collaborative may terminate this Agreement in accordance with Section [6.4] of this Agreement.
- 3.6.4 A complete schedule of BHE deliverables required prior to the Implementation Date is included as Appendix [D] to this Agreement.

### **3.7 TRANSITION PRIOR TO THE IMPLEMENTATION DATE**

- 3.7.1 During a period specified by the Collaborative prior to the Implementation Date, the BHE shall participate in transition activities in cooperation with the previous BHE, as directed by the Collaborative, to ensure continuity of services and a smooth transition of operations from the current BHE.

### **3.8 TRANSITION UPON THE AGREEMENT'S TERMINATION**

- 3.8.1 The BHE shall comply with the termination procedures outlined in Section [6.4] of this Agreement. In addition, the BHE shall participate in transition activities in cooperation with any new entity(ies), as directed by the Collaborative, to ensure continuity of services and a smooth transition of operations.

### **3.9 PROVIDER NETWORK**

- 3.9.1 The Collaborative shall provide the BHE with a list of Medicaid and non-Medicaid Providers for participation in the BHE's Provider network in order to deliver Covered Services, and the BHE shall use good faith and best efforts, as determined by the Collaborative, to execute contracts with such providers no later than sixty (60) Calendar Days prior to the Implementation Date.
- 3.9.2 The Collaborative shall notify the BHE on an ongoing basis of newly identified Providers for participation in the BHE's Provider network in order to deliver Covered Services, and the BHE shall use good faith and best efforts, as reasonably determined by the Collaborative, to execute contracts with such Providers within sixty (60) Calendar Days of notification.
- 3.9.3 The BHE shall develop policies and procedures on managing changes to the Provider network, including Provider termination, within sixty (60) Calendar Days from the effective date of this Agreement and submit such policies to the Collaborative for review and prior written approval.
- 3.9.4 The BHE shall notify the Collaborative in writing within twenty-four (24) hours of any change to the Provider network that impacts service delivery, including but not limited to Provider terminations and changes to any Provider's ability to perform his/her scope of work as specified in the Provider's contract.
- 3.9.5 The BHE shall not discriminate against Providers with respect to reimbursement or indemnification for any Provider acting within the scope of that Provider's license or certification under applicable State law solely on the basis of the Provider's license or certification.
- 3.9.6 The BHE shall notify the Collaborative in writing when any Provider is not accepting new Consumers.

- 3.9.7 The BHE shall not discriminate and/or retaliate against Providers who file complaints or concerns with the BHE, the Collaborative, or other State agencies.
- 3.9.8 The Collaborative shall provide the BHE with a fee schedule for all Covered Services to be included in each individual Provider's contract. Providers who provide services funded by more than one of the Funding Member Agencies will have separate scopes of work for each agency.
- 3.9.9 The Collaborative will provide a list of Vendors who do not provide direct services to Consumers. The BHE shall contract with those Vendors, as directed by the Collaborative or Funding Member Agencies, and pay for their services upon receipt of approved Invoices from the Collaborative or Funding Member Agencies.

### **3.10 PROVIDER CONTRACTING**

- 3.10.1 Provider contracts shall include provisions that address, at a minimum, the following provisions:
  - 3.10.1.1 Providers' clinical records and case file documentation shall meet all applicable State and federal statutes, rules, and regulations;
  - 3.10.1.2 Providers shall accept referrals and shall not refuse to provide Covered Services to a Consumer requiring such services that are within the Provider's scope of work, provided funds are available;
  - 3.10.1.3 Providers shall participate in and cooperate with all BHE and Collaborative quality assurance and monitoring activities;
  - 3.10.1.4 Providers shall adhere to reporting requirements, including but not limited to requirements for reporting data, Critical Incidents, and other information required by this Agreement;
  - 3.10.1.5 Providers shall adhere to all State and federal requirements regarding Fraud, Waste and Abuse, including reporting potential Fraud, Waste or Abuse and cooperating with any State or federal investigation;
  - 3.10.1.6 Providers shall agree that remedial action for non-compliance with their individual Provider contracts may include monetary and non-monetary sanctions such as CAPs and contract termination, including but not limited to sanctions for failure to comply with reporting requirements;
  - 3.10.1.7 Providers shall adhere to all federal and State statutes, background checks, regulations, rules, and policy manuals set forth in this Agreement or otherwise applicable;

- 3.10.1.8 Providers shall permit the Collaborative or any other federal or State agency to examine all medical, personnel, and/or financial records, including but not limited to Information Systems, in order to ensure compliance with this Agreement and financial viability both during and, for a period of ten (10) years, after the term of the Provider contract;
- 3.10.1.9 Providers shall agree to, upon request, make available to law enforcement investigators any and all administrative, financial, and medical records relating to the delivery of items or services for which State or federal monies were expended, unless otherwise provided by law;
- 3.10.1.10 Providers shall maintain all records relating to services provided to Consumers for a ten (10) year period from date of service;
- 3.10.1.11 Providers shall use Collaborative prescribed or approved Consumer assessment methodologies, including but not limited to functional assessment or screening tools;
- 3.10.1.12 Providers shall assist Consumers in applying for Medicaid as requested by Consumers and/or the Collaborative;
- 3.10.1.13 Providers shall actively support care coordination activities performed by Centennial Care MCOs, including proactively informing Consumers' care coordinators of any information that should be included in the Consumer's care plan;
- 3.10.1.14 Providers shall have and implement policies and procedures ensuring culturally and linguistically appropriate supports and services for all Consumers;
- 3.10.1.15 Providers shall report Critical Incidents following Collaborative prescribed protocols;
- 3.10.1.16 Providers shall accept the fee schedule provided by the Collaborative as payment rates for all contracted services and shall be on notice that such fee schedules are subject to change;
- 3.10.1.17 Providers shall agree to abide by any sanctions or penalties imposed by the BHE at the direction of the Collaborative or a Funding Member Agency;
- 3.10.1.18 Providers shall agree to accept all payments for services using EFT;
- 3.10.1.19 Providers shall agree to document all BHE trainings completed by staff and provide such documentation to the Collaborative upon request;
- 3.10.1.20 Providers shall agree to comply with appointment standards established by the Collaborative;

- 3.10.1.21 Providers shall agree that their facilities shall be in compliance with applicable provisions of the American with Disabilities Act, 42 U.S.C. 12101 *et seq.* and its regulations, including but not limited to entrances, restrooms, business offices, therapy locations, and all service delivery sites; and
- 3.10.1.22 Providers shall agree to be accessible through 711 or other Telecommunications Relay System.
- 3.10.2 The Collaborative shall prior approve all Provider contracts and amendments, and may specify additional provisions to be included.
- 3.10.3 CREDENTIALING
  - 3.10.3.1 The BHE shall ensure that all Providers maintain the licensure and certification necessary to provide the services in their scope of work.
    - 3.10.3.1.1 For Medicaid Providers, the BHE shall verify appropriate credentialing with Centennial Care MCOs.
    - 3.10.3.1.2 For non-Medicaid Providers, the Collaborative will specify all credentialing requirements to be included in the Provider contracts and the BHE shall verify that the Provider meets such requirements.
- 3.10.4 The BHE shall enforce timely filing requirements for Claims and Invoice submission by Providers:
  - 3.10.4.1 For Claims, (a) within ninety (90) Calendar Days from date of service and (b) within ninety (90) Calendar Days from the original remittance date for reconsideration and adjustment requests;
  - 3.10.4.2 For Invoices, (a) within thirty (30) Calendar Days from date of service and (b) within thirty (30) Calendar Days from the original remittance date for reconsideration and adjustment requests.

### **3.11 REQUIREMENTS FOR PROVIDER PAYMENT**

- 3.11.1 In order for the BHE to reimburse a Provider for Covered Services, the following conditions must be met:
  - 3.11.1.1 The Consumer must meet fund source eligibility requirements as described in Appendix [B] to this Agreement;
  - 3.11.1.2 The service must be a Covered Service under the applicable fund source rules, as described in Appendix [A] to this Agreement;

- 3.11.1.3 The Provider must be contracted with the BHE to provide the Covered Service;
- 3.11.1.4 The Consumer must meet any service-specific requirements under the applicable fund source rules, as described in Appendix [B] to this Agreement (e.g., primary diagnosis);
- 3.11.1.5 For Covered Services requiring a Provider Attestation, the Provider must have submitted the Provider Attestation; and
- 3.11.1.6 The Provider must have available, allocated funds from the appropriate fund source (see Section [3.13] of this Agreement).

### **3.12 REGISTRATION SYSTEM**

- 3.12.1 The BHE shall have an automated registration system in place for Providers to register Consumers.
- 3.12.2 The registration system shall display to Providers the eligibility rules for each fund source for which the Provider has funds allocated.
- 3.12.3 The registration system shall display a list of Covered Services for each fund source for which the Provider has an allocation. For each service the registration system shall display:
  - 3.12.3.1 Any service-specific requirements;
  - 3.12.3.2 Whether the Covered Service is also a Medicaid covered service; and
  - 3.12.3.3 Whether a Provider Attestation is required.
- 3.12.4 The registration system shall provide information about the Provider-specific allocations from each fund, including at a minimum:
  - 3.12.4.1 Total Provider allocation per fund;
  - 3.12.4.2 Total amount of Provider allocation spent per fund;
  - 3.12.4.3 Total number and amount of unadjudicated Claims and Invoices against each fund; and
  - 3.12.4.4 Total remaining Provider allocation per fund.

#### **3.12.5 CONSUMER REGISTRATION**

- 3.12.5.1 The registration system shall collect from Providers the minimum set of data elements required to determine Consumer eligibility for Covered

Services in accordance with current funding rules based on the funding and eligibility tables attached as Appendix [A and B] to this Agreement.

3.12.5.2 The registration system shall collect from Providers data elements specified by the Collaborative or Funding Member Agencies to assist with program oversight and evaluation.

3.12.5.3 The registration system shall identify potential duplicate or multiple records for a single Consumer and resolve any duplication such that the Consumer eligibility/registration, service utilization, and customer interaction histories of the duplicate or multiple records are linked or merged.

### 3.12.6 MEDICAID ELIGIBILITY

3.12.6.1 The registration system shall perform checks for Medicaid eligibility and Centennial Care MCO enrollment of Consumers during registration, and communicate this eligibility and enrollment status to the Provider requesting the registration.

3.12.6.2 The registration system shall provide a link to the State's online Medicaid eligibility application system to allow Providers to assist Consumers with applying for Medicaid during registration.

## 3.13 FUND MANAGEMENT

3.13.1 Fund allocation for each State fiscal year will be performed by the Collaborative and communicated to the BHE on a per-fund per-Provider basis.

3.13.2 The BHE shall monitor dollars available to each Provider in each fund source to ensure spending is in accordance with fund source eligibility rules and that such funding is not overspent. The BHE shall:

3.13.2.1 Notify Providers when any fund allocation for that Provider is eighty percent (80%) encumbered; and

3.13.2.2 Notify Providers when any fund allocation is one hundred percent (100%) encumbered, and clearly indicate that no further Claims or Invoices will be paid to the Provider from that fund allocation until and unless additional funds are allocated to the Provider.

3.13.3 The BHE shall provide the Collaborative with a real time interface to current fund allocation data, both at the fund level and the Provider level, including the following:

3.13.3.1 Total allocation per fund;

- 3.13.3.2 Total amount of allocation spent per fund;
  - 3.13.3.3 Total number and amount of unadjudicated Claims and Invoices against each fund; and
  - 3.13.3.4 Total remaining allocated dollars per fund.
- 3.13.4 The Collaborative may, at its discretion, reallocate funds over the course of the fiscal year. These reallocations will be provided to the BHE and must be implemented and communicated to Providers by the BHE within ten (10) Calendar Days of the reallocation communication from the Collaborative.

### **3.14 PROVIDER PAYMENTS**

- 3.14.1 At a minimum, the BHE shall run one (1) Provider payment cycle per week.
- 3.14.2 The BHE shall make all payments to Providers via EFT.
- 3.14.3 The BHE shall not employ off-system or gross adjustments when processing corrections to payment errors, unless it requests and receives prior written authorization from the Collaborative.

#### **3.14.4 ELECTRONIC CLAIMS**

- 3.14.4.1 The BHE shall have in place an ECM capability that can accept and process Claims electronically. The ECM capability shall function in accordance with information exchange and data management requirements specified in this Agreement.
- 3.14.4.2 As part of the ECM function, the BHE shall provide on-line and phone-based capabilities for Providers to obtain Claims processing status information.
- 3.14.4.3 The BHE shall support an ACH mechanism that allows Providers to request and receive EFT payment.
- 3.14.4.4 The BHE shall not derive financial gain from a Provider's use of electronic Claims filing functionality and/or services offered by the BHE or a third-party; however, this provision shall not be construed to imply that Providers may not be responsible for payment of applicable transaction fees/charges.

#### **3.14.5 INVOICES**

- 3.14.5.1 The Collaborative shall provide the BHE with workbook templates for Providers who submit Invoices. Provider Invoice workbooks shall be

received and processed by the BHE, but approved for payment by the individual Funding Member Agencies.

- 3.14.5.2 The BHE shall have an Invoice system to receive and store Invoice workbooks from Providers. This system shall include the following capabilities:
  - 3.14.5.2.1 Notification to Funding Member Agencies of workbook receipt;
  - 3.14.5.2.2 Interface for Funding Member Agencies to retrieve workbooks for review;
  - 3.14.5.2.3 Interface for Funding Member Agencies to indicate approval of workbooks;
  - 3.14.5.2.4 Ability for the BHE to review workbooks for financial integrity; and
  - 3.14.5.2.5 Ability to issue payment to Providers.
- 3.14.6 The BHE shall meet the Claims and Invoice payment timeliness and accuracy standards described in Section [3.21] of this Agreement.
- 3.14.7 The BHE's Claims management Information System(s) shall perform front-end edits, including but not limited to the following:
  - 3.14.7.1 Claims were completed with valid procedure, diagnosis, revenue, Provider, and other standardized claims codes;
  - 3.14.7.2 Appropriateness of the service given Consumer age, sex, and other characteristics;
  - 3.14.7.3 Whether a Claim is (a) exactly the same as a previously submitted Claim; or (b) a possible duplicate Claim and either deny or pend the Claim as needed;
  - 3.14.7.4 Whether a service is a Covered Service and is eligible for payment;
  - 3.14.7.5 Whether a Provider Attestation has been provided, if required; and
  - 3.14.7.6 Whether the Provider is eligible to render services for which the Claim was submitted.
- 3.14.8 The BHE shall provide electronic remittance advice to Providers that contain appropriate explanatory remarks related to payment or denial of the Claim, such that Providers can identify specific reasons for denial of each individual Claim and any documentation or action required to obtain payment upon resubmission.

### **3.15 PROVIDER SERVICES**

- 3.15.1 The BHE shall maintain a Provider web portal that shall, at a minimum, offer the following features to Providers:
  - 3.15.1.1 Consumer eligibility verification;
  - 3.15.1.2 Claims and Invoice status inquiry;
  - 3.15.1.3 Payment amount and status inquiry;
  - 3.15.1.4 Remittance advice;
  - 3.15.1.5 Claim submission/billing manuals;
  - 3.15.1.6 Training materials and schedules for training events;
  - 3.15.1.7 Fee schedules;
  - 3.15.1.8 Answers to FAQs by Providers;
  - 3.15.1.9 Posting of all general Provider correspondence;
  - 3.15.1.10 Ability for Providers to request technical assistance from the BHE; and
  - 3.15.1.11 Contact information for the BHE (including a contact list of BHE staff), the Collaborative, Funding Member Agencies, LCs, New Mexico Medical Assistance Division, and the Centennial Care MCOs.
- 3.15.2 The Provider portal shall comply with HIPAA and its regulations and other federal and State privacy and confidentiality statutes, rules, and regulations.

### **3.16 PROGRAM EVALUATION**

- 3.16.1 Not less than (30) Calendar Days prior to the Implementation Date, the BHE shall have developed and documented a methodology for measuring and reporting the overall effectiveness of the service delivery system and Provider network on an ongoing basis. This program evaluation process shall be subject to prior written approval by the Collaborative, reviewed by the BHE and Collaborative annually, and updated annually as required by the Collaborative.
  - 3.16.1.1 The evaluation methodology shall be able to do the following, including but not limited to:
    - 3.16.1.1.1 Detect both over and under-utilization of Covered Services;

- 3.16.1.1.2 Include any Performance Measures specified by the Funding Member Agencies, including but not limited to those required by State and federal agencies;
- 3.16.1.1.3 Measure Provider contract compliance through scoring criteria and methodologies for measuring contract compliance in non-clinical aspects, such that each Provider can be graded on those criteria and overall;
- 3.16.1.1.4 Provide performance feedback to Providers; and
- 3.16.1.1.5 Evaluate access to Covered Services for Consumers.

### **3.17 CRITICAL INCIDENT MANAGEMENT**

- 3.17.1.1 The BHE shall require its Providers to report, respond to, and document Critical Incidents; and
- 3.17.1.2 The BHE shall require staff and Providers to cooperate with any investigation conducted by the BHE, Centennial Care MCOs, or government entities (e.g., BHSD, DOH, CYFD, NMCD, Adult Protective Services, and law enforcement) related to Critical Incidents.

### **3.18 PROGRAM INTEGRITY**

- 3.18.1 The BHE shall:
  - 3.18.1.1 Have and implement policies and procedures that have been prior approved by the Collaborative to address prevention, detection, reporting, and recovering funds misspent due to potential and actual Consumer or Provider Fraud, Waste or Abuse;
  - 3.18.1.2 Designate a single point of contact for issues involving Fraud, Waste or Abuse;
  - 3.18.1.3 Develop and provide written Fraud, Waste or Abuse policies to Providers;
  - 3.18.1.4 Report to the Collaborative Executive Committee within five (5) Business Days of detecting any activity that, in the BHE's professional judgment, is suspicious and may indicate that Fraud, Waste or Abuse has occurred;
  - 3.18.1.5 Cooperate with any government investigation unit, law enforcement agency, or other investigatory body, including but not limited to the Attorney General's Office, the Office of Professional Standards, the Federal Drug Enforcement Administration, the Federal Bureau of Investigation, the New Mexico Taxation and Revenue Department, or HSD's Office of Inspector General; and

- 3.18.1.6 Have and implement policies and procedures that have been prior approved by the Collaborative for all BHE employees, which shall include potential disciplinary action for employees who do not report Fraud, Waste and Abuse to the BHE's single point of contact for the Collaborative (see Section [3.18.1.2] above) and/or destroy evidence related to a specific Fraud, Waste or Abuse case or potential case.
- 3.18.2 The BHE shall cooperate fully in any investigation by law enforcement agencies as well as any subsequent legal or administrative action that may result from such investigation. The BHE and its subcontractors and Providers shall, upon request, make available to law enforcement investigators any and all administrative, financial, and medical records relating to the delivery of items or services for which State monies were expended, unless otherwise provided by law. In addition, law enforcement investigators shall be granted access during normal business hours to the place of business and all records of the BHE and its subcontractors and Providers, except under special circumstances when after hour's access shall be allowed. Special circumstances shall be determined by the law enforcement investigators on a case-by-case basis.

### **3.19 CONSUMER SERVICES**

- 3.19.1 The BHE shall maintain a Consumer web portal that shall, at a minimum, include the following features:
  - 3.19.1.1 Access to a searchable Provider directory;
  - 3.19.1.2 A list of Covered Services;
  - 3.19.1.3 Answers to FAQs by Consumers; and
  - 3.19.1.4 Contact information for the BHE (including a contact list of BHE staff), the Collaborative, LCs, the New Mexico Medical Assistance Division, the Centennial Care MCOs, and the statewide crisis line.
- 3.19.2 The Consumer portal shall comply with HIPAA and its regulations and other federal and State privacy and confidentiality statutes, rules, and regulations.
- 3.19.3 The Parties agree that Consumer after-hour crisis calls shall be handled by statewide crisis line (New Mexico Crisis and Access Line).

### **3.20 CONSUMER AND PROVIDER CONCERNS**

- 3.20.1 The BHE shall develop, document, and implement processes, to be prior approved by the Collaborative, designed to address Consumer and Provider complaints and/or concerns. The process shall include escalation paths to the Collaborative and Funding Member Agencies for complaints and/or concerns

that are not resolved to the satisfaction of the Consumer or Provider, to be utilized only after all BHE pathways are exhausted.

3.20.2 The BHE shall develop and administer a Claims reconsideration process for complaints and/or concerns for Provider Claims payments or adjudications and Invoices. A Provider shall be required to request a reconsideration of a payment or adjudication decision within thirty (30) Calendar Days of receiving the remittance advice from the BHE. The BHE shall provide notification to the Provider of the result of the reconsideration research within thirty (30) Calendar Days of receipt of the reconsideration request.

3.20.3 The BHE shall advise Consumers and Providers that the State's Medicaid fair hearing process is not available for non-Medicaid funded services.

### **3.21 CLAIMS AND INVOICE MANAGEMENT**

#### **3.21.1 CLAIMS PAYMENT TIMELINESS**

3.21.1.1 The BHE shall pay or deny not less than ninety percent (90%) of all clean electronic Claims from Providers within thirty (30) Calendar Days of date of receipt and shall pay or deny not less than ninety-nine percent (99%) of all clean electronic Claims within ninety (90) Calendar Days of receipt.

3.21.1.2 The BHE shall pay or deny all Invoices and paper Claims within forty-five (45) Calendar Days of date of receipt, or thirty (30) Calendar Days from the date of the Funding Member Agency approval if required, whichever is later.

3.21.1.3 The BHE shall pay interest to Providers from BHE administrative funds at a rate of 1.5% per month for Clean Claims not paid within thirty (30) Calendar Days of receipt for electronically submitted Claims, forty-five (45) Calendar Days of receipt for paper submitted Claims, and thirty (30) Calendar Days of approval for Invoices.

3.21.1.4 If a Claim is denied on the basis that the Provider did not submit all required information or documentation with the Claim, then resubmission of a Claim with further information and/or documentation shall constitute a new Claim for purposes of establishing the timeframe for Claims processing.

### **3.22 CLAIMS ACCURACY AND AUDITS**

3.22.1 On a quarterly basis, the BHE shall submit Claims payment accuracy percentage reports to the Collaborative forty-five (45) Calendar Days after the end of each quarter.

- 3.22.2 The report shall be based on an audit conducted by the BHE. The audit shall be conducted by the BHE by a unit or staff independent of the BHE's Claims management unit.
- 3.22.3 The audit shall be based on a random sample of one hundred (100) Claims in each month of the quarter drawn from all electronic and paper Claims.
- 3.22.4 The minimum attributes to be tested for each Claim selected (not all attributes apply to each Claim that is selected for the audit) shall include:
  - 3.22.4.1 Claim data correctly entered into the Claims processing system;
  - 3.22.4.2 Claim is associated with the correct Provider;
  - 3.22.4.3 Service included a Provider Attestation where required;
  - 3.22.4.4 Allowed payment amount agrees with fee schedule;
  - 3.22.4.5 Duplicate payment of the same Clean Claim has not occurred;
  - 3.22.4.6 Denial reason applied appropriately; and
  - 3.22.4.7 Modifier codes correctly applied.
- 3.22.5 For verification purposes, the BHE shall keep track of the Claims being used in these audits. Additionally, the BHE shall document the results, including but not limited to:
  - 3.22.5.1 Results for each attribute tested for each Claim selected;
  - 3.22.5.2 Amount of overpayment or underpayment for Claims processed or paid in error;
  - 3.22.5.3 Explanation of the erroneous processing for each Claim processed in error;
  - 3.22.5.4 Determination if the error was the result of keying errors or the result of errors in the configuration or table maintenance of the Claims processing system; and
  - 3.22.5.5 Claims processed or paid in error have been corrected.
- 3.22.6 The BHE shall meet the Claims payment accuracy standard of ninety-seven percent (97%). If the BHE fails to meet this standard for any quarter, the BHE shall submit a CAP to the Collaborative within fifteen (15) Calendar Days of the Claims payment accuracy percentage report due date.

- 3.22.7 The Collaborative and/or its designee (which may include independent auditing agencies) reserves the right to perform any audits of the BHE it deems necessary to the oversight of the Agreement and program.

### **3.23 ENCOUNTER DATA**

- 3.23.1 The BHE shall send incremental data files weekly to HSD's Secure Transport Server to be loaded into the Collaborative's Behavioral Health Data Warehouse. This weekly data feed must include Claims and Encounter Data, customer data, and Provider data and use a file format defined by the Collaborative. This weekly data feed must be incremental and include only data modified, added, or deleted since the previous week's file. Detailed requirements associated with the incremental data files will be defined in partnership with the Collaborative upon Contract award.

### **3.24 INFORMATION SYSTEMS**

#### **3.24.1 GENERAL SYSTEM HARDWARE, SOFTWARE, AND INFORMATION SYSTEMS REQUIREMENTS**

- 3.24.1.1 The BHE shall maintain system hardware, software, and Information Systems resources sufficient to provide the capability to:
- 3.24.1.1.1 Accept, transmit, maintain, and store electronic data;
  - 3.24.1.1.2 Accept, transmit, process, maintain, and report specific information necessary to the Collaborative, including but not limited to data pertaining to Providers, Consumers, Claims, Encounters, and complaints;
  - 3.24.1.1.3 Comply with the most current federal standards for encryption of any data that is transmitted via the internet, stored, or archived by the BHE or its subcontractors;
  - 3.24.1.1.4 Conduct automated Claims processing with current National Provider Identification Number for health care Providers and FEIN/SSN numbers for atypical Providers in HIPAA compliant formats;
  - 3.24.1.1.5 Monitor and transmit electronic Encounter Data to the Collaborative according to Encounter Data submission standards,
  - 3.24.1.1.6 Monitor the completeness of the data being received to detect Providers or subcontractors who are transmitting partial or no records;

- 3.24.1.1.7 Maintain a website for dispersing information to providers and Consumers, and be able to receive comments electronically and respond when appropriate, including responding to practitioner transactions for eligibility.
- 3.24.1.2 The BHE shall submit all reports electronically to the Collaborative's secure FTP site unless directed otherwise by the Collaborative. The Collaborative shall provide the BHE with access to the secure FTP site.
- 3.24.1.3 The BHE's systems shall conform to future federal and/or the Collaborative specific standards for data exchange within the timeframe stipulated by federal authorities or the Collaborative. The BHE shall partner with the Collaborative in the management of current and future data exchange formats and methods, and in the development and implementation planning of future data exchange methods not specific to HIPAA or other federal effort. Furthermore, the BHE shall conform to these standards as stipulated in the plan to implement such standards.
- 3.24.1.4 The BHE shall participate in and, as may be directed, implement any HIE or EHR initiatives undertaken by the Collaborative or other entities.
- 3.24.1.5 The BHE shall ensure that written system process and procedure manuals document and describe all manual and automated system procedures for its information management processes and Information Systems and shall provide these documents to the Collaborative upon request.
- 3.24.1.6 The BHE shall:
  - 3.24.1.6.1 Maintain a Claims management Information System that at a minimum possesses the following features: (a) unique identification of the provider of the service; (b) date of receipt – the date the BHE receives the Claim as indicated by a date-stamp; (c) real-time-accurate history of actions taken on each Provider Claim – i.e., paid, denied, suspended, appealed, etc.; (d) date of payment – the date of issue of the check or other form of payment; and (e) tracking of individual services by fund source and/or program;
  - 3.24.1.6.2 Provide a means for Providers and subcontractors to register Consumers twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) Calendar Days a year; and
  - 3.24.1.6.3 Meet State and federal (including HIPAA) standards for release of Consumer information (applies to subcontractors as well).

### 3.24.2 SYSTEM AND INFORMATION SECURITY AND ACCESS MANAGEMENT REQUIREMENTS

3.24.2.1 The BHE's systems shall employ an access management function that restricts access to varying hierarchical levels of system functionality and information. The access management function shall:

3.24.2.1.1 Restrict access to information on a "least privilege" basis, e.g., users permitted inquiry privileges only will not be permitted to modify information;

3.24.2.1.2 Restrict access to specific system functions and information based on an individual user profile, including inquiry only capabilities. Global access to all functions shall be restricted to specified appropriate staff; and

3.24.2.1.3 Enforce approved authorizations for controlling the flow of confidential data within the system and between interconnected systems based on the technical safeguards in place to protect the confidential data.

3.24.2.1.4 Before granting access to the system, display to users an approved warning banner by the Collaborative and states that:

3.24.2.1.4.1 The system contains Confidential Information;

3.24.2.1.4.2 Users actions are monitored and audited;

3.24.2.1.4.3 Unauthorized use of the system is prohibited; and

3.24.2.1.4.4 Unauthorized use of the system is subject to criminal and civil sanctions.

3.24.2.1.5 Limits the number of concurrent sessions for each system account to one (1) session. The number of concurrent application/process sessions is limited and enforced to the number of sessions expressly required for the performance of job duties.

3.24.2.1.6 Prevent further access to the system by initiating a session lock after fifteen (15) minutes of inactivity or upon receiving a request from a user and retain the session lock until the user reestablishes access using established identification and authentication procedures.

3.24.2.1.7 Automatically terminate a user session after fifteen (15) minutes of inactivity.

- 3.24.2.2 The BHE shall make system information available to duly authorized representatives of the Collaborative and other State and federal agencies to evaluate, through inspections, audits, or other means, the quality, appropriateness and timeliness of services performed.
- 3.24.2.3 The BHE's systems shall contain controls to maintain information integrity. These controls shall be in place at all appropriate points of processing. The controls shall be tested in periodic and spot audits by the BHE and the results of these tests shall be made available to the Collaborative upon request.
- 3.24.2.4 Audit trails shall be incorporated into all systems to allow information on source data files and documents to be traced through the processing stages to the point where the information is finally recorded. The audit trails shall:
  - 3.24.2.4.1 Contain a unique log-on or terminal identification, the date, and time of any create/modify/delete action and, if applicable, the ID of the system job that effected the action;
  - 3.24.2.4.2 Have the date and identification "stamp" displayed on any online inquiry;
  - 3.24.2.4.3 Have the ability to trace data from the final place of recording back to its source data file and/or document;
  - 3.24.2.4.4 Be supported by listings, transaction reports, update reports, transaction logs, or error logs;
  - 3.24.2.4.5 Facilitate auditing of individual records as well as batch audits; and
  - 3.24.2.4.6 Be maintained online for no less than two (2) years; additional history shall be retained for no less than seven (7) years and shall be retrievable within forty-eight (48) hours.
- 3.24.2.5 The BHE's systems shall have inherent functionality that prevents the alteration of finalized records.
- 3.24.2.6 The BHE shall provide for the physical safeguarding of its data processing facilities and the systems and information housed therein. The BHE shall provide the Collaborative with access to data facilities upon request. The physical security provisions shall be in effect for the term of this Agreement.
- 3.24.2.7 The BHE shall restrict perimeter access to equipment sites, processing areas, and storage areas through a card key or other comparable system, as

well as provide accountability control to record access attempts, including attempts of unauthorized access.

- 3.24.2.8 The BHE shall include physical security features designed to safeguard processor site(s) through required provision of fire retardant capabilities, as well as smoke and electrical alarms, monitored by security personnel.
- 3.24.2.9 The BHE shall put in place procedures, measures, and technical security to prohibit unauthorized access to the regions of the data communications network within the BHE's Span of Control.
- 3.24.2.10 The BHE shall ensure that remote access users of its systems can only access said systems through two-factor user authentication and via methods such as virtual private network.
- 3.24.2.11 The BHE shall comply with recognized industry standards governing security of State and federal automated data processing systems and information processing. At a minimum, the BHE shall conduct a security risk assessment and communicate the results in an information security plan provided to the Collaborative prior to the Implementation Date. The risk assessment shall also be made available to appropriate State and federal agencies upon request.

### 3.24.3 SYSTEMS AVAILABILITY, PERFORMANCE, AND PROBLEM MANAGEMENT REQUIREMENT

- 3.24.3.1 In the event of a declared major failure or disaster, the BHE's core registration and Claims processing systems shall have functionality restored within seventy-two (72) hours of the failure's or disaster's occurrence.
- 3.24.3.2 In the event of a problem with system availability that exceeds four (4) hours, the BHE shall notify the Collaborative immediately and provide the Collaborative, within five (5) Business Days, with full written documentation that includes a CAP describing how the BHE will prevent the problem from occurring again.

### 3.24.4 BC-DR PLAN

- 3.24.4.1 Regardless of the architecture of its systems, the BHE shall develop and be continually ready to invoke a BC-DR plan that has been reviewed and prior approved in writing by the Collaborative.
- 3.24.4.2 At a minimum, the BHE's BC-DR plan shall address the following scenarios:

- 3.24.4.2.1 The central computer installation and resident software are destroyed or damaged;
- 3.24.4.2.2 System interruption or failure resulting from network, operating hardware, software, or operational errors that compromises the integrity of transactions that are active in a live system at the time of the outage;
- 3.24.4.2.3 System interruption or failure resulting from network, operating hardware, software, or operational errors that compromises the integrity of data maintained in a live or archival system; and
- 3.24.4.2.4 System interruption or failure resulting from network, operating hardware, software, or operational errors that does not compromise the integrity of transactions or data maintained in a live or archival system but does prevent access to the system, i.e., causes unscheduled System Unavailability.
- 3.24.4.3 The BHE's BC-DR plan shall specify projected recovery times and data loss for mission-critical systems in the event of a declared disaster.
- 3.24.4.4 The BHE shall periodically, but no less than annually, test its BC-DR plan through simulated disasters and lower level failures and provide the results of this testing to the Collaborative upon request.

### **3.25 REPORTING REQUIREMENTS**

- 3.25.1 As noted in Appendix [C], the BHE shall be responsible for developing report templates for certain reports. Such templates must be prior approved in writing by the Collaborative in accordance with the timeframes in Appendix [D].
- 3.25.2 As noted in Appendix [C], the BHE shall be required to use the templates developed and provided by the Collaborative for certain reports.
- 3.25.3 For all reports, the BHE shall comply with the appropriate reporting formats, instructions, and submission timetables as required by the Collaborative.
- 3.25.4 All quantitative reports shall include a summary table that presents data over time. including monthly, quarterly, and/or year-to-date summaries as directed by the Collaborative.
- 3.25.5 The Collaborative's requirements regarding reports, report content, and frequency of submission are subject to change at any time during the term of the Agreement. The BHE shall comply with all changes specified in writing by the Collaborative within a reasonable timeframe specified by the Collaborative.

- 3.25.6 The BHE shall submit reports timely and in proper format. The submission of late, inaccurate, or otherwise incomplete reports constitutes failure to report. “Timely submission” shall mean that the report was submitted on or before the date it was due. “Accuracy” shall mean the report was substantially prepared according to any specific written guidance, including report template, provided by the Collaborative to the BHE.
- 3.25.7 The Collaborative may, at its discretion, require the BHE to submit additional reports both ad hoc and recurring.
- 3.25.8 The BHE shall submit all reports to the Collaborative, unless indicated otherwise in this Agreement, according to the schedule below. Reports or other required data shall be received on or before scheduled due dates.

<b>Deliverable</b>	<b>Due Date</b>
Weekly Reports	Wednesday of the following week
Monthly Reports	Fifteenth (15 <sup>th</sup> ) Calendar Day of the following month
Quarterly Reports	Thirtieth (30 <sup>th</sup> ) Calendar Day of the following month
Annual Report	Ninety (90) Calendar Days after the end of Calendar year
Ad Hoc Reports	Within ten (10) Business Days from the date of the request unless otherwise specified by the Collaborative

- 3.25.9 If a report due date falls on a weekend or a State of New Mexico holiday, receipt of the report the next Business Day is acceptable.
- 3.25.10 Extensions to report submission dates will be considered by the Collaborative after the BHE has contacted the Collaborative designated point of contact via email at least twenty-four (24) hours in advance of the report due date. Extension for submission of reports should be under rare and unusual circumstances. If the Collaborative grants an extension and the report is submitted before the extended deadline, the report(s) will be considered timely. Not requesting an extension within at least twenty-four (24) hours of the report due date is considered failure to report timely.
- 3.25.11 Any time a report is rejected for any reason, the BHE shall resubmit the report within ten (10) Business Days from notification of the rejection or as directed by the Collaborative.
- 3.25.12 Unless, specifically exempted by the Collaborative in writing, all reports require a BHE certification. The Authorized Certifier or an equivalent position as

delegated by the BHE and approved by Collaborative, shall review the accuracy of language, analysis, and data in each report prior to submitting the report to the Collaborative. The Authorized Certifier shall include a signed attestation each time the report is submitted. The attestation must include a certification based on best knowledge, information, and belief as to the accuracy, completeness, and truthfulness of the data in the report. Reports will be deemed incomplete if an attestation is not included.

- 3.25.13 The BHE shall provide ad hoc reports, including responses to Freedom of Information Act requests, to the Collaborative upon demand in formats requested by the Collaborative.
- 3.25.14 A complete report matrix is included in Appendix [C] of this Agreement.

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## SECTION 4 COMPENSATION

### 4.1 GENERAL REQUIREMENTS

- 4.1.1 The Parties understand and agree that the compensation and payment reimbursement for services delivered under this Agreement are dependent on State and grant funding and approvals.
- 4.1.2 The BHE shall accept payments remitted by the Collaborative and/or the Funding Member Agencies as payment in full for all services required pursuant to this Agreement. Neither the BHE nor the Collaborative can or will guarantee funding or rates of payment or compensation for any year beyond the current year for which the BHE and Collaborative have received funding and reached agreement upon rates of compensation and payment.
- 4.1.3 The Parties further understand that program changes affecting compensation for Covered Services are likely to occur during the term of this Agreement and that:
  - 4.1.3.1 In the event the Collaborative initiates a material program change affecting compensation and/or payment reimbursement for any Covered Services during the term of this Agreement, prior to initiating any such change, the Collaborative shall provide the BHE with as much notice as is possible, generally at least thirty (30) Calendar Days, given the circumstance of the contemplated change and the effect it will have on compensation and payment reimbursement for any Covered Service.
  - 4.1.3.2 Upon notice of a proposed material change, the BHE may request negotiations for a modification of this Agreement concerning changes in compensation and/or payment reimbursement as provided in the notice from the Collaborative. Such program changes and any resulting negotiations and modifications shall be limited to the change in compensation and/or payment reimbursement for the program changes, and shall not subject the entire Agreement to being reopened.
  - 4.1.3.3 If the BHE does not request negotiations of this Agreement concerning a change in compensation and/or payment reimbursement for a program change within fifteen (15) Calendar Days of the notice from the Collaborative, then the change shall be implemented and become effective.
- 4.1.4 During the Agreement term, funds may become available to the Collaborative or one of its Collaborative Agencies through federal grants, State appropriations, or other sources. The Collaborative reserves the right to add new funding to this Agreement for services and activities that broadly fit within the Covered Services for this Agreement via expedited Amendment process described in Section [6.3.3.3].

## 4.2 PAYMENTS FOR SERVICES

- 4.2.1 Once a month, the BHE shall submit a separate detailed invoice to each Funding Member Agency for all Claims and Invoices the BHE has paid to Providers and Vendors and the respective Funding member Agency's share of the administrative fee. Within thirty (30) Calendar Days of receipt of the invoice, each Funding Member Agency shall either tender payment to the BHE or provide the BHE a letter of exception explaining the defect or objection to the invoice and outlining the steps the BHE may take to provide remedial action. Once the Funding Member Agency has accepted the remedial action and/or accepted the revised invoice, payment shall be tendered to the BHE within thirty (30) Calendar Days from acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. The Funding Member Agencies shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. The administrative fee is outlined in Appendix [E].
- 4.2.2 To the extent it is determined by the appropriate taxing authority that the performance of this Agreement by the BHE is subject to taxation, the amounts paid by the Collaborative to the BHE under this Agreement shall not include such tax(es) and such taxes shall be added to the amounts due from the Collaborative or the Funding Member Agencies. Therefore, the amount paid by the Collaborative and/or its respective Collaborative Agencies shall include the amounts due and all taxes that may be due and owing. The BHE is responsible for reporting and remitting all applicable taxes to the appropriate taxing agency upon payment of the amounts due and any applicable taxes. The tax amounts due pursuant to this section shall be adjusted as required to match the applicable tax rates. Notwithstanding the foregoing, it is the understanding of the Collaborative and the BHE that the transfer of funds from the Collaborative to the BHE for subsequent reimbursement to Providers for payment of Claims is not subject to New Mexico gross receipts tax.
- 4.2.3 In the event of an error that causes overpayment(s) to the BHE, the Collaborative or the applicable Funding member Agency shall provide the BHE with written notice of the overpayment and the overpayment amount shall be withheld from the next monthly payment made in accordance with Section [4.2.1] of this Agreement above. The BHE has the right to dispute any overpayment deductions in accordance with the Dispute Section set forth in this Agreement at Section [6.6]

## **SECTION 5 ENFORCEMENT**

### **5.1 GENERAL**

- 5.1.1 In the event that the BHE (or any person with an ownership interest in the BHE, affiliate, parent, or subcontractor to the BHE), fails to comply with this Agreement, the Collaborative may impose, at the Collaborative's discretion, remedies and/or penalties.
- 5.1.2 The Collaborative retains the right to apply progressively strict penalties against the BHE, including an assessment of a monetary penalty for failure to perform in any of the Agreement areas.
- 5.1.3 An assessment of a penalty does not constitute just cause for the BHE to interrupt providing the administrative services required by this Agreement.
- 5.1.4 The Collaborative may impose administrative, contractual and/or legal remedies available under federal or state law, rules, and regulations for the BHE's noncompliance under this Agreement.
- 5.1.5 The Parties agree that efficient operation of the New Mexico behavioral health system is enhanced through a cooperative relationship between the Parties. The Collaborative and the BHE agree to first attempt to resolve any dispute involving performance through good faith informal negotiations. To that end, the Collaborative shall stress communication, notice, and corrective action as the preferred method for initiating action related to the BHE's performance hereunto; provided that noting in this Section shall preclude the Collaborative from initiating the remedies and penalties set forth in this Section [5] at the discretion of the Collaborative.

### **5.2 PROCESS**

- 5.2.1 When the Collaborative determines that the BHE is not in compliance with any requirement of this Agreement, the Collaborative shall notify the BHE in writing. The written notice will include a description of the noncompliance, the basis and nature of the remedy (CAP or DCAP) or penalty, as well as any other due process protections the Collaborative elects to provide. Any notice that imposes monetary penalties will be signed by the Collaborative Co-Chairs.
- 5.2.2 The written notice of the CAP, DCAP or penalty will dictate the amount of time the BHE has to respond and/or cure the problem(s).
- 5.2.3 The BHE may dispute a penalty in accordance with the Section [6.6] of this Agreement.

### 5.3 ARRAY OF REMEDIES AND PENALTIES

5.3.1 In addition to any other administrative, contractual, or legal remedies available to the Collaborative under federal or state law, in the event that the BHE fails to comply with this Agreement, the Collaborative may impose the following types of remedies and penalties:

#### 5.3.1.1 CAP.

5.3.1.1.1 The Collaborative may require the BHE to develop and submit a CAP within the timeframe specified by the Collaborative.

5.3.1.1.2 If the BHE does not effectively implement the CAP within the timeframe specified in the CAP, the Collaborative may impose additional remedies or penalties.

#### 5.3.1.2 DCAP.

5.3.1.2.1 The Collaborative may develop a directed and very specific DCAP that the BHE shall implement.

5.3.1.2.2 If the BHE does not effectively implement the DCAP, the Collaborative may impose additional remedies or penalties.

5.3.1.2.3 The Collaborative may include a reasonable monetary penalty to the extent authorized by federal or state law in a DCAP.

#### 5.3.1.3 Appointment of a State Monitor.

5.3.1.3.1 Should the Collaborative be required to appoint a State Monitor to assure the BHE's performance, the BHE shall bear the reasonable cost of the Collaborative's intervention.

#### 5.3.1.4 Actual Damages.

5.3.1.4.1 The State may assess the BHE with actual damages to the Collaborative or Consumers resulting from the BHE's non-performance of its obligations.

## **SECTION 6 TERMS AND CONDITIONS**

### **6.1 AGREEMENT TERM**

- 6.1.1 This Agreement, including any amendments, shall be effective commencing on [ ], 2014, with the BHE providing services beginning on January 1, 2015. This Agreement shall end on June 31, [2018]. Thereafter, the Collaborative reserves the right to renew this Agreement for one-year period(s).
- 6.1.2 At the option of the Collaborative, the BHE agrees to continue services under this Agreement after the Agreement end date specified in Section [6.1.1] when the Collaborative determines that there is a public exigency that requires the services to continue. Continuation of services pursuant to this Section shall be in three (3) month increments, and the total of all public exigency extensions shall not exceed twelve (12) months. The Collaborative shall give the BHE thirty (30) Calendar Days written notice before this option is exercised.

### **6.2 APPLICABLE LAWS AND REGULATIONS**

- 6.2.1 The BHE agrees to comply with all applicable federal and State statutes, rules and regulations, policies, consent decrees, executive orders, and court orders, including Constitutional provisions regarding due process and equal protection of the law, including but not limited to:
  - 6.2.1.1 All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 7401 et seq.);
  - 6.2.1.2 Title IV and VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto, 45 C.F.R. Part 80;
  - 6.2.1.3 Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto, 45 C.F.R. Part 84;
  - 6.2.1.4 Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance;
  - 6.2.1.5 Americans with Disabilities Act, 42 U.S.C. 12101 et seq., and regulations issued pursuant thereto, 28 C.F.R. Parts 35, 36;
  - 6.2.1.6 Title IX of the Education Amendments of 1972 regarding education programs and activities;
  - 6.2.1.7 Equal Employment Opportunity provisions;

- 6.2.1.8 Byrd Anti-Lobbying Amendment;
- 6.2.1.9 Indian Child Welfare Act, 25 U.S.C. 1901 et seq., and the Indian Health Care Improvement Act;
- 6.2.1.10 Patient Protection and Affordable Care Act;
- 6.2.1.11 New Mexico Human Rights Act (NMSA 1978, 28-1-1 et seq.);
- 6.2.1.12 All applicable statutes, rules, and regulations implemented by the Federal Government or the State regarding child welfare, including but not limited to the Child and Family Services Review Act, and regulations issued pursuant thereto, 45 C.F.R. Part 1355; Title IV-B and Title IV-F of the Social Security Act; and the New Mexico Children's Code;
- 6.2.1.13 The New Mexico Adult Protective Services Act (NMSA 1978, 27-7-14 through 27-7-31);
- 6.2.1.14 HIPAA;
- 6.2.1.15 For substance abuse services funded by the SAPT Block Grant, the comprehensive Alcohol and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. §290 dd-1, et seq.), and the Public Health Service Act (42 U.S.C. §§300x, et seq.);
- 6.2.1.16 For mental health services funded by the Community Mental Health Services Block Grant, the Community Mental Health Centers Act (42 U.S.C. 2681, et seq. and 42 U.S.C. 300x, et seq.), and applicable regulations;
- 6.2.1.17 The Pro-Children Act of 1994 (20 U.S.C. 6083, et seq.), that prohibits smoking in any portion of any indoor facility used routinely or regularly for the provision of health services to children under the age of 18 funded by federal grants;
- 6.2.1.18 All procedures related to the exchange of data related to Consumers, Providers, and information between the BHE and the Collaborative or its respective member agencies as specified within department-specific regulations, manuals, policies, and memoranda; and
- 6.2.1.19 Any and all consent decrees, court orders, legally binding agreements, federal program improvement plans, and contracts related to behavioral health services entered into by the Collaborative of any of its respective member agencies.

### **6.3 AGREEMENT MODIFICATION/AMENDMENTS**

#### **6.3.1 MUTUAL AGREEMENT**

6.3.1.1 This Agreement may be amended at any time by mutual agreement of the Parties, except for payment changes subject to the Change Order Request process agreed to by the Parties. Any amendment to this Agreement must be made in writing and signed by individuals with authority to bind the Parties.

#### **6.3.2 CHANGES IN LAW OR APPROPRIATION(S)**

6.3.2.1 If (i) applicable federal or State statutes, rules, regulations, policies, or guidelines are adopted, promulgated, judicially interpreted, or changed, or (ii) changes in federal or State appropriation(s) or other circumstances require a change in the way the Collaborative manages its programs, this Agreement shall be subject to modification. Such modification shall be effected by the Collaborative sending written notice to the BHE. The Collaborative's decision as to the requirement for change in the scope of this Agreement shall be final and binding.

#### **6.3.3 MODIFICATION PROCESS**

6.3.3.1 If the Collaborative seeks modification of this Agreement, it shall provide written notice to the BHE that specifies those proposed modifications.

6.3.3.2 The BHE must respond to the Collaborative's notice of proposed modification within ten (10) Business Days of receipt, unless the notice provides for a different timeframe.

6.3.3.2.1 If the BHE fails to respond, the Collaborative shall consider the proposed modification(s) acceptable to the BHE. The Parties will then execute a written amendment to the Agreement.

6.3.3.2.2 If the BHE objects to the proposed modification(s), such proposed modification(s) shall not be implemented unless the Parties mutually agree to terms. Upon receipt of the BHE's response to the proposed modification(s), the Collaborative may enter into negotiations with the BHE to arrive at a mutually agreeable written amendment. In the event that the Collaborative determines that the Parties will be unable to reach agreement on the proposed amendment(s), then the Collaborative will provide written notice to the BHE of its intent to terminate this Agreement, or not to extend this Agreement beyond its current term.

6.3.3.3 The Collaborative reserves the right to add a new funding source to this Agreement for services and activities via an Amendment to this

Agreement. The Parties shall agree to an expedited process for the BHE to execute this amendment and return to the Collaborative in no more than five (5) Business Days.

#### 6.3.4 REQUIRED COMPLIANCE WITH AMENDMENT AND MODIFICATION PROCEDURES

6.3.4.1 No waiver of any term, covenant, or condition of this Agreement will be valid unless executed in compliance with this Section [6.3].

6.3.4.2 The BHE will not be entitled to payments for any materials, services, or facilities that are not authorized by a properly executed amendment.

### 6.4 TERMINATION

#### 6.4.1 TERMINATION EFFECTIVE DATE

6.4.1.1 Any termination of the Agreement shall be effective at the end of a month, unless otherwise specified in this Section [6].

#### 6.4.2 TERMINATION UNDER MUTUAL AGREEMENT

6.4.2.1 Under mutual agreement, the Collaborative and the BHE may terminate this Agreement for any reason if it is in the best interest of the Collaborative and the BHE. Both Parties shall sign a notice of termination which shall include, inter alia, the date of termination, conditions of termination, and extent to which performance of work under this Agreement is terminated.

#### 6.4.3 TERMINATION BY THE COLLABORATIVE FOR CAUSE

6.4.3.1 The Collaborative may terminate this Agreement at any time upon the BHE's material breach of the Agreement.

6.4.3.2 The BHE shall be deemed to have breached this Agreement if any of the following occurs:

6.4.3.2.1 The BHE fails to perform in accordance with any term or provision of this Agreement;

6.4.3.2.2 The BHE renders only partial performance of any term or provision of this Agreement;

6.4.3.2.3 The BHE engages in any act prohibited or restricted by this Agreement;

- 6.4.3.2.4 Notification to the Collaborative that the owners or managers of the BHE, or other entities with substantial contractual relationships with the BHE, have been convicted of federal healthcare Fraud, Waste or Abuse or received certain sanctions as specified in §1128 or §1128a of the Social Security Act;
  - 6.4.3.2.5 The BHE discriminates among Consumers on the basis of their Behavioral Health or disability status, or requirements for Covered Services, including expulsion or refusal to reenroll a Consumer, except as permitted by this Agreement and federal or State statutes, rules, or regulations, if the BHE engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the BHE by Consumers, or by Consumers whose condition or history indicates a need for substantial future Behavioral Health services; and
  - 6.4.3.2.6 The BHE intentionally misrepresents or falsifies information that is furnished to any governmental entity, the Collaborative, or Consumers, potential Consumers, or Providers.
- 6.4.3.3 In the event of a material breach by the BHE, the Collaborative shall have available any one or more of the following remedies in addition to, or in lieu of, any other remedies set out in this Agreement or available in law or equity:
- 6.4.3.3.1 Recover actual damages, including incidental and consequential damages, and any other remedy available at law or equity;
  - 6.4.3.3.2 Require that the BHE prepare a plan to correct the cited deficiencies immediately, unless some longer time is allowed by Collaborative, and implement this plan;
  - 6.4.3.3.3 Impose a DCAP and recover monetary penalties in accordance with Section [5] of this Agreement; and
- 6.4.3.4 Declare a default and terminate this Agreement.

#### 6.4.4 TERMINATION FOR UNAVAILABILITY OF FUNDS

- 6.4.4.1 In the event that federal and/or State funds to finance this Agreement become unavailable, the Collaborative may terminate this Agreement immediately in writing to the BHE without penalty.
- 6.4.4.2 The BHE shall be entitled to receive, and shall be limited to just and equitable compensation, for any work performed or otherwise requested by the Collaborative as of the termination date.

6.4.4.3 Availability of funds shall be determined by the Collaborative. The Collaborative's decision as to whether sufficient funds are available shall be accepted by the BHE and shall be final.

6.4.5 TERMINATION FOR BHE INSOLVENCY OR BANKRUPTCY

6.4.5.1 The BHE's insolvency or the filing of a bankruptcy petition by or against the BHE shall constitute grounds for termination for cause.

6.4.5.2 In the event the BHE becomes aware of the filing of a bankruptcy petition bankruptcy by or against a subcontractor or Provider, or the insolvency of said subcontractor or Provider, the BHE shall immediately notify the Collaborative.

6.4.6 TERMINATION FOR CONVENIENCE

6.4.6.1 The Collaborative may terminate this Agreement for convenience without cause upon ninety (90) Calendar Days written notice to the BHE.

6.4.6.2 The BHE may terminate this Agreement for convenience without cause as of the final day of the calendar year provided it provides the Collaborative with no less than one hundred twenty (120) Calendar Days' prior written notice.

6.4.7 TERMINATION PROCEDURES

6.4.7.1 The Party initiating the termination shall render written notice of termination to the other Party by certified mail, return receipt requested, or in person with proof of delivery. The notice of termination shall specify the provision of this Agreement giving the right to terminate, the circumstances giving rise to termination if so required, and the date on which such termination shall become effective.

6.4.7.2 Upon receipt of notice of termination or upon expiration of this Agreement, and subject to the provisions of this Section [6], on the date and to the extent specified in the notice of termination, the Collaborative will withhold the last month's administrative fee due to the BHE. The last month's administrative fee withhold will be returned to the BHE upon the Collaborative's reasonable determination that the BHE has substantially complied with and completed the termination and transition procedures in this Section [6.4.7] of the Contract. In addition, the BHE shall:

6.4.7.3 Upon receipt of notice of termination or upon expiration of this Agreement, and subject to the provisions of this Section [6], on the date and to the extent specified in the notice of termination, the BHE shall:

- 6.4.7.3.1 Not incur additional financial obligations for materials, services, or facilities under this Agreement without prior written approval of the Collaborative;
- 6.4.7.3.2 Terminate all purchase orders or procurements and subcontracts, and stop all work to the extent specified in the notice of termination, except as the Collaborative may direct for orderly completion and transition or as required to prevent the BHE from being in breach of its existing contractual obligations;
- 6.4.7.3.3 At the point of termination, assign to the Collaborative in the manner and extent directed by the Collaborative all the rights, title, and interest of the BHE in the subcontracts, in which case the Collaborative shall have the right, in its discretion, to settle or pay any of the claims arising out of the termination of such agreements and subcontracts;
- 6.4.7.3.4 Complete the performance of such part of the Agreement that shall have not been terminated under the notice of termination;
- 6.4.7.3.5 Take such reasonable action as may be necessary, or as the Collaborative Executive Committee or its designee may direct, and that the BHE agrees to, for the protection of property related to this Agreement that is in the possession of the BHE and in which the Collaborative has or may acquire an interest;
- 6.4.7.3.6 Promptly make available to the Collaborative, or its designated entity, any and all records, whether behavioral or financial, related to the BHE's activities undertaken pursuant to this Agreement. Such records shall be in a format specified by the Collaborative and shall be provided at no expense to the Collaborative or its designated entity;
- 6.4.7.3.7 Promptly supply all information necessary to the Collaborative or its designated entity for reimbursement for any outstanding claims at the time of termination;
- 6.4.7.3.8 Agree to maintain Claims processing functions as necessary for a minimum of twelve (12) months in order to complete adjudication of all Claims incurred during the term of this Agreement;
- 6.4.7.3.9 Agree to comply with all duties and/or obligations incurred prior to the actual termination date of the Agreement;
- 6.4.7.3.10 File all reports concerning the BHE's operations during the term of the Agreement in the manner described in this Agreement;

- 6.4.7.3.11 The BHE shall be responsible to the Collaborative for liquidated damages arising out of BHE's breach of this Agreement; and
- 6.4.7.3.12 Submit reports to the Collaborative every thirty (30) Calendar Days detailing the BHE's progress in completing its continuing obligations under this Agreement. The BHE, upon completion of these continuing obligations, shall submit a final report to the Collaborative describing how the BHE has completed its continuing obligations. The Collaborative shall, within twenty (20) Calendar Days of receipt of this report, advise in writing whether the Collaborative agrees that the BHE has fulfilled its continuing obligations. If the Collaborative finds that the final report does not evidence that the BHE has fulfilled its continuing obligations, then the Collaborative shall require the BHE to submit a revised final report. The Collaborative shall, in writing, notify the BHE once the BHE has submitted a revised final report evidencing to the satisfaction of the Collaborative that the BHE has fulfilled its continuing obligations.
- 6.4.7.4 In the event that the Collaborative terminates this Agreement for cause in full or in part, the Collaborative may procure services similar to those terminated and the BHE shall be liable to the Collaborative for any excess costs for such similar services for any calendar month for which the BHE has been paid for providing services to Consumers. In addition, the BHE shall be liable to the Collaborative for administrative costs incurred by the Collaborative in procuring such similar services. The rights and remedies of the Collaborative provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

## **6.5 GOVERNING LAW**

- 6.5.1 This Agreement shall be governed by the statutes of the State of New Mexico. All legal proceedings arising from unresolved disputes under this Agreement shall be brought before the First Judicial District Court in Santa Fe, New Mexico.

## **6.6 DISPUTES**

- 6.6.1 The component parts of the Agreement between the Collaborative and the BHE shall include:
  - 6.6.1.1 This Agreement, including all appendices, attachments, and any amendments;
  - 6.6.1.2 The RFP, including all appendices, attachments, and any amendments; and

- 6.6.1.3 The BHE's proposal submitted in response to the RFP, including any written clarifications or representations incorporated as part of the procurement or negotiation process.
- 6.6.2 In the event of a dispute under this Agreement, the various documents shall be referred to for the purpose of clarification or for additional detail in the order of priority and significance as follows: first, amendments to the Agreement in reverse chronological order; second, the Agreement, including all appendices and attachments; third, the RFP; and fourth, the BHE's proposal submitted in response to the RFP, including any written clarifications or representations incorporated as part of the procurement or negotiation process. In the event of a contradiction, conflict, or difference in language among the provisions of the documents comprising the Agreement, the conflicts or difference shall be resolved according to the order outlined in this Section.
- 6.6.3 The Collaborative reserves the right to clarify any contractual requirement in writing, and such clarifications shall govern in case of conflict with the requirements of this Contract. If an issue is addressed in the BHE's proposal that is not addressed in the RFP or Contract, no conflict in language shall be deemed to have occurred.
- 6.6.4 DISPUTE PROCEDURE INVOLVING CONTRACT TERMINATION
- 6.6.4.1 In the event the Collaborative seeks to terminate this Agreement with the BHE, the BHE may appeal the termination directly to the Collaborative Executive Committee or its designee within ten (10) Business Days of receiving the Collaborative's termination notice and proceed as follows:
- 6.6.4.1.1 The Collaborative Executive Committee or its designee shall acknowledge receipt of the BHE's appeal request within three (3) Business Days of the date the appeal request is received;
- 6.6.4.1.2 The Collaborative Executive Committee or its designee will conduct a formal hearing on the termination issues raised by the BHE thirty (30) Calendar Days after receipt of the written appeal;
- 6.6.4.1.3 Only the Collaborative and the BHE shall be considered parties to the hearing;
- 6.6.4.1.4 The hearing shall be recorded by a certified court reporter paid for equally by the Collaborative and the BHE. Copies of transcripts of the hearing shall be paid by the party requesting the copies;
- 6.6.4.1.5 The court reporter shall swear witnesses under oath;
- 6.6.4.1.6 The Collaborative Executive Committee or its designee shall determine which party presents its issues first and shall allow both

sides to question each other's witnesses in the order determined by the Collaborative Executive Committee or its designee;

- 6.6.4.1.7 The Collaborative Executive Committee or its designee may, but is not required to, allow opening statements from the parties before taking evidence;
- 6.6.4.1.8 The Collaborative Executive Committee or its designee may, but is not required to, request written findings of fact, conclusions of law, and closing arguments, or any combination thereof. The Collaborative Executive Committee or its designee may, but is not required to, allow oral closing argument only;
- 6.6.4.1.9 The Collaborative Executive Committee or its designee shall render a written decision and mail the decision by certified mail to the BHE within sixty (60) Calendar Days of the date the request for a hearing is received with copies to the Collaborative CEO and the BHE;
- 6.6.4.1.10 The Collaborative and the BHE may be represented by counsel at the hearing. The legal representatives shall submit a written request for an appearance with the Collaborative Executive Committee within fifteen (15) Calendar Days of the date of the hearing request; and
- 6.6.4.1.11 The Rules of Civil Procedure for the State of New Mexico District Courts and the New Mexico Rules of Evidence shall not apply. However, the Collaborative Executive Committee may limit evidence that is redundant or not relevant to the Agreement termination issues presented for review.

#### 6.6.5 DISPUTE PROCEDURE FOR OTHER THAN TERMINATION

- 6.6.5.1 Except for termination of this Agreement, any dispute concerning the Collaborative's enforcement imposed under Section [5] of this Agreement shall be reported in writing to the Collaborative CEO within fifteen (15) Calendar Days of the date the reporting Party receives notice of the enforcement. The decision of the Collaborative CEO regarding the dispute shall be delivered to the Parties in writing within thirty (30) Calendar Days of the date the Collaborative CEO receives the written dispute. The decision shall be final and conclusive unless, within fifteen (15) Calendar Days from the date of the decision, either Party files with the Collaborative Executive Committee a written appeal of the decision of the Collaborative CEO.

- 6.6.5.2 Any other dispute concerning performance of the Agreement shall be reported in writing to the Collaborative CEO within thirty (30) Calendar Days of the date the reporting Party knew of the activity or incident giving rise to the dispute. The decision of the Collaborative CEO shall be delivered to the Parties in writing within thirty (30) Calendar Days and shall be final and conclusive unless, within fifteen (15) Calendar Days from the date of the decision, either Party files with the Collaborative Executive Committee a written appeal of the decision of the Collaborative CEO.
- 6.6.5.3 Failure to file a timely appeal shall be deemed acceptance of the Collaborative CEO's decision and waiver of any further claim.
- 6.6.5.4 In any appeal under this Section, the Parties shall be afforded an opportunity to be heard and to offer evidence and argument in support of their position to the Collaborative Executive Committee or its designee. The appeal is an informal hearing that shall not be recorded or transcribed, and is not subject to formal rules of evidence or procedure.
- 6.6.5.5 The Collaborative Executive Committee, or its designee, shall review the issues and evidence presented and issue a determination in writing within thirty (30) Calendar Days of the informal hearing that shall conclude the administrative process available to the Parties. The Collaborative Executive Committee shall notify the Parties of the decision within thirty (30) Calendar Days of the notice of the appeal, unless otherwise agreed to by the Parties in writing or extended by the Collaborative Executive Committee for good cause. Either Party may appeal to the District Court; however, the appeal will be subject to a record rather than de novo review.
- 6.6.5.6 Pending decision by the Collaborative Executive Committee, both Parties shall proceed diligently with performance of this Agreement, in accordance with the terms of this Agreement.
- 6.6.5.7 Failure to initiate or participate in any part of this process shall be deemed waiver of any claim.

## **6.7 INDEMNIFICATION**

- 6.7.1 The BHE agrees to indemnify, defend, and hold harmless the State of New Mexico, its officers, agents, and employees from any and all claims and losses accruing or resulting from any and all BHE employees, agents, or subcontractors in connection with the breach or failure to perform, or erroneous or negligent acts or omissions in the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, association, partnership, entity, or corporation who may be injured or damaged by the BHE in the performance or failure in performance of this Agreement resulting from such

acts or omissions. The provisions of this Section [6.7.1] shall not apply to any liability, losses, charges, costs, or expenses caused by, or resulting from, in whole or in part, the acts or omissions of the State of New Mexico or any of its officers, employees, or agents.

6.7.2 The BHE shall, at all times during the term of this Agreement, indemnify and hold harmless the State against any and all liability, loss, damage, costs, or expenses that the State may sustain, incur, or be required to pay (i) by reason of any Consumer suffering personal injury, death, or property loss, or damage of any kind as a result of the erroneous or negligent acts or omissions of the BHE either while participating with or receiving care or services from the BHE under this Agreement, or (ii) while on premises owned, leased, or operated by the BHE or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for or in the control of the BHE or any officer, agent, subcontractor, or employee thereof. The provisions of this Section [6.7.2] shall not apply to any liability, losses, charges, costs, or expenses caused by, or resulting from, the acts or omissions of the State of New Mexico, or any of its officer, employees, or agents. In the event that any action, suit, or proceeding, except the BHE's appeal and grievance reviews or other administrative process, related to the services performed by the BHE, or any officer, agent, employee, servant, or subcontractor under this Agreement is brought against the BHE, the BHE shall, as soon as practicable but not later than two (2) Business Days after it receives notice thereof, notify the legal counsel of the Collaborative and the Risk Management Division of the New Mexico General Services Department by certified mail.

6.7.3 The BHE shall agree to indemnify and hold harmless the State, its agents, and employees from any and all claims, lawsuits, administrative proceedings, judgments, losses, or damages, including court costs and attorney fees, or causes of action, cause by reason of the BHE's erroneous or negligent acts, or omissions, including the following:

6.7.3.1 Any claims or losses attributable to any persons or firm injured or damaged by erroneous or negligent acts, including without limitation disregard of federal or state statutes, rules, or regulations by the BHE, its officers, employees, or subcontractors in the performance of this Agreement, regardless of whether the State knew or should have known of such erroneous or negligent acts; unless the State of New Mexico, or any of its officers, employees, or agents directed in writing to the performance of such acts; and

6.7.3.2 Any claims or losses attributable to any person or firm injured or damaged by the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under this Agreement in a manner not authorized by the Agreement or by federal or State statute, rules, or regulations, regardless of whether the State knew, or should have known,

of such publication, translation, reproduction, delivery, performance, use, or disposition; unless the State of New Mexico, or any of its officers, employees, or agents directed or affirmatively consented in writing to such publication, translation, reproduction, delivery, performance, use, or disposition.

- 6.7.4 The provision of this Section [6] shall not apply to any liabilities, losses, charges, costs, or expenses caused by, or resulting from, the acts or omissions of the State of New Mexico, or any of its officers, employees, or agents, and is not deemed to be a waiver of any and all of the BHE's legal rights to pursue indemnity actions and/or disputed claims arising from allegations involving the actions of the State and the BHE.
- 6.7.5 The BHE, including its subcontractors, agrees that in no event, including but not limited to nonpayment by the BHE, insolvency of the BHE, or breach of this Agreement, shall the BHE or its subcontractors bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against a Consumer or persons (other than the BHE) acting on their behalf for services provided pursuant to this Agreement except for any population required to make copayments under the Collaborative's policy. In no case shall the Collaborative, its respective member agencies, and/or Consumers be liable for any debts of the BHE.
- 6.7.6 The BHE agrees that the above indemnification provisions shall survive the termination of this Agreement, regardless of the cause giving rise to termination. This provision is not intended to apply to services provided after this Agreement has been terminated.
- 6.7.7 The Collaborative shall notify the BHE of any claim, loss, damage, suit, or action as soon as the Collaborative reasonably believes that such claim, loss, damage, suit, or action may give rise to a right to indemnification under this Section [6]. The failure of the Collaborative, however, to deliver such notice shall not relieve the BHE of its obligation to indemnify the Collaborative under this Section [6]. Prior to entering into any settlement for which it may seek indemnification under this Section [6], the Collaborative shall consult with the BHE, but the BHE need not approve the settlement. Nothing in this provision shall be interpreted as a waiver of the State's right to indemnification. The Collaborative shall permit the BHE, at the BHE's option and expense, to assume the defense of such asserted claim(s) using counsel acceptable of the Collaborative. Such consent shall not be unreasonably withheld. Failure to give prompt notice as provided herein shall not relieve the BHE of its obligations hereunder, except to the extent that the defense of any claim for loss is prejudiced by such failure to give timely notice.

## **6.8 STATUS OF THE BHE AND THE BHE'S PERSONNEL**

### **6.8.1 STATUS OF THE BHE**

6.8.1.1 The BHE is an independent contractor for performing professional services for the Collaborative and is not an employee of the State of New Mexico. The BHE shall not accrue leave, retirement, insurance, bonding, use State vehicles, or any other benefits afforded to State employees. The BHE acknowledges that all sums received hereunder this Agreement are reportable by the BHE for tax purposes.

6.8.1.2 The BHE shall be solely responsible for all applicable taxes, insurance, licensing, and other costs of doing business subject to the provisions of Section [4] of this Agreement. Should the BHE default in these or other responsibilities, jeopardizing the BHE's ability to perform services, this Agreement may be terminated for cause in accordance with the terms of this Agreement.

6.8.1.3 The BHE shall not purport to bind the Collaborative, its respective state agencies, its officers, directors, or employees, nor the State of New Mexico to any obligation not expressly authorized herein unless the Collaborative has expressly given the BHE the authority to do so in writing.

### **6.8.2 NO THIRD-PARTY BENEFICIARIES**

Only the Parties to this Agreement, their successors in interest, and assigns have any rights or remedies under or by reason of this Agreement.

### **6.8.3 CONDUCT OF THE BHE'S PERSONNEL AND SUBCONTRACTORS**

6.8.3.1 While performing the services required under this Agreement, the BHE's personnel and subcontractors must:

6.8.3.1.1 Comply with all applicable federal and State statutes, rules, and regulations and program guidelines and the Collaborative's requests regarding personal and professional conduct; and

6.8.3.1.2 Otherwise conduct themselves in a business-like and professional manner.

6.8.3.2 Notwithstanding any other provision of this Agreement, if the Collaborative determines in good faith that a particular employee or subcontractor is not conducting himself or herself in accordance with this Agreement, the Collaborative may provide the BHE with notice and documentation concerning such conduct. Upon receipt of such notice, the

BHE shall promptly investigate the matter and take appropriate action, which may include:

- 6.8.3.2.1 Removing the employee or the subcontractor;
- 6.8.3.2.2 Providing the Collaborative with written notice of such removal; and
- 6.8.3.2.3 Replacing the employee or subcontractor with a similarly qualified individual acceptable to the Collaborative.
- 6.8.3.3 The BHE agrees that anyone employed or retained by the BHE to fulfill the terms of this Agreement remains under the BHE's sole direction and control.
- 6.8.4 The BHE shall have policies regarding disciplinary action for all employees who fail to comply with federal and/or State statutes, rules, or regulations and the BHE's standards of conduct, policies, and procedures, and requirements under this Agreement. The BHE shall have policies regarding disciplinary action for all employees who engage in illegal or unethical conduct. The BHE shall produce such policies within a reasonable timeframe upon the Collaborative's request.
- 6.8.5 The BHE may not have an employment, consulting, or other agreement with a person who has been convicted of a crime specified in sections 1128 or 1128A of the Social Security Act for the provisions of items and services that are significant and material to the BHE's obligations under this Agreement.
- 6.8.6 The BHE shall not contract with an individual Provider, an entity, or an entity with an individual who is an officer, director, agent, manager, or person with more than five percent (5%) of beneficial ownership of an entity's equity, that has been convicted of crimes specified in the sections 1128 and 1128A of the Social Security Act, or who has a contractual relationship with an entity convicted of a crime specified in such section.

## **6.9 INTELLECTUAL PROPERTY AND COPYRIGHT**

### **6.9.1 INFRINGEMENT AND MISAPPROPRIATION**

- 6.9.1.1 The BHE warrants that all materials provided by the BHE will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other intellectual property rights.
- 6.9.1.2 The BHE will, at its expense, defend with counsel approved by the Collaborative, indemnify, and hold harmless the Collaborative, its employees, officers, directors, contractors, and agents from and against

any losses, liabilities, damages, penalties, costs, and fees from any claim or action against the Collaborative that is based on a claim of breach of the warranty set forth in Section [6.9.1.1] of this Agreement. The Collaborative will promptly notify the BHE in writing of the claim, provide the BHE a copy of all information received by the Collaborative with respect to the claim, and cooperate with the BHE in defending or settling the claim. The Collaborative will not unreasonably withhold, delay or condition approval of counsel selected by the BHE.

6.9.1.3 If materials are held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to the BHE to be likely to be brought, the BHE will, at its own expense, either:

6.9.1.3.1 Procure for the Collaborative the right to continue using the materials; or

6.9.1.3.2 Modify or replace the materials to comply with this Agreement and to not violate any intellectual property rights.

## 6.9.2 EXCEPTIONS

6.9.2.1 The BHE is not responsible for any claimed breaches of the warranties set forth in Section [6.9.1.1], above, to the extent caused by:

6.9.2.1.1 Modifications made to the item in question by anyone other than the BHE or its subcontractors, or modifications made by Collaborative or its contractors working at the Collaborative's direction or in accordance with the specifications;

6.9.2.1.2 The combination, operation, or use of the item with other terms if the BHE did not supply or approve for use with the item; or

6.9.2.1.3 The Collaborative's failure to use any new or corrected versions of the item made available by the BHE.

## 6.9.3 OWNERSHIP AND LICENSES

6.9.3.1 The Parties agree that any materials, including without limitation the Custom Software developed by the BHE for the State, will be the exclusive property of the Collaborative.

6.9.3.2 The Collaborative will own all right, title, and interest in and to its Confidential Information and the materials provided by the BHE, including without limitation the Custom Software and associated documentation. For purposes of this Section, the materials will not include the BHE's Proprietary Software or Third Party Software. The BHE will take all actions necessary and transfer ownership of the materials to the

Collaborative, including without limitation the Custom Software and associated documentation prior to the termination of this Agreement.

6.9.3.3 The BHE will furnish such material, upon request of the Collaborative, in accordance with applicable State law. All materials, in whole and in part, will be deemed works made for hire of the Collaborative for all purposes of copyright law, and the copyright will belong solely to the Collaborative. To the extent that any materials do not qualify as a work for hire under applicable law, and to the extent that the materials include items subject to copyright, patent, trade secret, or other proprietary right protection, the BHE agrees to assign, and hereby assigns, all right, title, and interest in and to the materials, including without limitation all copyrights, inventions, patents, trade secrets, and other proprietary rights therein (including renewals thereof) to the Collaborative.

6.9.3.4 The BHE will, at the Collaborative's expense, assist the Collaborative or its nominee to obtain copyrights, trademarks, or patents for all such materials in the United States and any other countries. The BHE agrees to execute all papers and to give all facts known to it necessary to secure United States or foreign copyrights and patents, and to transfer or cause to transfer to the Collaborative all the right, title, and interest in and to such materials. The BHE also agrees not to assert any moral rights under applicable copyright law with regard to such materials.

#### 6.9.3.5 LICENSE RIGHTS

6.9.3.5.1 The Collaborative will have a royalty-free and non-exclusive license to access the BHE's Proprietary Software and associated documentation during the term of this Agreement. The Collaborative will also have ownership and unlimited rights to use, disclose, duplicate, or publish all information and data developed, derived, documented, or furnished by the BHE under, or resulting from, this Agreement. Such data will include all results, technical information, and materials developed for and/or obtained by the Collaborative from the BHE in the performance of the services hereunder, including but not limited to all reports, surveys, plans, charts, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, computer printouts, notes and memoranda, and documents (whether finished or unfinished) that result from or are prepared in conjunction with this Agreement.

#### 6.9.3.6 PROPRIETARY NOTICES

6.9.3.6.1 The BHE will reproduce and include the Collaborative's copyright and other proprietary notices and product identifications provided

by the BHE on such copies, in whole or in part, or on any form of the materials.

#### 6.9.3.7 STATE AND FEDERAL GOVERNMENTS

6.9.3.7.1 In accordance with 45 C.F.R. § 95.617, all appropriate State and federal agencies will have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, translate, or otherwise use – and to authorize others to use for federal government purposes – all materials, the Custom Software and modifications thereof, and associated documentation designed, developed, or installed with federal financial participation under this Agreement, including but not limited to those materials covered by copyright, all software source and object code, instructions, files, and documentation.

### 6.10 ASSIGNMENT

6.10.1 The BHE shall not assign, transfer, or delegate any rights, obligations, duties, or other interest in this Agreement or assign any claim for money due or to become due under this Agreement except with the prior written consent of the Collaborative.

### 6.11 SUBCONTRACTS

6.11.1 With the exception of Provider agreements or other subcontracts expressly permitted under this Agreement, the BHE shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Collaborative. No such subcontract shall relieve the BHE from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Collaborative or any of its respective member agencies.

#### 6.11.2 SUBCONTRACT RELATIONSHIPS AND DELEGATION

6.11.2.1 The BHE shall evaluate and certify to the Collaborative that the prospective subcontractor has the ability to perform the activities to be delegated.

6.11.2.2 The BHE shall require that the agreement be in writing and specify the activities and report responsibilities delegated to the subcontractor and provide for revoking delegation or imposing other sanctions if the subcontractor's performance is inadequate.

6.11.2.3 The BHE shall have and implement policies and procedures for the oversight of the subcontractor's performance of the subcontracted functions and make such policies and procedures available to the

Collaborative within a reasonable timeframe upon the Collaborative's request.

6.11.2.4 The BHE shall maintain policies and procedures for verifying that the credentials of all its Providers and subcontractors meet applicable standards as stated in this Agreement, including all Attachments.

6.11.2.5 The Collaborative maintains the right to review all transactions from a subcontractor to the BHE at any time.

### 6.11.3 LEGAL RESPONSIBILITY

6.11.3.1 The BHE is solely responsible for fulfillment of this Agreement. The Collaborative shall make payments only to the BHE. In the event that any subcontractor is incapable of performing the service contracted for by the BHE, the BHE shall assume responsibility for providing the services that the subcontractor is incapable of performing.

### 6.11.4 PRIOR APPROVAL

6.11.4.1 The BHE shall give the Collaborative CEO prior notice with regard to its intent to subcontract any functions required under this Agreement. The Collaborative reserves the right to disallow a proposed subcontracting arrangement if the proposed subcontractor has been formally restricted from participating in a federal entitlement program (e.g., Medicare, Medicaid) or for other good cause.

6.11.4.2 All subcontracts and revisions thereto shall be approved in advance in writing by the Collaborative. The BHE shall revise subcontracts as directed by the Collaborative. Once a subcontract has been executed by all of the participating parties, a copy of the fully executed subcontract shall be sent to the Collaborative within thirty (30) Calendar Days of execution.

### 6.11.5 NOTICE OF SUBCONTRACTOR TERMINATION

6.11.5.1 If the BHE changes vendors for a specific subcontracted function during the term of this Agreement, the BHE shall pay an independent monitor, as selected by the Collaborative, to determine whether the new vendor is ready to perform the contracted function. The BHE shall not make any payments to the new vendor until the vendor has been determined ready.

## 6.12 RELEASE

6.12.1 Upon final payment of the amounts due under this Agreement, unless the BHE objects in writing to such payment within one hundred eighty (180) Calendar Days, the BHE shall release the Collaborative, its respective member agencies, its officers and employees, and the State of New Mexico from all such payment

obligations whatsoever under this Agreement. The BHE agrees not to purport to bind the State of New Mexico. If the BHE objects in a timely manner to such payment, such objection shall be addressed in accordance with the Dispute Section provided for in this Agreement.

- 6.12.2 Payment to the BHE by the Collaborative shall not constitute final release of the BHE. Should audit or inspection of the BHE's records or the BHE's Consumer grievances subsequently reveal outstanding BHE liabilities or obligations, the BHE shall remain liable to the Collaborative for such obligations. Any payments by the Collaborative to the BHE shall be subject to any appropriate recoupment by the State.
- 6.12.3 Notice of any post-termination audit or investigation of complaint by the Collaborative shall be provided to the BHE, and such audit or investigation shall be initiated in accordance with federal and state statutes, rules and regulations. The Collaborative shall notify the BHE of any claim or demand within thirty (30) Calendar Days after completion of the audit or investigation or as otherwise authorized by law or regulations. Any payments by the Collaborative to the BHE shall be subject to any appropriate recoupment by the State.

## **6.13 RECORDS AND AUDIT**

### **6.13.1 MEDICAL RECORDS**

- 6.13.1.1 The BHE shall maintain, and shall require its subcontractors, including Providers, to maintain appropriate records in accordance with federal and State statutes, regulations, and rules relating to the BHE's performance under this Agreement, including but not limited to records relating to services provided to Consumers, including a separate medical record for each Consumer. Each medical record shall be maintained on paper and/or in electronic format in a manner that is timely, legible, current, and organized and that permits effective and confidential patient care and quality review.
- 6.13.1.2 The BHE shall require its subcontractors, including Providers, to permit Consumers and/or the authorized representatives to review and copy the Consumer's medical record in accordance with federal and State statutes, regulations, and rules.

### **6.13.2 FINANCIAL RECORDS**

- 6.13.2.1 The BHE shall maintain, and require its subcontractors, including Providers, to maintain financial records, supporting documentation, statistical records, and all other records pertinent to the services rendered under this Agreement for a period of ten (10) years from the termination date with the exception of the following:

- 6.13.2.1.1 If any litigation, grievance, and/or appeals, claim, financial management review, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, grievance, and/or appeals, claim, or audit findings involving the records have been resolved and final action taken; and
- 6.13.2.1.2 Records relating to real property and/or personal property has been acquired with federal funds, such records shall be retained for ten (10) years after final disposition of the property.

### 6.13.3 PROVIDER AND CONSUMER COMPLAINTS AND CONCERNS

- 6.13.3.1 All files related to Consumer and Provider concerns (see Section [3.21] of the Agreement) shall be maintained in a secure, designated area and be accessible to the Collaborative upon request, for review. Such files shall be retained for ten (10) years following the final decision by the BHE, the Collaborative, final decisions by a court of competent jurisdiction, or closure of a file, whichever occurs later.
- 6.13.3.2 Documentation regarding the Consumer or Provider concern or dispute shall be made available to the Consumer/Provider, if requested.

### 6.13.4 ACCESS TO RECORDS, BOOKS, AND DOCUMENTS

- 6.13.4.1 Upon reasonable notice, the BHE must provide, and cause its subcontractors, including Providers, to provide, the officials and entities identified in this Section [6.13.4] with reasonable and adequate access to any records that are related to the scope of work performed under this Agreement within two (2) to ten (10) Business Days.
- 6.13.4.2 The BHE and its subcontractors must provide the access described in this Section upon the Collaborative's request. This request may be for, but is not limited to, the following purposes:
  - 6.13.4.2.1 Examination;
  - 6.13.4.2.2 Audit;
  - 6.13.4.2.3 Investigation;
  - 6.13.4.2.4 Agreement administration; or
  - 6.13.4.2.5 The making of copies, excerpts, or transcripts.
- 6.13.4.3 The access required must be provided to the following officials and/or entities:

- 6.13.4.3.1 HSD;
  - 6.13.4.3.2 The Collaborative or its designee;
  - 6.13.4.3.3 The New Mexico Attorney General's Office or its designee;
  - 6.13.4.3.4 Any independent verification and validation contractor, audit firm, or quality assurance contractor acting on behalf of the Collaborative;
  - 6.13.4.3.5 The Office of the State Auditor or its designee;
  - 6.13.4.3.6 A State or federal law enforcement agency;
  - 6.13.4.3.7 A special or general investigating committee of the New Mexico Legislature or its designee; and
  - 6.13.4.3.8 Any other State or federal entity identified by the Collaborative, or any other entity engaged by the Collaborative.
- 6.13.4.4 The BHE agrees to provide the access described wherever the BHE maintains such books, records, and supporting documentation. The BHE further agrees to provide such access in reasonable comfort and to provide any furnishings, equipment, or other conveniences deemed necessary to fulfill the purposes described in this Section. The BHE will require its subcontractors, including Providers, to provide comparable access and accommodations.
- 6.13.5 Upon request, the BHE must provide copies of the information described in this Section free of charge to the Collaborative and the entities described in this Section.

## **6.14 LIABILITY**

- 6.14.1 The BHE shall administer all other Covered Services on an ASO basis as specified in this Contract. No additional payment shall be made by the Collaborative other than that specified in this Agreement, nor shall any payment be collected from a Consumer, except for co-payments authorized by the Collaborative or State laws or regulations.
- 6.14.2 The BHE is solely responsible for ensuring that it issues no payments for services for which it is not liable under this Agreement. The Collaborative shall accept no responsibility for refunding to the BHE any such excess payments unless the Collaborative or Collaborative CEO directed such services to be rendered or payment made.

- 6.14.3 The BHE, its successors, and assignees shall procure and maintain such insurance and other forms of financial protections as are identified in this Agreement.

#### **6.15 ERRONEOUS ISSUANCE OF PAYMENT OR BENEFITS**

- 6.15.1 In the event of an error that causes payment(s) to the BHE to be issued by the Collaborative, the Collaborative shall deduct amounts from future payments after thirty (30) Calendar Days of written notice of such error.

#### **6.16 EXCUSABLE DELAYS**

- 6.16.1 The BHE shall be excused from performance hereunder for any period that it is prevented from performing any services hereunder in whole or in part as a result of an act of nature, war, civil disturbance, court order, or other cause beyond its reasonable control, and such nonperformance shall not be a default hereunder or ground for termination of this Agreement.
- 6.16.2 Suspensions under Force Majeure shall require the Party seeking suspension to give notification to the other Party at least five (5) Business Days before the imposition of the suspension. The receiving Party will be deemed to have agreed to such suspension unless having posted to mail such objection or non-consent within five (5) Business Days of receipt of request for suspension. The performance of any Party's obligations under this Agreement shall be suspended during the period that any circumstances of Force Majeure persists, or for a consecutive period of forty-five (45) Calendar Days, whichever is shorter, and such Party shall be granted an extension of time for performance equal to the period of suspension.
- 6.16.3 The BHE shall be excused from performance hereunder during any period for which the State of New Mexico has failed to enact a budget or appropriate monies to fund Covered Services, provided that the BHE notifies the Collaborative, in writing, of its intent to suspend performance and the Collaborative is unable to resolve the budget or appropriation deficiencies within forty-five (45) Calendar Days.

#### **6.17 PROHIBITION OF BRIBES, GRATUITIES, AND KICKBACKS**

- 6.17.1 Pursuant to the State of New Mexico statutes and regulations, the receipt or solicitation of bribes, gratuities, and kickbacks is strictly prohibited.
- 6.17.2 No public officer or employee of the State of New Mexico shall benefit financially or materially from this Agreement. No individual employed by the State of New Mexico shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

6.17.3 The Collaborative may, by written notice to the BHE, immediately terminate the right of the BHE to proceed under this Agreement if it is found, after notice and hearing by the Collaborative CEO or his or her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the BHE or any agent or representative of the BHE to any officer or employee of the State of New Mexico with a view toward securing this Agreement or securing favorable treatment with respect to the award or amending or making of any determinations with respect to the performance of such Agreement. In the event the Agreement is terminated as provided in this Section, the State of New Mexico shall be entitled to pursue the same remedies against the BHE as it would pursue in the event of a breach of contract by the BHE and as a penalty in addition to any other damages to which the Collaborative may be entitled to by law.

## **6.18 LOBBYING**

6.18.1 The BHE certifies by signing this Agreement to the best of its knowledge and belief, that federal funds have not been used for lobbying in accordance with 45 C.F.R. Part 93 and 31 U.S.C. § 1352. 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 under 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for such failure.

6.18.2 The BHE shall disclose any lobbying activities using non-federal funds in accordance with 45 C.F.R. Part 93.

6.18.3 The BHE shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

## **6.19 CONFLICT OF INTEREST**

6.19.1 The BHE 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.

6.19.2 The BHE 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 New Mexico Government Conduct Act, Chapter 10, and Article 16 NMSA 1978. Without in

any ways limiting the generality of the foregoing, the BHE specifically represents and warrants that:

6.19.2.1 In accordance with NMSA 1978, § 10-16-4.3 the BHE does not employ, has not employed, and will not employ during the term of this Agreement any Collaborative employee while such employee was or is employed by the Collaborative and participating directly or indirectly in the Collaborative's contracting process;

6.19.2.2 This Agreement complies with NMSA 1978, § 10-16-7(A) because:

6.19.2.2.1 The BHE is not a public officer or employee of the State of New Mexico;

6.19.2.2.2 The BHE is not a member of the family of a public officer or employee of the State of New Mexico;

6.19.2.2.3 The BHE is not a business in which a public officer or employee or the family of a public officer or employee of the State of New Mexico has a substantial interest; or

6.19.2.2.4 If the BHE is a public officer or employee of the State of New Mexico, a member of the family of a public officer or employee of the State of New Mexico, 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;

6.19.2.3 In accordance with NMSA 1978, § 10-16-8(A):

6.19.2.3.1 The BHE is not, and has not been, represented by a person who has been a public officer or employee of the State of New Mexico within the preceding year and whose official act directly resulted in this Agreement; and

6.19.2.3.2 The BHE is not, and has not been, assisted in any way regarding this transaction by a former public officer or employee of the State of New Mexico whose official act, while in State employment, directly resulted in the Collaborative's making this Agreement;

6.19.2.4 This Agreement complies with NMSA 1978, § 10-16-9(A) because:

6.19.2.4.1 The BHE is not a legislator;

6.19.2.4.2 The BHE is not a member of a legislator's family;

- 6.19.2.4.3 The BHE is not a business in which a legislator or a legislator's family has a substantial interest; or
- 6.19.2.4.4 If the BHE is a legislator, a member of a legislator's family, or a business in which a legislator or legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-9(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, NMSA 1978, 13-1-28 et seq.;
- 6.19.2.5 In accordance with NMSA 1978, § 10-16-13, the BHE has not directly participated in the preparation of specifications, qualifications, or evaluation criteria for this Agreement or any procurement related to this Agreement; and
- 6.19.2.6 In accordance with NMSA 1978, §§ 10-16-3 and 10-16-13.3, the BHE has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Collaborative.
- 6.19.3 The BHE's representations and warranties in Section [6.19] are material representations of fact upon which the Collaborative relied when this Agreement was entered into by the Parties. The BHE shall provide immediate written notice to the Collaborative if, at any time during the term of this Agreement, the BHE learns that the BHE's representations and warranties in Section [6.19] of this Agreement 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 BHE's representations and warranties in Section [6.19] of this Agreement 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 Collaborative and notwithstanding anything in this Agreement to the contrary, the Collaborative may immediately terminate this Agreement.
- 6.19.4 All terms defined in the Governmental Conduct Act have the same meaning in this Section.

## **6.20 HIPAA COMPLIANCE**

- 6.20.1 The BHE must comply with applicable provisions of HIPAA. This includes, but is not limited to, the requirement that the BHE's management Information System complies with applicable certificate of coverage and data specification and reporting requirements promulgated pursuant to HIPAA. The BHE must comply with HIPAA electronic data interchange requirements.

- 6.20.2 The BHE must comply with HIPAA notification requirements, including those set forth in the HITECH Act. The BHE must notify the Collaborative of all breaches or potential breaches of unspecified protected health information, as defined by the HITECH Act, without unreasonable delay and in no event later than thirty (30) Calendar Days after discovery of the breach or potential breach. If, in the Collaborative's determination, the BHE has not provided notice in the manner or format prescribed by the HITECH Act, then the Collaborative may require the BHE to provide such notice.

## **6.21 DISCLOSURE AND CONFIDENTIALITY INFORMATION**

### **6.21.1 CONFIDENTIALITY**

- 6.21.1.1 The BHE, its employees, agents, subcontractors, consultants, or advisors must treat all information that is obtained through Providers' performance of the services under this Agreement, including but not limited to information relating to Consumers and potential Consumers, as Confidential Information to the extent that confidential treatment is provided under State and federal law, rules, and regulations.
- 6.21.1.2 The BHE is responsible for understanding the degree to which information obtained through the performance of this Agreement is confidential under federal and State law, rules, and regulations.
- 6.21.1.3 The BHE and all subcontractors, consultants, advisors, or agents shall not use any information obtained through performance of this Agreement in any manner except as is necessary for the proper discharge of obligations and securing of rights under this Agreement.
- 6.21.1.4 Within thirty (30) Calendar Days of the effective date of this Agreement, the BHE shall develop and provide to the Collaborative for review and approval written policies and procedures for the protection of all records and all other documents deemed confidential under this Agreement.
- 6.21.1.5 Any disclosure or transfer of Confidential Information by the BHE, including information required by the Collaborative, will be in accordance with applicable law. If the BHE receives a request for information deemed confidential under this Agreement, the BHE shall immediately notify the Collaborative of such request, and will make reasonable efforts to protect the information from public disclosure.
- 6.21.1.6 In addition to the requirements expressly stated in this Section, the BHE must comply with any policy, rule, or reasonable requirement of the Collaborative that relates to the safeguarding or disclosure of information relating to Consumers, the BHE's operations, or the BHE's performance of this Agreement.

- 6.21.1.7 In the event of the expiration of this Agreement or termination thereof for any reason, all Confidential Information disclosed to, and all copies thereof made by, the BHE must be returned to the Collaborative or, at the Collaborative's option, erased or destroyed. The BHE must provide the Collaborative certificates evidencing such destruction.
- 6.21.1.8 The BHE's contracts with Providers shall explicitly state expectations about the confidentiality of the Collaborative's Confidential Information and Consumer records.
- 6.21.1.9 The BHE shall afford Consumers and/or representatives the opportunity to approve or deny the release of identifiable personal information by the BHE to a person or entity outside of the BHE, except to duly authorized subcontractors, Providers, or review organizations, or when such release is required by law, court order, subpoena, regulation, or quality standards.
- 6.21.1.10 The obligations of this Section must not restrict any disclosure by the BHE pursuant to any applicable law, or under any court or government agency, provided that the BHE must give prompt notice to the Collaborative of such order.
- 6.21.2 DISCLOSURE OF THE COLLABORATIVE'S CONFIDENTIAL INFORMATION
- 6.21.2.1 The BHE will immediately report to the Collaborative any and all unauthorized disclosures or uses of Confidential Information of which it or its subcontractors, consultants, agents, or Providers is aware or has knowledge. The BHE acknowledges that any publication or disclosure of Confidential Information to others may cause immediate and irreparable harm to the Collaborative and may constitute a violation of federal or State statutes, rules, or regulations. If the BHE, its subcontractors, consultants, or agents should publish or disclose Confidential Information to others without authorization, the Collaborative will immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity. The Collaborative will have the right to recover from the BHE all damages and liabilities caused by or arising from the BHE's, its subcontractors', Providers', representatives', consultants', or agents' failure to protect Confidential Information. The BHE will defend with counsel approved by the Collaborative, indemnify, and hold harmless the Collaborative from all damages, costs, liabilities, and expenses caused by or arising from the BHE's, or its subcontractors', Providers', representatives', consultants', or agents' failure to protect Confidential Information. The Collaborative will not unreasonably withhold approval of counsel selected by the BHE.

6.21.2.2 The BHE shall require its subcontractors, consultants, and agents to comply with the terms of this Section.

### 6.21.3 CONSUMER RECORDS

6.21.3.1 The term “Consumer record” for purposes of this Section means only those administrative, enrollment, and other such records maintained by the BHE, and is not intended to include Consumer records maintained by Providers.

6.21.3.2 The BHE must comply with the requirements of federal and State statutes, rules, and regulations, including HIPAA and the Substance Abuse and Mental Health Services Administration requirements set forth in this Agreement, regarding the transfer of Consumer records.

6.21.3.3 The BHE shall have an appropriate system in effect to protect substance abuse Consumer records from inappropriate disclosure in accordance with federal and State statutes, rules, and regulations, including 42 U.S.C. § 300x-53(b) and 45 C.F.R. § 96.13(e).

6.21.3.4 If this Agreement is terminated, the Collaborative may require the transfer of Consumer records, upon written notice to the BHE, to another entity, as consistent with federal and State statutes, rules, and regulations and applicable releases.

### 6.21.4 REQUESTS FOR PUBLIC INFORMATION

6.21.4.1 When the BHE produces reports or other forms of information that the BHE believes consist of proprietary or otherwise Confidential Information, the BHE must clearly mark such information as Confidential Information or provide written notice to the Collaborative that it considers the information confidential.

6.21.4.2 If the Collaborative receives a request, filed in accordance with the New Mexico Inspection of Public Records Act, NMSA 1978, 14-2-1 et seq. (“IPRA”), seeking information that has been identified by the BHE as proprietary or otherwise confidential, the Collaborative will deliver a copy of the IPRA request to the BHE.

### 6.21.5 UNAUTHORIZED ACTS

6.21.5.1 Each Party agrees to:

6.21.5.1.1 Notify the other Party promptly of any unauthorized possession, use, or knowledge, or attempt thereof, by any person or entity that may become known to it, of any Confidential Information or any information identified as confidential or proprietary;

- 6.21.5.1.2 Promptly furnish to the other Party full details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist the other Party in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information;
- 6.21.5.1.3 Cooperate with the other Party in any litigation and investigation against third parties deemed necessary by such Party to protect its proprietary rights; and
- 6.21.5.1.4 Promptly prevent a recurrence of any such unauthorized possession, use, or knowledge of such information.

#### 6.21.6 INFORMATION SECURITY

- 6.21.6.1 The BHE and all its subcontractors, consultants, representatives, Providers, and agents must comply with all applicable statutes, rules, and regulations regarding information security, including without limitation the following:
  - 6.21.6.1.1 Health and Human Services Enterprise Information Security Standards and Guidelines;
  - 6.21.6.1.2 HIPAA;
  - 6.21.6.1.3 HITECH Act; and
  - 6.21.6.1.4 NMAC 1.12.20 et seq.

#### 6.22 COOPERATION REGARDING FRAUD

- 6.22.1 When, in the BHE's professional judgment, suspicious activities may have occurred, the BHE shall refer such cases to the Collaborative within five (5) Business Days.
- 6.22.2 The BHE shall cooperate fully with any and all requests from the Collaborative, HSD, the New Mexico Attorney General Office, or other State or federal investigative agency for additional documentation or other types of collaboration in accordance with applicable law.
- 6.22.3 The BHE shall cooperate fully in any civil or criminal investigation by the New Mexico Attorney General Office or other State or federal agency, as well as any subsequent legal action that may result from such investigation. The BHE and its subcontractors and Providers shall, upon request, make available to the New Mexico Attorney General Office or other State or federal agency conducting an investigation any and all administrative, financial, and medical records relating to the delivery of items or services for which State monies are expended, unless

otherwise provided by law. In addition, the New Mexico Attorney General Office or other State or federal agency shall be allowed to have access during normal business hours to the place of business and all records of the BHE and its subcontractors and Providers, except under special circumstances when after hours access shall be allowed. Special circumstances shall be determined by the New Mexico Attorney General Office or other State or federal agency.

- 6.22.4 Should the BHE know about or become aware of any investigation being conducted by the New Mexico Attorney General Office or another State or federal agency, the BHE and its representatives, agents, and employees shall maintain the confidentiality of this information.

## **6.23 WAIVERS**

- 6.23.1 No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing by the Party claimed to have waived or consented.
- 6.23.2 A waiver by any Party hereto of a breach of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

## **6.24 SUSPENSION, DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

- 6.24.1 Pursuant to either 7 C.F.R. Part 3017 or 45 C.F.R. Part 76, as applicable, and other applicable federal regulations, the BHE certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief and except as otherwise disclosed in writing by the BHE to the Collaborative prior to the execution of this Agreement: (i) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal department or agency; (ii) have not, within a three (3) year period preceding the effective date of this Agreement, 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; (iii) 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 Section [6.24.1]; (iv) have not, within a three (3) year period preceding the effective date of this Agreement, had one or more public agreements or transactions (federal, State, or local) terminated for cause or default; and (v) have not been excluded from participation from Medicare, Medicaid, federal health care programs, or federal Behavioral Health care programs pursuant to

Title XI of the Social Security Act, 42 U.S.C. § 1320a-7 and other applicable federal statutes. The BHE may not knowingly have a relationship with the following:

- 6.24.1.1 An individual who is an affiliate, as defined in the Federal Acquisition Regulations Systems 48 C.F.R. Part 1 et seq., who is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549; or
- 6.24.1.2 For purposes of this Section, an individual who is an affiliate, as defined in the Federal Acquisition Regulation, has a “relationship” if such individual is:
  - 6.24.1.2.1 A director, officer, or partner of the BHE;
  - 6.24.1.2.2 A person with beneficial ownership of five percent (5%) or more of the BHE’s equity; or
  - 6.24.1.2.3 A person with an employment, consulting, or other arrangement with the BHE obligations under this contract with the Collaborative.
- 6.24.2 The BHE’s certification in Section [6.24.1] is a material representation of fact upon which the Collaborative relied when this Agreement was entered into by the Parties. The BHE shall provide immediate written notice to the Collaborative, if, at any time during the term of this Agreement, the BHE learns that its certification in Section [6.24.1] was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined that the BHE’s certification in Section [6.24.1] was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Collaborative, the Collaborative may terminate the Agreement.

## **6.25 NEW MEXICO EMPLOYEES’ HEALTH COVERAGE**

- 6.25.1 If the BHE has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least twenty (20) hours per week over a six (6) month period in New Mexico during the term of this Agreement, the BHE certifies, by signing this Agreement, to have in place, and agree to maintain for the term of this Agreement, health insurance for those employees and offer that health insurance to those employees.
- 6.25.2 The BHE agrees to maintain a record of the number of employees who have:

- 6.25.2.1 Accepted health insurance;
- 6.25.2.2 Declined health insurance due to other health insurance coverage already in place; or
- 6.25.2.3 Declined health insurance for other reasons.

6.25.3 These records are subject to review and audit by a representative of the State.

## **6.26 DUTY TO COOPERATE**

6.26.1 The Parties agree that they will cooperate in carrying out the intent and purpose of this Agreement. This duty includes, specifically, an obligation by the Parties to continue performance of the Agreement in the spirit it was written, in the event they identify any possible errors or problems associated with the performance of their respective obligations under this Agreement.

## **6.27 ENTIRE AGREEMENT/MERGER**

6.27.1 This Agreement (see Section [6.6.1]) shall represent the entire agreement between the BHE and the Collaborative and will supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter hereof.

## **6.28 PENALTIES FOR VIOLATION OF LAW**

6.28.1 The Procurement Code, sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation.

## **6.29 WORKERS' COMPENSATION**

6.29.1 The BHE agrees to comply with State statutes and rules applicable to workers' compensation benefits for its employees.

## **6.30 SEVERABILITY**

6.30.1 If any provision of this Agreement is construed to be illegal, invalid, or unenforceable, such interpretation and/or determination will not affect the legality or validity of any other provisions. The illegal, invalid, or unenforceable provision will be deemed stricken and deleted to the same extent and effect as if never incorporated into this Agreement with all other provisions remaining in full force and effect.

## **6.31 USE OF DATA**

6.31.1 The Collaborative shall have unlimited, but not exclusive, rights to use, disclose, or duplicate, for any purpose whatsoever, all information and data developed,

derived, documented, or furnished by the BHE resulting from this Agreement. However, the Collaborative shall not disclose proprietary information that is afforded confidential status by State or federal law.

### **6.32 TITLES/HEADINGS**

6.32.1 Titles of paragraphs or section headings used in this Agreement are for the purpose of facilitating use or reference only and shall not be considered in the interpretation of this Agreement.

### **6.33 ATTORNEYS' FEES**

6.33.1 In the event that any Party deems it necessary to take legal action to enforce any provision of this Agreement and the Collaborative prevails, the BHE agrees to pay all expenses of such action, including attorneys' fees and the cost of all State litigation as may be set by the court or hearing officer. Legal actions are defined to include administrative proceedings.

### **6.34 AUTHORITY**

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

### **6.35 STATE CONTRACT ADMINISTRATOR**

6.35.1 The Contract Administrator shall be designated by the Collaborative. The Collaborative shall notify the BHE of any changes in the identity of the Contract Administrator. The Contract Administrator is empowered and authorized as the agent of the Collaborative to represent the State in all matters related to this Agreement except those reserved to other State personnel by this Agreement. Notwithstanding the foregoing, the Contract Administrator does not have the authority to amend the terms and conditions of this Agreement. All events, problems, concerns, or requests affecting this Agreement shall be reported by the BHE to the Contract Administrator.

### **6.36 SURVIVAL OF TERMS**

6.36.1 Termination or expiration of this Agreement for any reason will not release any Party from any liabilities or obligations set forth in this Agreement that:

6.36.1.1 The Parties have expressly agreed shall survive any such termination or expiration; or

6.36.1.2 Remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

### **6.37 CALCULATION OF TIME**

- 6.37.1 Any time period herein calculated by reference to “days” means Calendar Days, unless further defined and provided; however, if the last day for a given act falls on a Saturday, Sunday, or a holiday observed by the State of New Mexico, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

### **6.38 NO IMPLIED AUTHORITY**

- 6.38.1 The authority delegated to the BHE by the Collaborative is limited to the terms of this Agreement. The BHE may not rely upon implied authority and specifically is not delegated authority under this Agreement to:
- 6.38.1.1 Make public policy;
  - 6.38.1.2 Promulgate, amend, or disregard administrative regulations or program policy decisions made by the State and federal agencies responsible for administration of the Collaborative’s programs; or
  - 6.38.1.3 Unilaterally communicate or negotiate with any federal or State agency or the New Mexico State Legislature on behalf of the Collaborative regarding the Collaborative’s programs.
- 6.38.2 The BHE is required to cooperate to the fullest extent possible to assist the Collaborative in communications and negotiations with State and federal governments and agencies as directed by the Collaborative.

### **6.39 NO WAIVER OF SOVEREIGN IMMUNITY**

- 6.39.1 The Parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by the State of any immunities from suit or from liability that the State of New Mexico may have by operation of law.

### **6.40 NOTICE**

- 6.40.1 A notice shall be deemed duly given upon delivery, if delivered by hand, or three (3) Calendar Days after posting if sent by first-class mail, with proper postage affixed. Notice may also be tendered by facsimile or electronic mail transmission, with original to follow by first-class mail.
- 6.40.2 All notices required to be given to the State under this Agreement shall be sent to the Collaborative CEO or his or her designee:

[ ]

or

[ ]

6.40.3 All notices required to be given to BHE under this Agreement shall be sent to:

[ ]

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, the parties have executed this amended and restated contract as of the last date of signature by a Party.

**BHE**

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

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

**THE NEW MEXICO BEHAVIORAL HEALTH PURCHASING COLLABORATIVE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Secretary of NM HSD

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Secretary of NM DOH

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Secretary of NM CYFD

**Approved as to Form and Legal Sufficiency:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
HSD General Counsel

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

**TAXATION AND REVENUE DEPARTMENT**

ID Number: \_\_\_\_\_

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

## **APPENDICES**

A – Funding Table

B – Eligibility Requirements

C – List of Reports

D – Schedule of Deliverables Prior to Implementation

E – Administrative Fee

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**APPENDIX A – FUNDING TABLE**

Funding Source (Fed/State)	Direct Services	Individuals Served	Programs/Services Provided	Special Parameters
<b>NMCD – Community Programming</b>				
Community Offender Management (Probation and Parole) – General Fund	\$1,354,209.00	Individuals under NMCD supervision in the community, either probation or parole, or discharging from prison or jail to community supervision.	Outpatient services for Behavioral Health, Residential Substance Abuse programming and life maintenance services.	See General Fund Appropriations; NMCD Strategic Plan, budget-based Performance Measures. Funds will be expended as directed by NMCD.
Community Corrections Fund – General Fund	\$1,502,395.00	Individuals under NMCD supervision in the community, either probation or parole, or discharging from prison or jail to community supervision.	Outpatient services for Behavioral Health, Residential Substance Abuse programming and life maintenance services.	NMCD Strategic Plan, budget-based Performance Measures; community corrections Statute; NMSA 33.9.1 - 33.9.10 (1989). Funds will be expended as directed by NMCD.
GRAND TOTAL NMCD	\$2,856,604.00			
<b>HSD</b>				
BHSD General Fund – Substance Abuse	\$8,445,140.00	Non-Medicaid-eligible adults (age 18+) who meet certain clinical and financial criteria.	Substance Abuse Residential, Outpatient Svcs; Methamphetamine Treatment; Native American Services; Total Community Approach.	Funds will be expended as directed by BHSD.

<b>Funding Source (Fed/State)</b>	<b>Direct Services</b>	<b>Individuals Served</b>	<b>Programs/Services Provided</b>	<b>Special Parameters</b>
BHSD General Fund – Mental Health	\$9,905,072.00	Non-Medicaid-eligible adults (age 18+) who meet certain clinical and financial criteria.	Mental Health Inpatient & Outpatient Services; Supported Employment; Autism; Veterans/Family Support; Forensic Services; Jail Diversion; Native American Services; Sexual Assault Services; Supportive Housing; psychotropic meds; compulsive gambling.	Funds will be expended as directed by BHSD.
Sub-Total BHSD General Fund	\$18,350,212.00			
BHSD Community Mental Health Block Grant – Federal	\$866,000.00	Non-Medicaid-eligible adults (age 18+) who meet certain clinical and financial criteria.	Mental Health Outpatient Services.	Must follow CMHS Federal Block Grant requirements. Funds will be expended as directed by BHSD.
BHSD SAPT Block Grant – Federal	\$4,874,348.00	Treatment: Non-Medicaid eligible adults (age 18+) who meet certain clinical and financial criteria; and targeted community services.	Substance Abuse Residential & Outpatient Services.	Must follow SAPT Block Grant Federal Requirements. Funds will be expended as directed by BHSD.
BHSD Access to Recovery (ATR III) – Federal	\$622,980.00	Non-Medicaid-eligible adults (aged 18+) who meet certain clinical and financial criteria	Voucher-based substance abuse treatment referral system.	ATR fed requirements. Funds will be expended and invoiced as directed by BHSD. \$32,500 will be used for clinical staff salary and travel.

<b>Funding Source (Fed/State)</b>	<b>Direct Services</b>	<b>Individuals Served</b>	<b>Programs/Services Provided</b>	<b>Special Parameters</b>
BHSD Jail Diversion Veteran's Fund – Federal	\$321,018.00	Individuals living in Sandoval, San Juan, and McKinley Counties with preference to veterans and a focus on Native American Veterans.	Behavioral Health treatment as a means for jail diversion.	JDVF federal requirements. Funds will be expended as directed by BHSD.
BHSD Mental Health Transformation (Original) – Federal	\$167,886.00	Persons with mental illness or co-occurring disorders who are homeless or at risk of homelessness; target veterans and Native Americans.	Supportive Housing, Comprehensive Community Support Services, Consumer Operated Services.	To follow federal regulations. Funds will be expended as directed by BHSD.
BHSD: Nat'l Institute on Drug Abuse (NIDA) – Federal	\$28,100.00		Research grant for the evaluation of Total Community Approach programs.	To follow federal regulations. Funds will be expended as directed by BHSD.
BHSD Crossroads: Supporting Families (PPW) – Federal	\$130,691.00	Women who are pregnant or who have given birth within the prior 12 months who have experienced trauma and substance abuse.	Residential Treatment Pregnant and Post-Partum Women's Program (PPW).	To follow federal regulations. Funds will be expended as directed by BHSD.
Partnerships for Success II: Strategic Prevention Framework –	\$608,289.00	Individuals age 12-20 engaging in under-age drinking; individuals 12-25 who misuse/abuse prescription drugs.	Substance Abuse Prevention.	To follow federal regulations. Funds will be expended as directed by BHSD.

<b>Funding Source (Fed/State)</b>	<b>Direct Services</b>	<b>Individuals Served</b>	<b>Programs/Services Provided</b>	<b>Special Parameters</b>
Federal				
Partnerships for Success II: Supplemental (SEOW) – Federal	\$68,580.00		To expand and enhance the activities of the current state epidemiological outcomes workgroup.	To follow federal regulations. Funds will be expended as directed by BHSD.
Screening, Brief Intervention and Referral to Treatment (SBIRT) – Federal	\$774,083.00	Individuals 18 years of age and over receiving services from designated health care venues.	Behavioral Health screening and, as needed, brief intervention and/or referral to treatment.	To follow federal regulations. Funds will be expended as directed by BHSD.
Sub-total BHSD Federal Funds	\$8,461,975.00			
GRAND TOTAL HSD	\$26,812,187.00			
<b>CYFD</b>				
General Fund	\$3,307,496.00	CYFD and non-CYFD involved/referred youth (to age 21); those at risk of CYFD involvement.	Mandatory, Priority, and Non-Priority services, allocations will be provided by a separate L.O.D.	HB 2- §4, To be expended as directed by CYFD.
Sub-Total – General Fund	\$3,307,496.00			
CMH Block Grant – Federal	\$194,498.00	CYFD and non-CYFD involved/referred youth (to age 21); those at risk	Evidence-Based Programs and Training.	CMH Mental Health block grant regulations. To be directed by CYFD.

<b>Funding Source (Fed/State)</b>	<b>Direct Services</b>	<b>Individuals Served</b>	<b>Programs/Services Provided</b>	<b>Special Parameters</b>
		of CYFD involvement		
Sub-Total – Federal	\$194,498.00			
GRAND TOTAL CYFD	\$3,501,994.00			
FUNDING TABLE GRAND TOTAL	\$33,170,785.00			

## **APPENDIX B – ELIGIBILITY REQUIREMENTS**

### **ELIGIBILITY CRITERIA FOR NM BEHAVIORAL HEALTH COLLABORATIVE FUNDING**

#### **NMCD – Community Programming**

##### **Community Offender Management (Probation and Parole) – General Fund Funding Pool: —**

- Consumer must be discharging from prison or jail to community supervision; OR
- Must be under NMCD supervision in the community, either on probation or parole; AND
- Provider must determine the Consumer is in need of Behavioral Health services.

##### **Community Corrections Fund – General Fund Funding Pool: —**

- Consumer must be discharging from prison or jail to community supervision; OR
- Must be under NMCD supervision in the community, either on probation or parole; AND
- Provider must determine the Consumer is in need of Behavioral Health services.

#### **Human Services Department**

##### **Community Mental Health Block Grant Funding Pool: B200**

- Consumer must be 18 and over; AND
- Must not be eligible for the service through Medicaid or third party insurance; AND
- Must have a diagnosis of SMI; AND
- Must be in a location offering funded services.

##### **State General Fund – Substance Abuse Funding Pool: BB10**

- Consumer must be low income; AND
- Must be seeking services for substance abuse; AND
- Must not be eligible for the service through Medicaid or other third party insurance.

**State General Fund – Mental Health  
Funding Pool: B500**

- Consumer must be 18 and over; AND
- Must not be eligible for the service through Medicaid or third party insurance; AND
- Must have a SMI diagnosis; AND
- Must be in a location offering services.

**Native American Services  
Funding Pool: B600 and BA90**

- Consumer must be 18 and over; AND
- Must be Native American; AND
- Must have a Behavioral Health concern; AND
- Must be in a location offering services.

**Veterans Support Services  
Funding Pool: B700**

- Consumer must be age 18 and over; AND
- Must be a Veteran or Veteran's Family Member.

**SAPT Block Grant Funds – Treatment  
Funding Pool: B800**

- Consumer must be age 18 and over; AND
- Must be seeking services for substance abuse; AND
- Must be unable to pay for services; AND
- Must not be eligible for the service through Medicaid or other third party coverage.

**SAPT – Women's Services  
Funding Pool: BA10**

- Consumer must be 18 and over; AND
- Must be a pregnant or parenting woman; AND
- Must have a diagnosis of substance abuse; AND
- Is seeking treatment; AND
- Must not be eligible for the service through Medicaid or third party insurance; AND
- Must be in a location offering services.

**State General Fund – Forensic  
Funding Pool: BA40**

- Consumer must be 18 and over; AND
- Must have a court order for a forensic evaluation.

### **Jail Diversion**

#### **Funding Pool: BA80**

- Consumer must have a SMI diagnosis; AND
- Must be at risk for, or already involved with, the criminal justice system; AND
- Must be at a Jail Diversion Program Funded site.
  
- Jemez Pueblo Only:
  - Jemez Community Adult or Veteran; AND
  - Must be referred by the court for substance abuse ; AND
  - Must not be eligible for the service through Medicaid or other third party insurance.

### **Sexual Assault**

#### **Funding Pool: BB00**

- Consumer must be a victim of sexual assault.

### **Supportive Housing**

#### **Funding Pool: BB20**

- Consumer must be 18 and over; AND
- Must be very low income; AND
- Must be seeking affordable housing and supportive services; AND
- Must have a SMI diagnosis; AND
- Must be in a location offering services.

### **Total Community Approach (Prevention)**

#### **Funding Pool: BC60**

- All Ages; AND
- Must not have a diagnosis of a substance abuseSA disorder.

### **ATR – IV**

#### **Funding Pool: BC80**

- Consumer must be age 18 and over; AND
- Must be low-income; AND
- If the client has Medicaid, they are not eligible for a clinical voucher, but they can get a recovery support service voucher; AND
- Must self-report as having a substance abuse problem; AND
- Must agree to three months of treatment.

**Psychotropic Meds**  
**Funding Pool: BC90**

- Consumer must be 18 and over; AND
- Must not be eligible for the service through Medicaid or third party insurance; AND
- Must be prescribed a psychotropic medication by a CSA.

**Substance Abuse Los Lunas Residential Treatment**  
**Funding Pool: BD00**

- Consumer must be 18 and over; AND
- Must have a diagnosis of substance use disorder; AND
- Must be referred for residential treatment; AND
- Must not be eligible for the service through Medicaid or third party insurance.

**SAPT Block Grant Funds – Prevention**  
**Funding Pool: BD30**

- All Ages; AND
- Must not have a diagnosis of substance abuse.

**State General Fund – Gambling**  
**Funding Pool: BD40**

- No Consumer services.

**State General Fund - Autism**  
**Funding Pool: —**

- No Consumer services.

**Jail Diversion Veterans Fund**  
**Funding Pool: BD60**

- Consumer must be age 18 and over; AND
- Must be a Veteran; AND
- Must have a primary diagnosis of Post-Traumatic Stress Disorder or other trauma related disorder; AND
- Must be at risk for, or already involved with, the criminal justice system; AND
- Must be at a Jail Diversion Veterans Program Funded site.

**Mental Health Transformation Grant  
Funding Pool: BD70**

- Consumer must be 18 and over; AND
- Must be very low income; AND
- Must be homeless; AND
- Must be seeking affordable housing and supportive services; AND
- Must have a SMI diagnosis; AND
- Must be in a location offering services.

**NIDA  
Funding Pool: BD90**

- No Consumer services.

**PPW Crossroads  
Funding Pool: BE00**

- Grant ends in September 2014.

**PFSII  
Funding Pool: BE10**

- Consumers of All Ages; AND
- Must not have a diagnosis of a substance abuse disorder.

**PFSII SEOW  
Funding Pool: —**

- No Consumer services.

**SBIRT  
Funding Pool: BE20**

- Consumer must be age 18 and over; AND
- Must have Behavioral Health concerns; AND
- Must receive services from a SBIRT-funded Provider.

## **Children Families and Youth Department**

### **Children's Behavioral Health Service**

#### **Funding Pool: —**

- Consumer is under 21; AND
- Must have a diagnosis, or be at risk, of severe emotional disturbance; AND
- Must be referred by CYFD Juvenile Justice Division or Protective Services Division; AND
- Must not be eligible for the service through Medicaid or third party insurance; AND
- Provider is a CYFD qualified Provider and is eligible for reimbursement; AND
- CBHS funding is available.

### **Community Mental Health Block Grant**

#### **Funding Pool: —**

- Consumer is under 21; AND
- Has a diagnosis, or is at risk, of severe emotional disturbance; AND
- Is referred by Juvenile Justice Division or Protective Services Division; AND
- Must not be eligible for the service through Medicaid or third party insurance; AND
- Provider is a CYFD qualified Provider and is eligible for reimbursement; AND
- CMHBG funding is available.

## **APPENDIX C – LIST OF REPORTS**

The following table describes the currently identified required reports, and indicates responsibility for development of the report templates.

<b>Report ID</b>	<b>Report</b>	<b>Description</b>	<b>Frequency</b>	<b>Template Developer</b>
ASO 1	Provider Network	A comprehensive suite of reports on Providers in a workbook with multiple sheets, including summary level and various drilldown data sheets. Summary data to include geoaccess and network adequacy data. Provider data to include Provider contract status, high level utilization data per Provider by service category, Provider compliance and grading data, Critical Incident counts.	Monthly	BHE
ASO 2	Funding and Utilization	A comprehensive suite of reports on funding and utilization in a workbook with multiple sheets, including summary level and various drilldown data sheets. Utilization and funding data to include high level summaries and drilldowns by agency, by fund source, by Provider, by service category, and by various other Consumer attributes (e.g. eligibility category, sex, age).	Monthly	Collaborative
ASO 3	Provider and Consumer Complaints and Disputes	Summary and per complaint/dispute detail level and summary level, including resolution, with narrative and analysis.	Quarterly	BHE
ASO 4	Critical Incidents	Summary and per incident detail level and summary level, including resolution, with narrative and analysis.	Quarterly	Collaborative
ASO 5	Program Evaluation	Overall program effectiveness report based on BHE	Baseline, then	BHE

<b>Report ID</b>	<b>Report</b>	<b>Description</b>	<b>Frequency</b>	<b>Template Developer</b>
	Report	data, including claims and registrations, with narrative and analysis.	Annually	
ASO 6	Claims Processing Report	Summary and detail level data on BHE claims payment timeliness, volume, denial rates and reasons, value and inventory by ECM, invoice, and paper.	Monthly	BHE
ASO 7	Claims Accuracy Report	Report on BHE claims processing audit, including accuracy rates and detail accounting of errors found, resolutions, and corrective actions to prevent recurrence.	Quarterly	BHE
ASO 8	Director's Dashboard Report	High level program report.	Monthly	BHE
ASO 9	Program Integrity	Fraud, Waste and Abuse alarms triggered, summary, and detailed level.	Monthly	BHE
ASO 10	Implementation Monitoring Suite	Report on various aspects of implementation progress up to and for some time after go-live.	Weekly for the first 3 months if required, longer if directed	BHE
ASO 11	System/Privacy Incident Report	Report on security and privacy compliance and incidents.	Monthly	BHE
CI-11	Independently Audited Financial Statements	BHE certified, independently audited financial statements.	Annually	Collaborative
CYFD-03	CYFD Paid Claims / Invoice	Claims data for CYFD.	Monthly	BHE
BHSD-07	Street Outreach SAPT	Collaborative Template to be provided.	Quarterly	Vendor (Service Tracking and Reporting)

<b>Report ID</b>	<b>Report</b>	<b>Description</b>	<b>Frequency</b>	<b>Template Developer</b>
				(STAR))
NMCD-01	Expenditure Spreadsheet Listing	Collaborative Template to be provided.	Monthly	Collaborative
NMCD-03	Provider Unduplicated Monthly Consumer Count Spreadsheet	Collaborative Template to be provided.	Monthly	Collaborative
BHSD-10	Substance Abuse and Prevention Treatment Quarterly	Collaborative Template to be provided.	Quarterly	Collaborative

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## **APPENDIX D – SCHEDULE OF DELIVERABLES**

This is a draft list that will be finalized upon Contract Award.

<b>Deliverable</b>	<b>Contract Section</b>	<b>Due Date (TBD)</b>
Compliance Policies and Procedures	3.2.2	
Staff Resumes	3.3.2	
Change Order Request Processes and Protocols	3.4.2.3	
Designation of Single Point of Contact	3.5.1	
Communication and Escalation	3.5.2	
Readiness Reviews	3.6.1	
Provider Network Change Management Policies and Procedures	3.9.3	
Provider Contracts	3.10.2	
Program Evaluation Methodology	3.16.1	
Program Integrity Policies and Procedures	3.18.1.1	
Program Integrity Employee Policies and Procedures	3.18.1.6	
Complaint and Concern Processes	3.20.1	
Information Security Plan	3.24.2.11	
BC-DR plan	3.24.4.1	
Reporting Templates	3.25.1 & Appendix C	
Subcontracts (if any)	6.11.4.2	

**APPENDIX E – ADMINISTRATIVE FEE**

TBD

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**APPENDIX C**  
**LETTER OF TRANSMITTAL FORM**

**LETTER OF TRANSMITTAL FORM**

**RFP#:** \_\_\_\_\_

**Offeror Name:** \_\_\_\_\_

Items #1 to #7 EACH SHALL BE COMPLETED IN FULL. Failure to respond to all seven (7) items WILL RESULT IN DISQUALIFICATION OF THE PROPOSAL!

1. Identity (Name) and Mailing Address of the Offeror's submitting organization:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Person authorized by the Offeror's organization to contractually obligate the organization:

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

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

E-mail address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

3. Person authorized to negotiate the Contract on behalf of the Offeror's organization:

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

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

E-mail address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

4. Person to be contacted for clarifications:

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

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

E-mail address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

5. Use of subcontractors (Select one):

\_\_\_ No subcontractors will be used in the performance of this Contract OR

\_\_\_ The following subcontractors will be used in the performance of this Contract:

\_\_\_\_\_  
(Attach extra sheets, as needed)

6. Please describe any relationship with any entity that will be used in the performance of this Contract:

\_\_\_\_\_  
(Attach extra sheets, as needed)

7.

\_\_\_ On behalf of the submitting organization named in item #1, above, I accept the Conditions Governing the Procurement as required in Section 2.3.1 and 5.3 of this RFP.

\_\_\_ I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section 4 of this RFP.

\_\_\_ I acknowledge receipt of any and all amendments to this RFP.

\_\_\_\_\_, 2014  
Authorized Signature and Date (Shall be signed by the person identified in item #2, above.)

**APPENDIX D**  
**NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM**

**NEW MEXICO EMPLOYEES HEALTH COVERAGE FORM**

1. For all contracts solicited and awarded on or after January 1, 2008: If the Offeror 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, Offeror must agree 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 no later than July 1, 2010, if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceeds \$250,000 dollars.
2. Offeror must agree 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.
3. Offeror must agree 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 website link to additional information: <http://insurenwemexico.state.nm.us/>.
4. For Indefinite Quantity, Indefinite Delivery contracts (price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it), these requirements shall apply the first day of the second month after the Offeror reports combined sales (from State and, if applicable, from local public bodies if from a State price agreement) of \$250,000; \$500,000; or \$1,000,000.

Signature of Offeror: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX E**  
**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

## **CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

Pursuant to NMSA 1978, 13-1-191.1 (2006), any person seeking to enter into a contract with any State agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources, must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective Contractor must disclose whether they, a family member, or a representative of the prospective Contractor has made a campaign contribution to an applicable public official of the State or a local public body during the two (2) years prior to the date on which the Contractor submits a proposal or, in the case of a sole source or small purchase contract, the two (2) years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member, or a representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two (2)-year period.

Furthermore, the State agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

**THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR, WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.**

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal, or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance, or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect, or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. “Campaign Contribution” includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law, or son-in-law.

“Pendency of the procurement process” means the time period commencing with the public notice of the RFP and ending with the award of the Contract or the cancellation of the RFP.

“Person” means any corporation, partnership, individual, joint venture, association, or any other private legal entity.

“Prospective contractor” means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership, or a trustee of a trust of the prospective contractor.

**DISCLOSURE OF CONTRIBUTIONS:**

Contribution Made By: \_\_\_\_\_

Relation to Prospective Contractor: \_\_\_\_\_

Name of Applicable Public Official: \_\_\_\_\_

Date Contribution(s) Made: \_\_\_\_\_

Amount(s) of Contribution(s): \_\_\_\_\_

Nature of Contribution(s): \_\_\_\_\_

Purpose of Contribution(s): \_\_\_\_\_

(Attach extra pages if necessary)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title (position)

— OR —

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY (\$250) DOLLARS WERE MADE to an applicable public official by me, a family member, or a representative.

---

Signature

---

Date

---

Title (position)

**APPENDIX F**  
**SUSPENSION AND DEBARMENT FORM**

## SUSPENSION AND DEBARMENT FORM

The entering of a contract between the Collaborative and the successful Offeror pursuant to this RFP is a “covered transaction,” as defined by 45 C.F.R. Part 76, and other applicable federal regulations. The Collaborative’s contract with the successful Offeror shall contain a provision relating to debarment, suspension, and responsibility. See Section 6.24 of the Contract (Appendix B). All Offerors must provide as a part of their proposals a certification to the Collaborative in the form provided below. Failure of an Offeror to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render the Offeror nonresponsible. Furthermore, the Offeror shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Although the Collaborative may review the veracity of the certification through the use of the federal Excluded Parties Listing System, or by other means, the certification provided by the Offeror in paragraph (a), below, is a material representation of fact upon which the Collaborative will rely when making a contract award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Collaborative, the Collaborative may terminate the contract resulting from this RFP for default.

The certification provided by the Offeror in paragraph (a), below, will be considered in connection with a determination of the Offeror’s responsibility. A certification that any of the items in paragraph (a), below, exists may result in rejection of the Offeror’s proposal for non-responsibility and the withholding of an award under this RFP. If the Offeror’s certification indicates that that any of the items in paragraph (a), below, exists, the Offeror shall provide with its proposal a full written explanation of the specific basis for, and circumstances connected to, the item; the Offeror’s failure to provide such explanation will result in rejection of the Offeror’s proposal. If the Offeror’s certification indicates that that any of the items in paragraph (a), below, exists, the Collaborative in its sole discretion, may request, that the U.S. Department of Health and Human Services and any other applicable federal agency grant an exception under 45 C.F.R. §§ 76.120 and 76.305 and any other applicable federal regulations if the Collaborative believes that the procurement schedule so permits, and an exception is applicable and warranted under the circumstances. In no event will the Collaborative award a contract to an Offeror if the requested exception is not granted for the Offeror.

(a)(1) By signing and submitting a proposal in response to this RFP, the Offeror certifies, to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals:

- (A) Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency;
- (B) Have  have not , within a three (3)-year period preceding the date of the Offeror’s proposal, 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;

- (C) Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this certification;
  - (D) Have  have not , within a three (3)-year period preceding the date of Offeror's proposal, had one or more public agreements or transactions (federal, state, or local) terminated for cause or default; and
  - (E) Have  have not  been excluded from participation from Medicare, Medicaid, other federal health care programs, or other federal behavioral health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7 and other applicable federal statutes.
- (ii) "Principal," for the purposes of this certification, shall have the meaning set forth in 45 C.F.R. § 76.995 and shall include an officer, director, owner, partner, principal investigator, or other person having management or supervisory responsibilities related to a covered transaction. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with federal funds, who: is in a position to handle federal funds, is in a position to influence or control the use of those funds, or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.
  - (iii) For the purposes of this certification, the terms used in the certification, such as *covered transaction*, *debarred*, *excluded*, *exclusion*, *ineligible*, *ineligibility*, *participant*, and *person* have the meanings set forth in the definitions and coverage rules of 45 C.F.R. Part 76 and other applicable federal regulations.
  - (iv) Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

OFFEROR: \_\_\_\_\_

SIGNED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**APPENDIX G**  
**COST PROPOSAL TEMPLATE**

## COST PROPOSAL TEMPLATE

The Offeror shall use this form to provide its cost proposal.

1. Based on the Offeror’s estimated costs of services, please acknowledge if the Offeror can perform the work as outlined in the Contract, not to exceed seven percent (7%) of the total services expense on an annualized basis.
2. If the Offeror cannot perform the scope of work outlined in the Contract for an amount not to exceed seven percent (7%), the Offeror shall provide a proposed incentive award structure that includes (i) specific activities/performance measures and deadlines and (ii) specific amounts associated with each activity/performance measure.
3. The Offeror shall provide a detailed cost estimate for each annual period that includes key cost drivers, including but not limited to staff salary, fringe benefits, information systems, reporting costs, and general overhead. Failure to provide itemized detail constitutes an unresponsive submission.
4. In addition to the cost estimate for the scope of work, the Offeror is requested to provide a cost estimate for an optional provision of the Contract related to retroactive claiming of services for Medicaid federal financial participation. The cost estimate for this scope will not be evaluated for RFP scoring.
5. The Offeror shall use the template below to provide a summary of its cost proposal. The mandatory costs are those included in the draft Contract (see Question 3 above). The optional services are those that are not required, but are additional functions that the Offeror can perform for the Collaborative (see Question 4 above).

<b>Cost Development Summary</b>				
	<b>Contract Period 1 (6 months)</b>	<b>Contract Period 2 (1 year)</b>	<b>Contract Period 3 (1 year)</b>	<b>Contract Period 4 (1 year)</b>
<b>Mandatory Services Cost</b>				
<b>Optional Services Cost</b>				