

**NEW MEXICO HUMAN SERVICES DEPARTMENT**

**REQUEST FOR PROPOSALS**

**IV&V Services for MMISR Project**



**RFP#**  
16-630-8000-6000

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## **I. INTRODUCTION**

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

The purpose of the Request for Proposal (RFP) is to solicit proposals for Independent Verification and Validation (IV&V) services for the New Mexico (NM) Medicaid Management Information System Replacement (MMISR) project. The MMISR project will employ a multiple-module, multiple-vendor approach encompassing both technology-based components and business process outsourcing; we require proactive IV&V services from planning and procurements through certification. The IV&V Contractor will work independently with the State of New Mexico's Human Services Department (HSD), the Project Management Office (PMO) contractor, and with other contracted vendors and stakeholders associated with the MMISR project. The State is seeking an IV&V approach that complies with Centers for Medicare and Medicaid Services (CMS) and NM Department of Information Technology (DoIT) project oversight requirements and that goes beyond a traditional compliance-oriented approach to IV&V. We believe the IV&V Contractor's role is integral to MMISR project success, and expect the IV&V Contractor to deliver technical and business expertise to help the State understand downstream implications of decisions so we can better procure, manage and implement the MMISR solution.

This procurement will result in a single award. The selected Offeror will provide professional IV&V services on site in Santa Fe, NM, and at other locations as determined by the HSD. The Offeror must demonstrate experience and knowledge necessary to perform the services described in this RFP. Pursuant to §10-16-13 NMSA 1978 Prohibited Bidding: No state agency shall accept any bid (proposal) from a person who directly or indirectly participated in the preparation of specifications on which the competitive bidding was held.

The IV&V Contractor selected for this work will not be allowed to participate as a contractor (primary or subcontractor) on any of the modules associated with the MMISR project. The IV&V Contractor may not assist any vendor with its applications or proposals to the State for consideration on any of the MMISR modules.

### **B. MMISR PROJECT VISION**

The goal of the MMISR project is to move away from a monolithic system approach and instead to implement a modular MMIS solution with the information, infrastructure, tools and services necessary to efficiently administer the NM Medicaid programs, using a combination of technology-based procurements, related services and business process outsourcing. The MMISR framework also is intended to support other programs in the NM Health and Human Services (HHS) enterprise that are supported by the MMIS. Our vision for the future is that the improved MMIS solution will enable us to reduce costs, while improving member health outcomes. To achieve this, the MMISR solution must have the capability to support informed and timely decision-making, both at the policy administration level and at point of care, while promoting service coordination, transparency and accountability.

The MMISR solution will:

1. Use a modular approach to create a framework aligned with Medicaid Information Technology Architecture (MITA) Version 3.0, supporting New Mexico's goal of operating Medicaid functions at a MITA maturity level 4 in all business and technical areas. (See 2015 MITA State Self-Assessment [SS-A].)
2. Comply with CMS Seven Conditions and Standards (SCS), and promote the use of industry standards for information exchange and interoperability, providing a seamless business services environment for users.
3. Support the State in maintaining eligibility for Federal Financial Participation (FFP) for the design, development, installation and enhancement of mechanized claims and encounter processing and information retrieval, as specified under 42 CFR 433.112, by implementing a modernized system that meets the conditions specified by federal regulation.
4. Provide information management and business intelligence tools to assist the State in effectively managing the Medicaid and related health service programs.

Objectives for the MMISR solution include:

5. Adaptability: As noted previously, the MMISR solution is intended to encompass technology-enabled elements and services, as well as business process outsourcing. The State's goal in adopting this approach is to provide an extensible, flexible, and soundly designed framework that can adapt over time to changing programmatic needs, solution approaches and technologies. The MMISR solution must be standards-based to facilitate interoperability and maintainability. The State seeks to implement a flexible, rules-based, modular, configurable solution to enhance decision-making and increase management efficiencies. The State seeks a Service Oriented Architecture (SOA) platform that will bring interoperability of service-based modules to support modernization and continual enterprise evolution without restricting its ever-changing business needs. In addition, the State seeks a highly configurable and flexible platform that can enable the expansion of technological capabilities to other state and federal agencies.
6. Sustainability: Working hand-in-hand with the adaptability objective, the State seeks an MMISR solution that can be efficiently sustained and affordably maintained throughout its life, while offering enhanced program support and customer experience. It is imperative that a balance is achieved to deliver a modular and extensible solution, while sustaining quality data, integrity of Medicaid program operations (and those of other HHS enterprise participants) and offering adaptability to meet changing needs.
7. Business Intelligence and Data Analytics: The new MMIS will include an enterprise data services component encompassing business intelligence, analytics and enterprise data management. The goal of this component is for the State to have ready and flexible

access to accurate, timely information needed to support reporting, support insightful management of the Medicaid enterprise, evaluate performance, enable cost savings, inform policy and process decisions, and enable population health management an outcomes-focused approach to benefit delivery and management.

8. Service Focused: The modules that are implemented should be able to be modified by user configurations, rather than through constant custom coding that would result in yet another one-off MMIS, and should offer adaptable services that can take advantage of evolving technology and/or expanded capacity, and allow for solutions that are designed to allow Commercial-Off-The-Shelf (COTS) products to be installed, integrated, and upgraded through scheduled releases when such installations are appropriate and to the State's advantage.
9. Enterprise Solution: The State is not seeking Medicaid-only solutions. The MMISR solution will provide a framework to support the broader NM HHS enterprise and will serve as an information gateway for all NM HHS stakeholders. The solution must support effective automation and paperless transactions across traditional program lines, facilitate data access and exchange in real-time while ensuring privacy and security, and enable effective and timely transfer of information to program users. In addition, the solution is envisioned to include a consolidated, easy-to-use and appealing user interface (e.g., portal, social media, call center) to provide an enhanced customer service experience for providers and clients.
10. Maximize Enhanced Federal Funding: The MMISR solution must be designed and implemented to maximize qualification for enhanced FFP for development, implementation and operations.
11. Ensure Federal Standards Compliance: The MMIS must comply with the Centers for Medicare & Medicaid Services (CMS) MITA 3.0 and Seven Conditions and Standards requirements.
12. Obtain Federal Certification: The development and implementation of systems and modules must be done in a way to ensure CMS certification.
13. Accountability and Measurement: The MMISR solution must be designed and implemented to enable accurate assessment, measurement and reporting on the Medicaid program and on the broader NM HHS enterprise. In addition, the State seeks a solution that facilitates adoption of a population health management approach to Medicaid and its related programs. This means a movement away from the traditional transaction-focused MMIS and toward a solution with the information to assess health outcomes and program impact across traditional programmatic silos.
14. Integration with State-wide IT Systems: The MMISR solution must be designed to enable interoperability with existing and future HHS enterprise systems, including the State's Medicaid eligibility system (ASPEN), health insurance exchange, health information exchanges, public health agency and human services programs.

15. Leveraging and Reuse: The MMISR will leverage, reuse and/or share technologies available within New Mexico and in other state Medicaid systems as possible and appropriate.

### **C. IV&V CONTRACTOR ROLE**

The IV&V Contractor will play a critical role in MMISR project success. By joining the initiative during the planning stage, the IV&V Contractor is expected to advise the State – and other stakeholders invested in the project – on project planning (e.g., schedule, management approaches and tools, technical); procurement development, evaluation and administration; project risks; vendor integration; and any other aspect of the project that might affect its success. The State seeks an IV&V Contractor who will take a proactive, mentoring approach to IV&V (while preserving independence), in addition to V&V activities related to the project’s compliance with regulations and requirements; requirements traceability through the life cycle; technology design, development and implementation quality; and similar activities.

As the planned MMISR solution involves multiple procurements, the IV&V Contractor will be responsible for an initial assessment and follow-up reporting relating to the project’s overall structure, management and approach, as well as for assessments and reporting associated with each procurement. The IV&V Contractor’s role will extend through the project’s life, from the planning stage through implementation and, ultimately, CMS certification of the MMISR solution.

The State is seeking a contractor with the depth of experience and resources needed to support a diverse project of this size. The IV&V Contractor is expected to bring to bear experience with project management, business and technology aspects of the project. Offeror’s should include in their proposals descriptions of tools, methodologies and standards on which their approach to IV&V is based.

The IV&V work will be comprehensive for the full project life of the MMISR project.

Other specific objectives include, but are not limited to:

Monitor and review to verify that all MMISR modules and components effectively support the business functions for which they are designed.

Monitor and review to verify that each module and the MMISR solution as a whole support efficient management of the NM Medicaid program and of the NM HHS enterprise.

Monitor and review to verify that all MMISR modules and services are functionally interoperable, and that they satisfy business, functional, non-functional and data requirements.

Monitor and review to verify that the MMISR solution meets CMS MITA 3.0 standards; advances the State’s MITA maturity level for business, architecture and data; aligns with CMS SCS; and achieves CMS Certification at project completion.

Monitor and review to verify that the MMISR project is managed in accordance with federal and state project management requirements and best practices.

## BACKGROUND INFORMATION

This section provides background on HSD that may be helpful in preparing the proposal. The information is provided as an overview and is not intended to be a complete or exhaustive description.

### HSD Mission and Roles

The Mission of the Human Services Department is to reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.

### HSD Goals

#### Goal 1: Promote Self-Sufficiency of our Recipients

- 1.1: Increase job readiness and access to sustainable employment and housing.
- 1.2: Increase member engagement in his/her care.
- 1.3: Support families' financial stability by removing barriers to child support orders and collections.

#### Goal 2: Slow the Growth Rate of Health Care Costs and Improve Health Outcomes

- 2.1: Implement value-based purchasing that promotes integration of services, reduces costs, and increases quality of care.
- 2.2: Reduce service gaps through innovative delivery models that build provider capacity.
- 2.3: Collaborate with partners to support prevention models and reduce health disparities.
- 2.4: Detect and prevent fraud, waste, and abuse.

#### Goal 3: Implement Person-Centric Service Models

- 3.1: Streamline and enhance access and engagement of constituents.
- 3.2: Develop a new model for delivery of public assistance programs for demonstration.

#### Goal 4: Improve Administrative Effectiveness and Simplicity

- 4.1: Implement paperless document management.
- 4.2: Execute the MMIS and CSES replacement projects.
- 4.3: Implement staff development plans.
- 4.4: Internal review of program effectiveness.

## 1. HSD Organization

HSD is a cabinet-level Department in the Executive Branch of New Mexico State government. The Department is headed by a Cabinet Secretary appointed by the Governor and confirmed by the New Mexico State Senate. HSD consists of the Office of the Secretary (OOS) and six divisions. Only those divisions that are related to this

RFP are described herein.

As of February 2015, HSD has more than 2,000 employees and maintains contracts with community-based providers throughout the state. HSD's central offices are located in Santa Fe:

Pollon Plaza Building: OOS, Income Support Division (ISD), Child Support Enforcement Division (CSED), and Office of General Counsel (OGC);

Ark Plaza Building: Medical Assistance Division (MAD);

Plaza La Prensa: Behavioral Health Services Division (BHSD), Fair Hearings Bureau, Office of the Inspector General (OIG), Office of Human Resources (OHR);

Rodeo Road Building: Administrative Services Division (ASD), Restitution Division of the OIG; and

Siler Road Building: Information Technology Division (ITD).

State-wide, HSD has more than 30 HSD/ISD field offices, several additional satellite offices, and 8 quality control offices.

**Office of the Secretary.** OOS consists of the Secretary of Human Services, two Deputy Secretaries, OGC and the OIG. The Secretary provides Cabinet-level direction for HSD. OGC provides legal support for the Department. OIG investigates and pursues cases of fraud and abuse, and also administers the fair hearing process.

**Office of Human Resources.** OHR serves HSD personnel needs including recruiting, hiring, reorganizations, career counseling, employee insurance and benefits, and personnel policies. OHR also provides coaching to HSD supervisors and managers, works with labor relations, and delivers and coordinates training programs and staff development.

**Administrative Services Division.** ASD provides general administrative support for HSD and for all of its programs, including Medicaid.

**Income Support Division.** ISD is the primary source for eligibility determination for all HSD programs, including Medicaid. The Division's field staff of close to 1,000 employees, supervisors and county directors is administered through four district operations offices under the direction of two Deputy Directors. Field staff are responsible for interviewing applicants/recipients, determining eligibility, and issuing benefits for food stamp, cash assistance, Medicaid, and other assistance programs.

**Medical Assistance Division.** MAD manages and administers the federal Medicaid program (Centennial Care), the Children's Health Program (CHIP), and authorized waivers. Medicaid is authorized under Title XIX of the Social Security Act (SSA), and

the CHIP program is authorized under Title XXI. These programs provide access to medically necessary health services for eligible individuals. They are jointly funded by federal and state funding. Federal contribution levels differ by program and vary based on relative ranking of the state in per capita income. The Division is headed by a Director who has three Deputies reporting directly to her.

**Child Support Enforcement Division.** Child Support Enforcement is a state and federal program to collect support from non-custodial parents. CSED's primary mission is to maximize the collection of child support for New Mexico children.

**Behavioral Health Services Division.** BHSD's primary role is to serve as the adult Mental Health and Substance Abuse State Authority for the State of New Mexico. The Authority's role is to plan, provide, monitor, assess and foster quality in behavioral health services for all adults across the state.

**Information Technology Division.** ITD provides timely and cost-effective IT services to HSD, its programs, and its divisions and offices, enabling them to fulfill the HSD mission and ensuring that HSD gains full benefit from its current and future technology investments.

## **E. OVERVIEW OF THE MEDICAID PROGRAM**

### **1. Medicaid Eligibles**

New Mexico Medical Assistance Programs cover approximately 40 eligibility categories. The major groups eligible for Medicaid: Affordable Care Act are: adults ages 19 to 65, with income below 138 percent of the federal poverty level (FPL); parent/caretakers, pregnant women, and children below 300 percent FPL; individuals receiving Supplemental Security Income (SSI); children under the jurisdiction of the state (e.g. foster care and adoption); working disabled individuals; women with breast or cervical cancer; individuals requiring nursing home care, individuals receiving home- and community-based waiver services; and limited coverage categories such as Medicare Savings Programs and family planning. As of August 2015 New Mexico has approximately 820,000 Medicaid recipients.

### **2. Covered Services**

Medicaid program regulations allow reimbursement for a broad array of health services to *enrolled* providers. Mandated services include, but are not limited to: general acute inpatient hospital care; outpatient hospital services; physician services in a variety of settings; nurse midwives; nursing facility services for certain individuals; home health care; rural health clinic services, the services of Federally Qualified Health Centers; laboratory and radiology; nurse practitioner services; and medically necessary Early Periodic Screening, Diagnostic, and Treatment (EPSDT) services. Optional services provided in New Mexico include, but are not limited to: prescription drugs; eyeglasses and hearing aids; organ transplants; dental services; physical, occupational and speech therapies; rehabilitative services; Intermediate Care Facilities for the Mentally Retarded

(ICFs/MR); case management; hospice; transportation services; durable medical equipment and supplies; prosthetic devices; and adult personal care options (PCO).

### **3. Administration of the Medicaid Program**

HSD -- and its Medical Assistance Division (MAD) -- has the primary responsibility for managing the Medicaid program in NM and is recognized as the State Medicaid Agency (SMA). HSD collaborates with its agency partners for managing specific components of its Medicaid program. Those partners include: Aging & Long Term Services Department (ALTSD), the Department of Health (DOH) and the Children, Youth, and Families Department (CYFD).

Programs to monitor and control use and to identify fraud, abuse, and overpayments are operated by /OIG and by the Medicaid Fraud and Elder Abuse unit of the New Mexico Office of the Attorney General.

### **4. Assistance of Other State Contractors**

HSD/MAD works collaboratively with contractors, vendors, and consultants to provide certain services for the division. Periodically, the successful Offeror will work directly with and/or interact electronically with these other contractors, vendors, or consultants. These other contractors include, but are not limited to: Managed Care Organizations (MCOs) to administer the state's Centennial Care managed care program; an External Quality Review Organization (EQRO) vendor; a Recovery Audit Contractor (RAC); a claims processing and fiscal agent contractor (Xerox); and various consultants familiar with Medicaid and other federally funded programs.

### **5. Fee-for-Service Populations**

Some populations for Medicaid benefits are exempt from receiving services through an MCO. In those instances, HSD/MAD reimburses providers directly in a Fee-for-Service (FFS) program. Most of the involved individuals are Native Americans, of whom a large percentage use Indian Health Service facilities for the majority of their health care. Others in the FFS program are eligible for family planning services and receive benefits limited to that service. Nearly 100,000 New Mexicans are covered under various FFS programs in 2015.

### **6. Managed Care**

Title XIX (Medicaid) of the SSA describes the terms under which a state may implement Medicaid managed care. A state must obtain a CMS-approved waiver of certain SSA provisions before implementation is possible. HSD/MAD received approval of a Section 1115 demonstration waiver request to implement risk-based managed care. The resulting program – Centennial Care – began January 1, 2014. The four MCOs contracted to insure NM Medicaid recipients under Centennial Care are BlueCross BlueShield NM, Molina Healthcare of New Mexico, Presbyterian Health Plan, and UnitedHealthcare Community Plan. With the addition of newly-qualified Medicaid recipients under the Medicaid Adult

Expansion (beginning January 2014), almost 700,000 New Mexicans currently are covered under the Centennial Care managed care program.

## **7. Behavioral Health**

Since Centennial Care was implemented, claims for behavioral health services are covered and processed by the MCO in which a Medicaid recipient is enrolled or by the Medicaid FFS program if the recipient is not enrolled in managed care. Prior to January 1, 2014, behavioral health claims were processed by a New Mexico single state-wide entity.

## **8. Coordination of Long-Term Services**

Prior to January 1, 2014, most Medicaid recipients of long-term care services were enrolled in the State's Coordination of Long-Term Services (CoLTS) program. These recipients included: full dually eligibles (individuals who qualify for both Medicare and Medicaid services), nursing facility residents, Personal Care Option consumers, and individuals currently receiving Disabled & Elderly (D&E) Home- and Community-Based Waiver services. The State had risk-based contracts with two entities to administer the CoLTS program until it ended on December 31, 2013, with the implementation of Centennial Care. Effective January 1, 2014, these Medicaid recipients became covered by the Centennial Care MCOs. Separate MCOs for these types of recipients no longer exist.

## **9. HSD Priorities for MMISR**

The HSD constantly looks for ways to advance its primary goal of providing quality care for New Mexicans while managing costs. With the implementation of Centennial Care, almost 90 percent of the state's Medicaid enrollees access most or all of their Medicaid-covered health-related services through an MCO rather than through the HSD's FFS program. HSD seeks an MMISR solution that facilitates timely data reporting, performance measurement, and assessment of health outcomes for its clients. HSD also seeks the ability to accurately measure whether its programs, activities and vendors are taking actions to improve population health.

HSD is interested in securing program integrity services that support the CMS-required RAC program in post-payment detection and recovery of improper Medicaid claims, in identification of underpayments and in implementation of actions to prevent future improper payments. The HSD also seeks an MMISR solution that will identify responsible third party payers, identify incorrect or abusive claims coding, implement measures that will result in claims payment avoidance when appropriate, implement a thorough post-payment recovery mechanism in both the managed care programs and the FFS program, take other steps to identify and recover inappropriate claims or MCO capitation payments, and put in place procedures to report credible allegations of fraud to HSD/OIG. In addition, the State seeks to have an effective estate and trust recovery program.

HSD has a responsibility to ensure the integrity and validity of its enrolled and participating providers, so the MMISR must have the capability to provide and update information on ownership, related parties, sanctions, tax or civil liens, criminal activity, conflicts of interest, and licensure or certification problems.

## **F. CMS SEVEN CONDITIONS AND STANDARDS**

The NM MMIS will align with and conform to the CMS Seven Conditions and Standards (SCS) for new MMIS solutions. The IV&V Contractor and all systems/modules vendors and developers will work to ensure SCS alignment.

### **1. Modularity Standard**

Use a modular, flexible approach to systems development. Compliance is addressed through the use of SDLC methodology, open interfaces, and exposed APIs, use of business rules engines, and submission of business rules to HHS-designated repository.

### **2. MITA Condition**

Align to and increasingly advance in MITA maturity. Compliance is addressed by performing an annual State Self-Assessment (SS-A), submitting a MITA five-year roadmap for maturity progression, and implementing a Concept of Operations and Business Process Models.

### **3. Industry Standards Condition**

Ensure alignment with and incorporation of industry standards. Compliance is met by implementing standards such as HIPAA 5010. Additionally, states must implement practices and procedures for system development phases.

### **4. Leverage Condition**

Promote sharing, leverage, and re-use of Medicaid technologies and systems. Solution examples include project collaboration with other states, implementation of commercial off-the-shelf (COTS) software, and identification of components for reuse by other states or within state's Medicaid enterprise.

### **5. Business Results Condition**

Support accurate and timely processing of claims. Evaluation is based on the degree of automation, web-based customer service for providers and beneficiaries, and the enactment of performance standards.

### **6. Reporting Condition**

Produce transaction data, reports, and performance information. Solution examples include electronic transmission of program evaluation reports through open interfaces to

management and federal agencies.

## **7. Interoperability Condition**

Ensure seamless coordination and integration with HIE and HIX and other federal agencies. Systems must be built using standardized messaging, protocols, and architecture.

## **G. CONTRACT PERIOD OF PERFORMANCE AND SCOPE**

The State is seeking to procure the services of an IV&V contractor (“Contractor”) to assist in developing a new Enterprise MMIS using multiple modules and multiple vendors. The IV&V Contractor will provide IV&V services for all aspects, modules, components, vendors, contractors and subcontractors of the multi-year MMISR project as outlined in the Scope of Work (Appendix G).

The procurement will result in a single 3-year contract with 3 optional 1-year extensions, not to exceed 6 years in total. The IV&V contract will be time and materials, with annual and life-of-project not-to-exceed caps.

The contract will begin upon final approval by the State Purchasing Agent (SPA) or Contract Review Bureau (CRB), subsequent to approval by CMS. At HSD discretion, the contract may be amended as needed to meet the MMISR project requirements or any future related federal or state requirements.

## **H. PROCUREMENT MANAGER**

1. HSD has assigned a Procurement Manager who is responsible for conducting this procurement, and whose name, address, telephone number and e-mail address are listed below:

Daniel Clavio, Procurement Manager  
New Mexico Human Services Department  
Medical Assistance Division  
P.O. Box 2348  
Santa Fe, NM 87504-2348  
Phone: 505-827-1345  
Fax: 505-476-7043  
email: Daniel.Clavio@state.nm.us

2. All deliveries of responses via express carrier must be addressed as follows:

Daniel Clavio, Procurement Manager  
New Mexico Human Services Department  
Medical Assistance Division  
Ark Plaza  
2025 South Pacheco Street  
Santa Fe, NM 87505

3. Any inquiries or requests regarding this procurement may be submitted in writing to the Procurement Manager. Offerors may contact **ONLY** the Procurement Manager regarding this procurement. Other state employees or Evaluation Committee members do not have the authority to respond on behalf of the State Purchasing Division (SPD).

## I. DEFINITION OF TERMINOLOGY

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

“**Agency**” means the Human Services Department.

“**Authorized Purchaser**” means an individual authorized by a Participating Entity to place orders against this contract.

“**Award**” means the final execution of the contract document.

“**Business Hours**” means 8:00 AM thru 5:00 PM Mountain Standard or Mountain Daylight Time, whichever is in effect on the date given.

“**Close of Business**” means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.

“**CMS**” means the federal “Center for Medicare and Medicaid Services”, an agency of the US Department of Health and Human Services.

“**Contract**” means any agreement for the procurement of items of services, construction, or tangible personal property.

“**Contractor**” means the IV&V contractor for the MMISR project who has been contracted as a result of this procurement.

“**Determination**” means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

“**Desirable**” – the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor.

“**Enterprise**” means the full spectrum of NM HHS systems and agencies (departments/divisions).

“**Evaluation Committee**” means a body appointed to evaluate Offerors’ proposals.

**“Evaluation Committee Report”** means a report prepared by the Procurement Manager and the Evaluation Committee for contract award. It will contain written determinations resulting from the procurement.

**“Finalist”** means an Offeror who meets all mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.

**“HHS”** means “Health and Human Services” and includes all State agencies delivering HHS-related services: Department of Health (DOH), HSD, Aging and Long Term Services Department (ALTSD), Children Youth and Families Department (CYFD).

**“Hourly Rate”** means the proposed fully loaded maximum hourly rates – that include travel, per diem, fringe benefits and any overhead costs – for contractor personnel, and, if appropriate, subcontractor personnel.

**“HSD”** means the State “Human Services Department”.

**“IT”** means information technology.

**“IV&V”** means “Independent Validation and Verification” as defined in Federal regulations and this procurement document.

**“Mandatory”** – the terms "must", "shall", "will", and "required" identify a mandatory item or factor. Failure to meet a mandatory item or factor will result in rejection of an Offeror’s proposal.

**“Minor Technical Irregularities”** include anything in a proposal that does not affect the price quality and quantity or any other mandatory requirement.

**“MITA”** means “Medicaid Information Technology Architecture.”

**“MITA SSA”** mean MITA “State Self-Assessment”.

**“MMIS”** – The New Mexico “Medicaid Management Information System” that helps manage the State’s Medicaid program and Medicaid business functions.

**“MMISR”** – The “MMIS Replacement” system and project, as explained in the RFP.

**“Multiple Source Award”** means an award of an indefinite quantity contract to more than one Offeror, for one or more similar services, items of tangible personal property or construction.

**“Offeror”** is any person, corporation, or partnership that chooses to submit a proposal.

**“Price Agreement”** means a definite or indefinite quantity contract that requires the

contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body that issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

**“Procurement Manager”** means any person or designee authorized by a state agency or local public body to enter into or administer contracts and to make written determinations with respect thereto.

**“Procuring Agency”** means the New Mexico Human Services Department.

**“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates when the project scope is achieved and project acceptance is given by the project executive sponsor.

**“Request for Proposals”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.

**“Responsible Offeror”** means an Offeror that submits a responsive proposal and that 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”** means an offer that conforms in all material respects to the requirements set forth in the RFP. Material respects of an RFP include, but are not limited to price, quality, quantity or delivery requirements.

**“SCS”** means “Seven Conditions and Standards”.

**“SPD”** means State Purchasing Division of the New Mexico State General Services Department.

**“Staff”** means any individual who is a full-time, part-time, or independently contracted employee with an Offeror’s company.

**“State (the State)”** means the State of New Mexico.

**“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent, but does not include local public bodies.

**“State Purchasing Agent”** means the Director of the Purchasing Division of the General Services Department.

## J. PROCUREMENT LIBRARY

The procurement library consists of these online documents which can be accessed individually by clicking on the links below. Offerors are encouraged to review the materials noted here by selecting the link provided in the electronic version of this document through your own internet connection.

The RFP will be posted on the NM HSD website:

<http://www.hsd.state.nm.us/LookingForInformation/open-rfps.aspx>

NM Procurement regulations and RFP instructions:

[http://www.generalservices.state.nm.us/statepurchasing/ITBs\\_RFPs\\_and\\_Bid\\_Tabulation.aspx](http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx).

Federal and State requirements for MMIS:

- 42 CFR Part 433 (c): <http://www.ecfr.gov/cgi-bin/text-idx?SID=f100ecfeaa4b4f7032c97c20d7746886&node=sp42.4.433.c&rgn=div6>
- 45 CFR Part 95 (f): <http://www.ecfr.gov/cgi-bin/text-idx?SID=735a4beac7b39103a5c80483d3ffa209&node=sp45.1.95.f&rgn=div6>
- State Medicaid Manual Part 11: <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Paper-Based-Manuals-Items/CMS021927.html>
- CMS Seven Conditions and Standards: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/Downloads/EFR-Seven-Conditions-and-Standards.pdf>
- CMS MMIS Certification Toolkit and Checklist: <http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MMIS/MECT.html>
- Privacy and Security Standards – NIST Special Publications: <http://csrc.nist.gov/publications/PubsSPs.html>
- CMS MITA: <http://www.medicaid.gov/medicaid-chip-program-information/by-topics/data-and-systems/medicaid-information-technology-architecture-mita.html>
- NM 2015 MITA 3.0 State Self-Assessment, on the NMHSD website: <http://www.hsd.state.nm.us/uploads/files/Looking%20For%20Information/General%20Information/State%20Plan%20Amendments/NM%20MITA%20SSA%20Summary%20Doc%206-30-15.pdf>
- CMS Presentation on IV&V Services Requirements in MMISR Projects <http://www.hsd.state.nm.us/uploads/files/Looking%20For%20Information/General%20Information/State%20Plan%20Amendments/NM%20MITA%20SSA%20Summary%20Doc%206-30-15.pdf>

- NM DoIT Independent Verification and Validation Guidelines:  
<http://www.doit.state.nm.us/contracts.html>

## II. CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP presents the schedule, description and conditions governing the procurement.

### A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	HSD	October 30, 2015
2. Distribution List	HSD	November 10, 2015
3. Pre-Proposal Conference (optional)	HSD	November 10, 2015
4. Deadline to submit Questions	Potential Offerors	November 17, 2015
5. Response to Written Questions	Procurement Manager	November 24, 2015
<b>6. Submission of Proposal</b>	<b>Potential Offerors</b>	December 10, 2015
7. Proposal Evaluation	Evaluation Committee	December 11-18, 2015
8. Selection of Finalists	Evaluation Committee	December 18, 2015
9. Best and Final Offers	Finalist Offerors	January 5, 2016
10. Oral Presentation(s)	Finalist Offerors	January 12 & 13, 2016
11. Finalize Contractual Agreements	HSD/Finalist Offerors	January 29, 2016
12. CMS Approval of Contract	CMS	March 18, 2016
13. Contract Awards	HSD/ Finalist Offerors	March 30, 2016
14. Protest Deadline	HSD	15 calendar days after contract award notice

\* Dates subject to change based on number of responses to evaluate and final approval from Federal partners.

### B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II.A above.

#### 1. Issue RFP

This RFP was issued on behalf of NM HSD Department on the date specified in the SEQUENCE OF EVENTS. The RFP and amendments, if any, may be downloaded from the following address: <http://www.hsd.state.nm.us/> .

#### 2. Distribution List Response Due

Potential Offerors should email, hand deliver, return by facsimile, or return by registered or certified mail the "Acknowledgement of Receipt of Request for Proposals Form" that accompanies this document (APPENDIX A) to have their organization placed on the procurement distribution list. The form must be signed by an authorized representative of the organization, dated and returned to the Procurement Manager by 3:00 pm MST or

MDT as stated in Section II, A. SEQUENCE OF EVENTS.

The procurement distribution list will be used to distribute amendments to the RFP, in accordance with 1.4.1.19 NMAC, and to distribute written responses to questions. Failure to return the Acknowledgement of Receipt form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

### **3. Pre-Proposal Conference**

A pre-proposal conference will be held beginning at 1:00 PM MST at 1474 Rodeo Rd., Santa Fe, NM 87505 in the large conference room, as stated in Section II, A. SEQUENCE OF EVENTS. Attendance by potential Offers at the Pre-Proposal Conference is optional. Potential Offeror(s) are encouraged to submit written questions to the Procurement Manager in advance of the conference (see Section I, Paragraph H). The identity of the organization submitting question(s) will not be revealed. Additional written questions may be submitted at the conference. All written questions will be addressed in writing on the date listed in the SEQUENCE OF EVENTS. A public log will be kept of the names of potential Offeror(s) who attended the pre-proposal conference.

### **4. Deadline to Submit Written Questions**

Potential Offerors may submit written questions to the Procurement Manager as to the intent or clarity of this RFP until 5:00 PM MST as indicated in Section II, A, SEQUENCE OF EVENTS. All written questions must be addressed to the Procurement Manager as declared in Section I, Paragraph H.

### **5. Response to Written Questions**

As indicated in the SEQUENCE OF EVENTS, written responses to written questions will be distributed to all potential Offerors whose organization name appears on the procurement distribution list. An e-mail copy of questions and responses will be sent to all Offerors that provide Acknowledgement of Receipt Forms (described in II.B.2) before the deadline. If this RFP is being issued through state purchasing, additional copies will be posted to: [http://www.generalservices.state.nm.us/statepurchasing/ITBs\\_RFPs\\_and\\_Bid\\_Tabulation.aspx](http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx).

### **6. Submission of Proposal**

ALL OFFEROR PROPOSALS MUST BE RECEIVED BY THE PROCUREMENT MANAGER OR DESIGNEE NO LATER THAN 3:00 PM MST on the date stated in Section II, A. SEQUENCE OF EVENTS. Proposals received after this deadline will not be accepted. The date and time of receipt will be recorded on each proposal.

Proposals must be addressed and delivered to the Procurement Manager at the address listed in Section I, Paragraph H. Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the IV&V Services for MMISR Project, RFP #16-630-8000-6000. Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to Section 13-1-116 NMSA 1978, the contents of proposals will not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract pursuant to this RFP is awarded. In this context “awarded” means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

## **7. Proposal Evaluation**

Proposals will be evaluated by a HSD-selected Evaluation Committee. The evaluation process will take place as indicated in the SEQUENCE OF EVENTS, depending upon the number of proposals received. During this time, the Procurement Manager may initiate discussions for the purpose of clarifying aspects of the proposals with Offerors that submit responsive or potentially responsive proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by Offerors, under the risk of violating procurement rules and being disqualifying.

## **8. Selection of Finalists**

The Procurement Manager will notify the finalist Offerors selected by the Evaluation Committee in accordance with the schedule in Section II. A, SEQUENCE OF EVENTS, or as soon as possible. A schedule for oral presentations and demonstrations will be determined at this time.

## **9. Best and Final Offers**

Finalist Offerors may be asked to submit revisions to their proposals for the purpose of obtaining best-and-final offers in accordance with the schedule in Section II. A, SEQUENCE OF EVENTS, or as soon as possible. Best-and-final offers may also be clarified and amended at finalist Offerors’ oral presentations and demonstrations.

## **10. Oral Presentations**

Finalist Offerors will be required to make an oral presentation at a location to be determined in accordance with the schedule in Section II. A, SEQUENCE OF EVENTS or as soon as possible. Scheduling of oral presentations and the time limitations of the presentations will be at the discretion of the Evaluation Committee.

## **11. Finalize Contractual Agreements**

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) in accordance with the schedule in Section II. A, SEQUENCE OF EVENTS, or as soon as possible thereafter. This date is subject to change at the discretion of the relevant Agency Procurement office. In the event that mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

## **12. CMS Approval of Contract**

The final contract is subject to a review and approval process by CMS prior to formal execution. The contract will be officially awarded only after CMS has granted its approval.

## **13. Contract Awards**

After review of the Evaluation Committee Report and of the signed contractual agreement, the Agency Procurement office will award in accordance with the schedule in Section II. A, SEQUENCE OF EVENTS, or as soon as possible thereafter. This date is subject to change at the discretion of the relevant Agency Procurement office.

The contract shall be awarded to the Offeror (or Offerors) whose proposals are most advantageous to the State of New Mexico and HSD, taking into consideration the evaluation factors set forth in this RFP. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

## **14. Protest Deadline**

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The fifteen (15) calendar-day protest period shall begin on the day following contract award and will end at 5:00 pm MST/MDT on the 15<sup>th</sup> day after contract award. Protests must be written and must include the name and address of the protestor and the request for proposal number. Protests must also include a statement of the grounds for protest, including appropriate supporting exhibits, and must specify the ruling requested from the party listed below. The protest must be delivered to the HSD Protest Manager at the following address:

### **Physical Address:**

Office of General Counsel  
Pollon Plaza  
2009 South Pacheco  
Santa Fe, New Mexico 87505

### **Mailing Address:**

P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

**Protests received after the deadline will not be accepted.**

## **C. GENERAL REQUIREMENTS**

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

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

## **2. Incurring Cost**

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror. Any cost incurred by the Offeror for set up and demonstration of any proposed equipment and/or system shall be borne solely by the Offeror.

## **3. Prime Contractor Responsibility**

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a state agency that may derive from this RFP. The state agency entering into a contractual agreement with a Contractor will only make payments to the prime contractor.

## **4. Subcontractors/Consent**

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive written approval from the agency awarding any resultant contract before any subcontractor is used during the term of this agreement.

## **5. Amended Proposals**

An Offeror may submit an amended proposal before the deadline for receipt of proposals. An amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Agency personnel will not merge, collate, or assemble proposal materials. No Amended Proposals may be submitted after the submission deadline.

## **6. Offeror's Rights to Withdraw Proposal**

Offerors will be permitted to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative and 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, including proposal prices for services, will be considered firm for one hundred twenty (120) days after the due date for receipt of proposals or ninety (90) days after the due date for the receipt of a best-and-final offer, if the Offeror is invited or required to submit one.

## **8. Disclosure of Proposal Contents**

Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be

open to the public, except for material that is clearly marked proprietary or confidential. The Procurement Manager will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:

- a) Proprietary or confidential data shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential portion of the proposal.
- b) Confidential data is restricted to:
  - 1) Confidential financial information concerning the Offeror's organization;
  - 2) Data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978.

PLEASE NOTE: 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, SPD or the Agency shall examine the Offeror's request and make a written determination that specifies which portions of the proposal may 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.

## **9. No Obligation**

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by 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 agency determines such action to be in the best interest of the State of New Mexico.

## **11. Sufficient Appropriation**

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

## **12. Legal Review**

The Agency requires that all Offerors agree to be bound by the General Requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Procurement Manager.

### **13. Governing Law**

This RFP and any agreement with an Offeror that may result from this procurement shall be governed by the laws of the State of New Mexico.

### **14. Basis for Proposal**

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

### **15. Contract Terms and Conditions**

The Contract between the Agency and a Contractor will follow the format specified by the Agency and contain the terms and conditions set forth in Appendix C of the attached sample contract, "Contract Terms and Conditions." However, the Agency reserves the right to negotiate with a successful Offeror provisions in addition to those contained in this RFP.

HSD discourages exceptions requested by offerors to contract terms and conditions in the RFP (Sample Contract). If, in the sole assessment of HSD (and its Evaluation Team), a proposal appears to be contingent on an exception, or on correction of what is deemed by an offeror to be a deficiency, or if an exception would require a substantial proposal rewrite, a proposal may be rejected as nonresponsive.

The sample contract in APPENDIX I is HSD's generic contract.

Sample Contract Termination provisions can be found in Section 6 of the attached sample contract found in APPENDIX I.

### **16. Offeror Terms and Conditions**

Should an Offeror object to any of the Agency's terms and conditions, as contained in this Section or in the appendices, the **Offeror must propose specific, alternative language in writing and submit it with its proposal.** Contract variations received after the award will not be considered. The Agency may or may not accept the alternative language. Offerors agree that requested language must be agreed to in writing by the Agency to be included in the contract. If any requested alternative language submitted is not so accepted by the Agency, the attached sample contract with appropriately accepted amendments shall become the contract between the parties. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the Agency and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change, followed by the specific proposed alternate wording. Offerors must submit with the proposal a complete set of any additional terms and conditions that they expect to have included in a contract negotiated with the Agency.

### **17. Contract Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency and the Offeror selected 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 potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or who fails to submit a responsive offer as defined in Sections 13-1-83 and 13-1-85 NMSA 1978.

### **19. Right to Waive Minor Irregularities**

The Evaluation Committee reserves the right to waive minor irregularities. The Evaluation Committee also reserves the right to waive mandatory requirements in instances where all responsive proposals failed to meet the same mandatory requirements and the failure to do 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 Agency reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Agency, adequately meeting the needs of the Agency.

### **21. Notice of Penalties**

The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

### **22. Agency Rights**

The Agency in agreement with the Evaluation Committee reserves the right to accept all or a portion of a potential Offeror's proposal.

### **23. Right to Publish**

Throughout the duration of this procurement process and contract term, Offerors and contractors must secure from the agency written approval prior to the release of any information that pertains to the potential work or activities covered by this procurement and/or agency contracts deriving from this procurement. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or removal from the contract.

### **24. Ownership of Proposals**

All documents submitted in response to the RFP shall become property of the State of New Mexico.

### **25. Confidentiality**

Any confidential information provided to, or developed by, the Contractor in the

performance of the contract resulting from this RFP shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

The Contractor(s) agrees to protect all confidential information and not to publish or disclose such information to any third party without the procuring Agency's written permission.

## **26. Electronic mail address required**

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence. (See also Section II.B.5, Response to Written Questions).

## **27. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the agency, the Offeror acknowledges that the version maintained by the agency shall govern. Please refer to:

[http://www.generalservices.state.nm.us/statepurchasing/ITBs\\_RFPs\\_and\\_Bid\\_Tabulation.aspx](http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx).

The version found on the HSD website is at:

<http://www.hsd.state.nm.us/LookingForInformation/open-rfps.aspx>

## **28. New Mexico Employees Health Coverage**

- a) 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 twenty (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 if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed two hundred fifty thousand dollars (\$250,000) dollars.
- b) Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline health insurance for other reasons. These records are subject to review and audit by a representative of the state.
- c) 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 web site link to additional information <http://www.insurenemexico.state.nm.us/>.

- d) 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 revenue (from state and, if applicable, from local public bodies if from a state price agreement) of two hundred fifty thousand dollars (\$250,000).

## **29. Campaign Contribution Disclosure Form**

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, APPENDIX E, as a part of its proposal. This requirement applies regardless whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return the signed unaltered form will result in disqualification.

## **30. Pay Equity Reporting Requirements**

- a) If the Offeror has ten (10) or more employees OR eight (8) or more employees in the same job classification, Offeror must complete and submit the required reporting form (PE10-249) if it is awarded a contract. Out-of-state Contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and fulfilled directly by the out-of-state contractor, and not passed through a local Contractor.
- b) For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Offeror must also agree to complete and submit the required form annually within thirty (30) calendar days of the annual bid or proposal submittal anniversary date and, if more than one hundred eighty (180) days has elapsed since submittal of the last report, at the completion of the contract.
- c) Should Offeror not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, Offeror must agree to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement.
- d) Offeror must also agree to levy these reporting requirements on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Offeror must further agree that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, offer will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement.

## **31. Disclosure Regarding Responsibility**

- 1) Any prospective Contractor and any of its Principals who enter into a contract greater than sixty thousand dollars (\$60,000.00) with any state agency or local public body for professional services, tangible personal property, services or construction agrees to disclose whether the Contractor, or any principal of the Contractor's company:

- 1) Is presently debarred, suspended, proposed for debarment, or declared ineligible for award of contract by any federal entity, state agency or local public body;
- 2) Has within a three (3) year period preceding this offer, been convicted in a criminal matter or had a civil judgment rendered against them for:
  - (a) the 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;
  - (b) violation of Federal or state antitrust statutes related to the submission of offers; or
  - (c) the commission in any federal or state jurisdiction of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violation of Federal criminal tax law, or receiving stolen property;
- 3) Is presently indicted for, or otherwise criminally or civilly charged by any (federal state or local) government entity with the commission of any of the offenses enumerated in paragraph A of this disclosure;
- 4) Has been notified, preceding this offer, of any delinquent Federal or state taxes in an amount that exceeds three thousand dollars (\$3,000) of which the liability remains unsatisfied. Taxes are considered delinquent if the following criteria apply:
  - (a) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge of the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
  - (b) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
  - (c) Have within a three year period preceding this offer, had one or more contracts terminated for default by any federal or state agency or local public body.)
- 5) Principal, for the purpose of this disclosure, means an officer, director, owner, partner, or person having primary management or supervisory responsibilities within a business entity or related entities.
- 6) The Contractor shall provide immediate written notice to the State Purchasing Agent or other party to this Agreement if, at any time during the term of this Agreement, the Contractor learns that the Contractor's disclosure was at any time erroneous or became erroneous by reason of changed circumstances.
- 7) A disclosure that any of the items in this requirement exist will not necessarily result in termination of this Agreement. However, the disclosure will be considered in the determination of the Contractor's responsibility and ability to

perform under this Agreement. Failure of the Contractor to furnish a disclosure or provide additional information as requested will be grounds for immediate termination of this Agreement pursuant to the conditions set forth in Paragraph 7 of this Agreement.

- 8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the disclosure required by this document. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9) The disclosure requirement provided is a material representation of fact upon which reliance was placed when making an award and is a continuing material representation of the facts during the term of this Agreement. If during the performance of the contract, the Contractor is indicted for or otherwise criminally or civilly charged by any government entity (federal, state or local) with commission of any offenses named in this document the Contractor must provide immediate written notice to the State Purchasing Agent or other party to this Agreement. If it is later determined that the Contractor knowingly rendered an erroneous disclosure, in addition to other remedies available to the Government, the State Purchasing Agent or Central Purchasing Officer may terminate the involved contract for cause. Still further the State Purchasing Agent or Central Purchasing Officer may suspend or debar the Contractor from eligibility for future solicitations until such time as the matter is resolved to the satisfaction of the State Purchasing Agent or Central Purchasing Officer.

**32. Involvement of NM HSD Personnel during the MMISR Project and IV&V contract.**

NMHSD will provide limited project management and contractor management support during the MMISR Project and the IV&V contract, along with subject matter expertise in business and technical areas. This support will be provided by State personnel from the HSD. This contract will be managed by the HSD Information Technology Division (ITD). Governance of the MMISR Project is provided by an Executive Steering Committee. The MMISR PMO Contractor, Integration Platform Contractor, and other MMISR Contractors will be deeply involved in the project.

**33. No resources provided by NM HSD to the IV&V Contractor.**

NM HSD will not provide the IV&V Contractor with supplies, clerical support, computers, hardware, work space and/or other resources related to fulfilling the IV&V Contract. The State will provide the IV&V Contractor access to its MMIS system and to other MMISR contractors as needed for the IV&V work.

**34. Prime Contractor.**

The IV&V Contractor selected through this RFP procurement will be deemed the

Prime Contractor and is completely responsible for the Contract performance whether or not subcontracts are used.

**35. Equal Employment Opportunity.**

HSD is committed to equal employment opportunity and to compliance with federal antidiscrimination laws. We also comply with New Mexico law, which prohibits discrimination and harassment against employees or applicants for employment based on race, age (40 and over), color, religion, national origin, ancestry, sex (including pregnancy, childbirth and related medical conditions), sexual orientation, gender identity, spousal affiliation, National Guard membership, status as a smoker or nonsmoker, genetic information, HIV status, physical or mental handicap or serious medical condition.

HSD will not tolerate discrimination or harassment. The Contractor will be required to submit a statement confirming compliance with EEO rules as part of their contract.

**36. New Mexico Preference Not Applicable**

Because of the use of federal funds, this procurement does not qualify for a NM Resident Business Preference or a NM Veteran's Business Preference per NMSA 1978 §13-1-21.

### III. SCOPE OF WORK

This section summarizes the scope of work for the MMISR project IV&V contract. See APPENDIX G for more detailed information regarding the MMISR project and the IV&V scope of work.

Work under the IV&V contract must comply with CMS and NM DoIT standards and guidelines for IV&V contractors. Broadly stated, these requirements focus on IV&V activities related to:

- Risk management;
- Cost and schedule review;
- Technical quality;
- Performance measurement;
- Code reviews;
- Product development requirements (scope); and
- Project management.

See APPENDIX G for a list of the minimum compliance requirements for this contract. The IV&V Contractor is expected to recommend and apply additional industry-accepted standards, methodologies and tools as appropriate to effectively perform the MMISR IV&V work. The list below addresses, in summary, the key work requirements for the contract to be awarded under this procurement. The specifications listed in APPENDIX G will determine the nature and content of the work to be performed.

Work the IV&V Contractor will perform for the MMISR project includes, but is not limited to:

- The Contractor will develop and submit for HSD review and approval an *IV&V Project Plan* that shows how Contractor will meet the requirements of this contract. The Plan will address, at a minimum:
  - How the Contractor will manage their work under the IV&V contract;
  - Methodologies, tools and /or standards they will use to perform work and how these will be applied for this project;
  - How communications and reporting will be addressed, including deliverable reviews and reporting to CMS or other external organizations;
  - Resource allocation and management for the IV&V contract duration;
  - Planned evaluations (including focus, frequency, expected start and end dates, expected durations, dependencies, relationship to project milestones or events);
  - An IV&V project schedule in an agreed-upon project scheduling tool.
- Contractor will verify and document that business, technology and NM DoIT requirements have been incorporated into the *IV&V Project Plan*. Throughout the project's life, the IV&V Contractor will review and update, as needed, the *Plan* on a regular schedule and/or as required by the HSD to adjust for any changes to the MMISR project.

- At a minimum, upon IV&V contract award the IV&V Contractor will perform and document the following initial project assessments:
  - An initial risk assessment of the MMISR project as a whole, taking into consideration technical, procurement-related, project management and other dimensions of the project;
  - An initial project management assessment of the MMISR project as a whole, taking into consideration work performed by and/or tasked to the PMO Contractor and work being performed by the State;
  - An initial project schedule review for the MMISR project as a whole;
  - An initial project requirements assessment for the MMISR project and intended solution;
  - An initial assessment of the MMISR project procurement strategy, including an initial evaluation of planned and active RFPs and/or contracts related to the MMISR project; and
  - An initial compliance review to assess the MMISR project status in relation to Federal, State and other requirements – particularly those related to CMS certification of the ultimate MMISR solution.
  
- The IV&V Contractor will provide an initial MMISR Project Assessment Report, and also will document assessment activities and results in a Weekly IV&V Report (specifically focusing on work performed during the reporting period and on project risk) and in a Monthly IV&V Report (addressing work performed during the reporting period and focusing on project management and risks). In every case, the IV&V Contractor shall make recommendations regarding how the State, the PMO Contractor or other MMISR vendors might address any risks, shortcomings or issues the IV&V Contractor identifies throughout the project life.
  
- As the MMISR project moves through the life cycle, from planning through implementation and closeout, the IV&V Contractor will perform appropriate reviews to verify and validate the technical soundness of the MMISR project approach, the technical soundness of MMISR vendor activities and solutions, the effectiveness of planning and management for that phase of the project or vendor activity, the conformation of solutions to stated MMISR requirements, and the adequacy of the MMISR solution modules to meet CMS certification requirements.
  
- The IV&V Contractor reviews will include, but are not limited to:
  - Project risks;
  - Milestone-related reviews;
  - Architecture reviews;
  - Procurement-related reviews;
  - Project management reviews;
  - Communications and change management reviews;
  - Software/system development related reviews (e.g., code reviews, software development processes and products, requirements traceability);

- Test plans and results;
  - Conversion plans, processes and results;
  - Training-related reviews;
  - Data management reviews;
  - Performance management-related reviews, including service level definitions;
  - Compliance-related reviews;
  - Security and privacy reviews;
  - Readiness reviews; and
  - Operational effectiveness reviews.
- As an independent expert contractor supporting the MMISR project, the IV&V Contractor will proactively identify potential risks, projected consequences of near-term actions, and other vulnerabilities that could affect MMISR project success. The IV&V Contractor will promptly raise these to the State's attention, and will work with the State, the PMO Contractor and other vendors to devise actions or approaches that mitigate the issue or that present an alternative, and more appropriate, approach.

The IV&V Contractor will employ highly knowledgeable key personnel, with qualifications appropriate to this project's scope and complexity, to provide continuous leadership to IV&V activities. The IV&V Contractor will complement these key personnel with appropriate subject matter experts (SMEs) as required by MMISR project life cycle phase and specific activities or issues at any given time during the contract.

## IV. RESPONSE FORMAT AND ORGANIZATION

### A. NUMBER OF RESPONSES

Each Offeror shall submit only one proposal in response to this RFP.

### B. NUMBER OF COPIES

Each Offeror shall deliver:

- **Binder 1:** one original and seven identical hard copies of their Technical Proposal and required additional forms and material. The original and each copy shall be in separate labeled binders. All confidential information in the proposal shall be clearly identified and easily segregated from the rest of the proposal. Binder 1 must not include any cost information.
- **Binder 2:** one original and two copies of their Cost Proposal. The original and each copy shall be in **separate labeled** binders.
- One electronic version of the proposal containing ONLY the Technical Proposal. This copy **MUST NOT** contain any cost information. Acceptable formats for the electronic version of the proposal are Microsoft Word, Excel, and PDF.
- One electronic version of the Cost Proposal. Acceptable formats for the electronic version of the proposal are Microsoft Word, Excel, and PDF.

Any and all confidential or proprietary information shall be clearly identified and shall be segregated on the electronic version, mirroring the hard copy submission(s).

Any proposal that does not adhere to the requirements of this Section may be deemed non-responsive and rejected on that basis.

### C. PROPOSAL FORMAT

This section describes the required format, content and organization for all proposals.

Hard copy proposals shall be submitted typewritten on standard 8 ½-x-11-inch paper (larger paper is permissible for charts, spreadsheets, etc.) and shall be placed in binders with tabs delineating each section.

#### 1. Proposal Content and Organization

Canned or promotional material may be used if referenced and clearly marked; however, use of promotional material should be minimized. The proposal must be organized and indexed (tabbed) in the following format and must contain, at a minimum, all listed items

in the sequence indicated. Additional items may be submitted as attachments following the mandatory items listed for Binder 1.

**Binder 1:** Technical Proposal. *No cost information in Binder 1.*

- Table of Contents
- Response to Specifications (see Section V)
- Signed Letter of Transmittal Form (APPENDIX C)
- List of References
- Financial Stability Documents
- Performance Bond Capacity Statement
- Signed Campaign Contribution Disclosure Form (APPENDIX E)
- Signed Employee Health Coverage Form (APPENDIX F)
- Signed Pay Equity Statement
- Signed Eligibility Statement
- Additional items, if any

**Binder 2:** Cost Proposal

- Completed Cost Response (see APPENDIX B)

In each section of the proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates or expenses must occur only in Binder 2 on the Cost Response.

2. Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal Form located in APPENDIX C, which must be completed and signed by an individual person authorized to obligate the company. The letter of transmittal MUST:

- a. Identify the submitting business entity.
- b. Identify the name, title, telephone number and e-mail address of the person authorized by the Offeror organization to contractually obligate the business entity providing the Offer.
- c. Identify the name, title, telephone number and e-mail address of the person authorized to negotiate the contract on behalf of the Offeror organization (if different than 2.b).
- d. Identify the names, titles, telephone numbers and e-mail addresses of persons to be contacted for clarification and/or questions regarding proposal content.
- e. Identify subcontractors (if any) anticipated to be used in performing any resultant contract.

- f. Describe the relationship with any other entity that will be participating in performing the detailed in an awarded contract.
- g. Identify the following with a check mark and signature where required:
  - 1) Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II. C.1;
  - 2) Acceptance of Section V of this RFP; and
  - 3) Acknowledge receipt of any and all amendments to this RFP.
- h. Be signed by the person identified in paragraph 2.b of this Section.

## V. RESPONSE SPECIFICATIONS

*Services to be delivered through this procurement are spelled out in Section III, SCOPE OF WORK, and APPENDIX G. Responses to questions listed in MANDATORY SPECIFICATIONS should take these work requirements into consideration.*

For each mandatory specification, Offerors should respond in the form of a thorough narrative unless otherwise instructed. The narratives, including required supporting materials, will be evaluated and awarded points accordingly.

### A. MANDATORY SPECIFICATIONS

#### 1. Organizational Experience and Staffing

Offerors' proposals **must** address the following requirements for your organization and any subcontractor performing at least 25% of the proposed work.

##### a) Experience

- 1) Describe in detail your organization's relevant IV&V experience with large, complex technology and business process outsourcing projects in government and/or the private sector, from requirements through implementation. Indicate how many IV&V projects your organization has performed within the last four years and what percentage of your business revenue was derived from those IV&V engagements.
- 2) Describe your organization's experience performing other (non-IV&V) roles on large, complex technology and/or business process outsourcing projects in the government or the private sector. Highlight any experience your organization has with: providing PMO support to major projects; performing requirements analysis, acquisition support, or other planning activities; performing system design, development and implementation; providing training or testing support to major projects.
- 3) Describe at least two successful recent IV&V projects on which your organization was the lead IV&V Contractor. Describe how each experience shaped your services, what lessons were learned, and what outcomes were achieved for the client's project. Address how the Offeror will leverage previous IV&V engagement experience to perform IV&V work for the NM MMISR project.
- 4) Describe experience the Offeror has had with gate reviews, including a description of how the Offeror supported gate evaluations and MMIS Certification reviews.

- 5) Submit a copy of a public record IV&V report, project plan, and final evaluation from another state that was prepared by the Offeror on a similar, recent engagement.

**b) Personnel:**

- 1) Present an organization chart for your proposed IV&V staff structure, showing roles, relationships among team members, and identifying key personnel and other proposed staff by name. Describe how this structure will function over the life of the MMISR project and of the IV&V contract. Correlate roles and the description of how the project team will function to specific MMISR requirements, project phases and implementation approaches.
- 2) Identify expertise and experience you believe are essential to successful performance of the MMISR IV&V project and explain how these relate to the required work and to the MMISR project vision and implementation approach. Correlate these types of expertise and/or experience to the background and capabilities of staff proposed for the project. Explain where you propose that IV&V staff will work – i.e., on site in New Mexico, on site at vendor locations, off site – and how that model will allow your staff to meet NM IV&V needs.
- 3) Describe the professional experience and expertise of your staff, key personnel and subcontractors related to planning, designing, implementing, testing and operating solutions for the HHS sector, and identify their experience and knowledge of MMIS, CMS Seven Conditions and Standards and MITA.
- 4) Present your proposed staffing and Key Personnel models for this project as described in the Scope of Work. Identify (by name and expertise) SMEs who will be part of the IV&V team, and explain what types of additional expertise are available from within the organization and how these experts can be accessed for this project. Identify any subcontractor(s) who will participate in an awarded contract, and describe their organization's experience and the role they will play in the MMISR IV&V project. Provide a detailed list of relevant licenses and certifications members of the proposed project team hold; include Key Personnel, SMEs, other project staff and subcontractor staff. .
- 5) Identify the Key Personnel for this project. Include a resume for each Key Personnel role.
- 6) Describe how you would adjust staffing or expertise (e.g., add or replace staff) throughout the project should staffing or expertise needs change over the MMISR project life.

## **2. Technical Response**

### **a) Understanding of MMISR Project Requirements**

Describe your understanding of the MMISR project and of the challenges and requirements associated with (a) implementing an MMIS solution using the chosen approach and (b) providing effective, proactive IV&V services to help ensure project success.

### **b) IV&V Approach**

1) Describe your organization's approach to performing IV&V engagements, including elements such as (but not limited to):

- (a) What you believe the appropriate role of IV&V is;
- (b) Any tools or methodologies that you use to guide and perform IV&V work;
- (c) How you apply standards as part of your IV&V work;
- (d) How your IV&V approach varies or is tailored to specific client projects, solution types and/or life cycle phases;
- (e) What types of artifacts and work products you produce as a result of your IV&V work; and
- (f) What elements or factors you believe are essential to effective IV&V.

2) Describe how you would apply your organization's IV&V approach to the MMISR project requirements.

- (a) Identify specific activities you would perform;
- (b) Identify the tools, methods and/or standards you would employ to perform these activities;
- (c) Identify specific artifacts and work products that you recommend for the MMISR IV&V effort;
- (d) Describe how you would approach IV&V over the full life of the MMISR project and across the various planned procurements (e.g., technology-based vs. business process outsourcing);
- (e) Explain how you will perform the specified types of assessments required by CMS and NM DoIT (see Section III for an overview of these assessments);
- (f) Provide a proposed schedule and work plan for performing the IV&V work and developing the artifacts and work products that you recommend;
- (g) Explain any requirements for or expectations of support from HSD personnel, from the PMO Contractor and/or from other MMISR vendors over the project life;
- (h) Explain how you will maintain independence, while still working proactively and cooperatively to help the State make the MMISR project a success; and
- (i) Describe how your approach will help New Mexico achieve a robust and effective MMISR and HHS enterprise solution that meets CMS certification requirements.

- 3) Describe in detail how you would provide *proactive IV&V services* (related to concurrent reviews, phase gate participation, independent risk evaluation, and other aspects as described in this RFP) that would improve project outcomes and reduce design, development or implementation problems or issues before they happen. Describe how you would alert and inform project stakeholders about critical risks and issues associated with the project, including recommendations as to how these risks and issues can be addressed as quickly as possible.
- 4) Describe how your IV&V approach would enable the State to maximize the containment of risks for a project of this size and complexity.
- 5) Describe how your IV&V approach would help the State and the other MMISR vendors to minimize issues related to duplication of efforts, integration and interfaces, implementation quality, etc.

**c) Project Management Approach**

- 1) Describe your organization's approach to managing an IV&V project of the size and complexity of the NM MMISR project. Include consideration of, at a minimum:
  - (a) Project management methodologies, tools or standards that your organization uses to manage its engagements;
  - (b) Schedule planning and management;
  - (c) Status reporting;
  - (d) Deliverable development and coordination;
  - (e) Resource management and coordination with other stakeholders (e.g., HSD, PMO Contractor, other MMISR vendors, external stakeholders such as CMS);
  - (f) Communications;
  - (g) Issue identification and resolution;
  - (h) Risk identification and management;
  - (i) Budget planning and management; and
  - (j) Staff performance management (related to project).
- 2) Describe how you will have sufficient resources and staff to start IV&V operations within 15 calendar days of contract award and to be fully operational within 45 calendar days of award.
- 3) Explain where your staff would be located and what facilities and resources will be available to them through the life of this project.

**d) Incentives**

Describe any payment incentives that would be beneficial to both the State and the Offeror for a project of this nature.

## **B. COST**

Offerors must submit the Cost Response as noted in APPENDIX B. Cost will be evaluated by appropriateness and best value for the State.

## **C. OTHER REQUIREMENTS**

Submit the following items in Binder 1 following the responses to Mandatory Specifications. Please include a labeled tab for each item.

### **1. Letter of Transmittal Form**

The Offeror's proposal **must** be accompanied by the Letter of Transmittal Form in APPENDIX C. The form must be complete and **must** be signed by the person authorized to obligate the Offeror's organization.

### **2. References**

Offerors shall provide a minimum of three (3) and no more than five (5) references from similar large-scale IV&V projects performed for private, state or large local government clients within the last 3 years. **Offerors are required to send the Reference Questionnaire Form, APPENDIX D, to their listed business references. The reference organizations must submit the completed Reference Questionnaire Form directly to the Procurement Manager, as described in Section I, Paragraph H.** It is the Offeror's responsibility to ensure the completed forms are received on or before the proposal submission deadline for inclusion in the evaluation process.

References for which the Reference Questionnaire Form is not received, or for which the Form is incomplete, may adversely affect the Offeror's score in the evaluation process. The Evaluation Committee may contact any or all references for validation of information submitted. Additionally, the Agency reserves the right to consider any and all information available to it (outside of the reference information required herein) in its evaluation of Offeror responsibility per Section II, C.18.

Within their proposals, Offerors must submit a list of references with the following information for each reference:

- Client name;
- Project description;
- Project dates (starting and ending);
- Technical environment (e.g., software applications, internet capabilities, data communications, network, hardware);
- Staff assigned to reference engagement who will be designated for work on the MMISR IV&V project;
- IV&V project outcomes, lessons learned and/or value delivered; and
- Client project manager name, telephone number, fax number and e- mail address.

### **3. Financial Stability**

Offerors must submit copies of the most recent year's independently audited financial statements and the most current 10K, as well as financial statements for the preceding three (3) years, if they exist. The submission must include the audit opinion; the balance sheet; statements of income, retained earnings, and cash flows; and the notes to the financial statements. If independently audited financial statements do not exist, Offeror must state the reason and, instead, submit sufficient information (e.g., D & B report) to enable the Evaluation Committee to assess the Offeror's financial stability.

### **4. Performance Surety Bond**

Offeror must have the ability to secure a Performance Surety Bond in favor of the Agency to insure the Contractor's performance the contract award pursuant to this procurement. While each engagement will be different, the option to require a Performance Surety Bond must be available to the Agency at time of contract award. **A statement of concurrence must be submitted in the Offeror's proposal.**

### **5. Campaign Contribution Disclosure Form**

The Offeror must complete an unaltered Campaign Contribution Disclosure Form (see APPENDIX E) and submit a signed copy with their proposal. This must be accomplished whether or not an applicable contribution has been made.

### **6. Employee Health Coverage Form**

The Offeror must agree with the terms indicated in APPENDIX F. The unaltered form must be completed, signed by the person authorized to obligate the Offeror's firm and submitted with Offeror's proposal.

### **7. Pay Equity Reporting Statement**

The Offeror must agree with the reporting requirements defined in Section II.C.30. This report is due at contract award. A statement of concurrence with this requirement must be included in Offeror's proposal. Out-of-state contractors that have no facilities and no employees working in New Mexico are exempt if the contract is directly with the out-of-state contractor and is fulfilled directly by the out-of-state contractor, and is not passed through a local contractor. However, such out-of-state Offerors must still submit a statement of concurrence that reads as follows: **"Offeror concurs with the Pay Equity Reporting as defined in Section II.C.30. Offeror would come under the definition of out-of-state Contractor if Offeror should be successful."**

### **8. Statement of Eligibility**

**Provide a statement confirming the following:** It is the Contractor's responsibility to

warrant that the Contractor and its principals are eligible to participate in all work and transactions and have not been subjected to suspension, debarment, or similar ineligibility determined by any Federal, State or local governmental entity and that the Offeror is in compliance with the State of New Mexico statutes and rules relating to procurement and not listed on the federal government's terrorism watch list as described in Executive Order 13224.

#### **D. ORAL PRESENTATION**

If selected as a finalist, the Offeror will be required to present an overview of its proposal to the Evaluation Committee to give the Evaluation Committee the opportunity to interview proposed key personnel, to ask questions, to seek clarifications to better understand Offeror's proposal, and to better assess Offeror's ability to fulfill the requirements outlined in the scope of work.

Finalists will be the Offerors with the highest scores based on evaluations of responses to Sections A (Mandatory Specifications), B (Cost), and C (Other Requirements) above. The number of Finalists will be determined at the discretion of the Evaluation Committee.

## VI. EVALUATION

### A. EVALUATION POINT SUMMARY

Table 1 summarizes evaluation factors and their associated point values. These weighted factors will be used in the evaluation of Offeror proposals.

<b>Factors</b>	<b>Points Available</b>
<b>Mandatory Specifications</b> ( <i>narrative responses</i> )	<b>700</b>
Organizational Experience & Staffing	
Experience (5 responses)	125
Personnel (6 responses)	125
Technical Responses	
Understanding of MMISR Projects Requirements	50
IV&V Approach (5 responses)	175
Project Management Approach (3 responses)	175
Incentives	50
<b>Cost</b>	<b>300</b>
Cost	300
<b>Other Requirements</b>	<b>100</b>
C.1. Letter Of Transmittal Form	Pass/Fail
C.2. References (completed forms sent separately)	100
C.3. Financial Stability Documents	Pass/Fail
C.4. Performance Surety Bond Statement	Pass/Fail
C.5. Campaign Contribution Disclosure Form	Pass/Fail
C.6. Employee Health Coverage Form	Pass/Fail
C.7. Pay Equity Statement	Pass/Fail
C.8. Statement of Eligibility	Pass/Fail
<b>Sub-Total</b> (for choosing Finalists)	<b>1,100</b>
<b>D. Oral Presentation</b> (Finalists only)	<b>200</b>
Oral Presentation	200
<b>Total</b>	<b>1,300</b>

*Table 1: Evaluation Point Summary*

### B. EVALUATION FACTORS

Responses to Sections A, B and C will be scored on a point system with one-thousand-one-hundred (1,100) total points. With the exception of C.2, References, requirements in Section C are mandatory, with a Pass/Fail grade. Offerors with the highest total points for Sections A, B, C (and passing all requirements of C) will be considered Finalists; the number of Finalist Offerors will be determined at the discretion of the Evaluation Committee. Finalists may be asked to provide an Oral Presentation (Section D) with a possible score of two hundred (200) points. The award for this contract will go to the Finalist deemed to be the most advantageous and to offer the best value to the State for this work.

**C. MANDATORY SPECIFICATIONS (700 points)**

Points will be awarded based on the thoroughness and clarity of the response, the breadth and depth of the engagements cited, and the perceived validity of the response. These responses are placed in Binder 1.

- Organizational Experience and Staffing
  - Experience, 5 responses (125)
  - Personnel, 6 responses (125)
- Technical Responses
  - Understanding of MMISR Requirements (50)
  - IV&V Approach, 5 responses (175)
  - Project Management Approach, 3 responses (175)
  - Incentives (50)

**D. COST (300 points)**

Points will be awarded for thoroughness and appropriateness of the response.

**E. OTHER REQUIREMENTS (100 points, pass/fail)**

Provide the following in tabbed sections in Binder 1:

**1. Letter of Transmittal**

Pass/Fail only. No points assigned.

**2. References (100 points)**

Offeror submits a list of at least three references (and no more than five references) in Binder 1, with business information for each. Completed Reference Questionnaire Forms are submitted by referenced organizations directly to the Procurement Manager. Points will be awarded based on evaluation of the responses to a series of questions that are asked of the references concerning the quality of the Offeror's services, the timeliness of services, responsiveness to problems and complaints, and the level of satisfaction with the Offeror's overall performance. Three References must be provided using the Reference Questionnaire Form found in Appendix D.

**3. Financial Stability – Financials**

Pass/Fail only. No points assigned.

**4. Performance Bond Capacity Statement**

Pass/Fail only. No points assigned.

**5. Campaign Contribution Disclosure Form**

Pass/Fail only. No points assigned.

**6. Employee Health Coverage Form**

Pass/Fail only. No points assigned.

**7. Pay Equity Reporting Statement**

Pass/Fail only. No points assigned.

**8. Statement of Eligibility**

Pass/Fail only. No points assigned.

**F. ORAL PRESENTATION (Finalists only, 200 points)**

Oral Presentations will be required by the highest-scoring Finalists as determined at the discretion of the Evaluation Committee. Points will be awarded based on the quality and organization of information presented, as well how effectively the information was communicated, the professionalism of the presenters and the technical knowledge of the proposed staff. Prior to Oral Presentation, Agency will provide the Offeror with a presentation agenda. (If no Oral Presentations are required all Offerors will receive the same number of total points for this evaluation factor.)

**G. EVALUATION PROCESS**

1. All Offeror proposals will be reviewed for compliance with the requirements and specifications stated in the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Section II. B.7.
3. The Evaluation Committee may include other sources of information to perform the evaluation as specified in Section II. C.18.
4. Responsive proposals will be evaluated on the factors in Section IV, which have been assigned a point value. The responsible Offerors with the highest scores will be selected as finalist Offerors, based upon the proposals submitted. The responsible Offerors whose proposals are most advantageous to the State, taking into consideration the evaluation factors in Section IV, will be recommended for award (as specified in Section II. B.8). Please note, however, that, regardless of overall score, a serious deficiency in the response to any one factor may be grounds for rejection.

## **Summary of Appendices to Follow:**

- Appendix A – Acknowledgment of Receipt Form
- Appendix B – Cost Response
- Appendix C – Letter of Transmittal Form
- Appendix D - Reference Questionnaire Form
- Appendix E – Campaign Contribution Disclosure Form
- Appendix F – NM Employees Health Coverage Form
- Appendix G – Scope of Work
- Appendix H -- Requirements and Standards
- Appendix I – Sample Contract

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

**REQUEST FOR PROPOSAL**

**IV & V Services for MMISR Project**  
**RFP # 16-630-8000-6000**

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that s/he has received a complete copy, beginning with the title page and table of contents, and ending with APPENDIX I.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than as stated in Section II, A. SEQUENCE OF EVENTS. 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 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 Request for Proposal.

Firm does/does not (circle one) intend to respond to this Request for Proposal.

Daniel Clavio, Procurement Manager  
IV&V Services for MMISR Project  
RFP #16-630-8000-6000  
Human Services Department  
Medical Assistance Division  
2025 Pacheco Street  
PO Box 2348, Santa Fe, NM 87504  
Fax: 505-476-7043  
E-mail: [Daniel.Clavio@state.nm.us](mailto:Daniel.Clavio@state.nm.us)

## **APPENDIX B**

### **COST RESPONSE**

1. Provide a table showing all personnel costs by staffing category.  
*Note: Personnel rates must be equal to or lower than your best rates to any other public sector client for comparable work.*
  
2. Provide a clear and detailed budget showing total costs for the life of the project (three years) and one extension year, by year and staffing category.  
*Note: This contract will be subject to annual and life-of-project not-to-exceed caps.*

**APPENDIX C**  
**Letter of Transmittal Form**

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

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

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

1. **Identity (Name) and Mailing Address** of the submitting organization:

\_\_\_\_\_

2. For the person authorized by the organization to contractually obligate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

3. For the person authorized by the organization to negotiate on behalf of this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

4. For the person authorized by the organization to clarify/respond to queries regarding this Offer:

Name \_\_\_\_\_

Title \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Telephone Number \_\_\_\_\_

5. Use of Sub-Contractors (Select one)

\_\_\_\_ No sub-contractors will be used in the performance of any resultant contract OR

\_\_\_\_ The following sub-contractors will be used in the performance of any resultant contract:

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

6. Please describe any relationship with any entity (other than Subcontractors listed in (5) above) which will be used in the performance of any resultant 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 II. C.1.

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

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

\_\_\_\_\_, 2015  
Authorized Signature and Date (Must be signed by the person identified in item #2, above.)

## **APPENDIX D**

### **REFERENCE QUESTIONNAIRE**

The State of New Mexico, as a part of the RFP process, requires Offerors to submit a minimum of three (3) business references as required within this document. The purpose of these references is to document Offeror's experience relevant to the scope of work in an effort to establish Offeror's responsibility.

Offeror is required to send the following reference form to each business reference listed. The business reference, in turn, is requested to submit the Reference Questionnaire directly to:

Daniel Clavio, Procurement Manager  
**IV&V Services for MMISR Project**  
**RFP 16-630-8000-6000**  
Human Services  
Department Medical  
Assistance Division  
2025 Pacheco Street  
PO Box 2348, Santa Fe, NM 87504  
Fax: 505-476-7043  
E-mail: Daniel.Clavio@state.nm.us

Completed Reference Questionnaires must be received by the Procurement Manager not later than the RFP submission deadline for inclusion in the evaluation process. The form and information provided will become a part of the submitted proposal. Business references provided may be contacted for validation of content provided therein.

**RFP # 16-630-8000-6000**  
**REFERENCE**  
**QUESTIONNAIRE FOR:**

---

(Name of Offeror)

This form is being submitted to your company for completion as a business reference for the company listed above. This form is to be returned to the State of New Mexico, Human Services Department via facsimile or e-mail at:

Daniel Clavio, Procurement Manager  
**IV&V Services for MMISR Project**  
**RFP # 16-630-8000-6000**  
 Human Services Department  
 Medical Assistance Division  
 2025 Pacheco Street  
 PO Box 2348, Santa Fe, NM 87504  
 Fax: 505-476-7043  
 E-mail: Daniel.Clavio@state.nm.us

The form must be received by the Procurement Manager no later than the date specified in the SEQUENCE OF EVENTS, and **must not** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the State of New Mexico Procurement Manager listed above. When contacting us, please be sure to include the RFP number listed at the top of this page.

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	

**QUESTIONS:**

3. In what capacity have you worked with this Contractor in the past? Describe the work this Contractor did for you.  
 COMMENTS:

2. How would you rate this firm's knowledge and expertise?  
 \_\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 Unacceptable)

COMMENTS:

3. How would you rate the Contractor's flexibility relative to changes in the project scope and timelines?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

4. What is your level of satisfaction with hard-copy materials produced by the Contractor?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

5. How would you rate the dynamics/interaction between the Contractor and your staff?

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

6. Who were the Contractor's principal representatives involved in your project and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

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

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

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

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

COMMENTS:

7. How satisfied are you with the products developed by the Contractor

\_\_\_\_ (3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable)

COMMENTS:

8. With which aspect(s) of this Contractor's services are you most satisfied?  
COMMENTS:

9. Which aspect(s) of this Contractor's services are you least satisfied with?  
COMMENTS:

10. Would you recommend this Contractor's services to your organization again?  
COMMENTS:

## **APPENDIX E**

### **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 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 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 and fifty dollars (\$250) over the two-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 request for proposals and ending with the award of the contract or the cancellation of the request for proposals. “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 DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.**

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

\_\_\_\_\_  
Title (Position)

## APPENDIX F

### 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 exceed \$250,000 dollars.
2. Offeror must agree to maintain a record of the number of employees who have (a) accepted health insurance; (b) decline health insurance due to other health insurance coverage already in place; or (c) decline 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 web site link to additional information <http://www.insurenewmexico.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 revenue (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

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

Date \_\_\_\_\_

**APPENDIX G**  
**DETAILED SCOPE OF WORK**

*Independent Verification and Validation for the New Mexico MMIS*  
*Replacement Project*

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- C. IV&V Contractor Expectations
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- A. Staffing Overview and Model
- B. Contractor Key Project Personnel
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## A. MMISR Project

The State of New Mexico is initiating a transformational change to its Medicaid Management Information System (MMIS). The new system will be developed using several modules – including technology-based modules, technology-based services, and business process outsourcing – to support more efficient business practices, provide greater interconnected services across the Enterprise, and, consequently, lead to better health outcomes for our population.

The MMIS Replacement (MMISR) solution, aligned to Center for Medicare and Medicaid Services (CMS) Medicaid Information Technology Architecture (MITA) 3.0 and Seven Conditions and Standards (SCS), will offer greater flexibility, efficiency, and interoperability. The emphasis of this multiple-module/multiple-vendor approach is on procuring *services* rather than *technologies*, and on working with vendors and partners who can offer the best solutions in rapidly changing healthcare and technology fields.

The State is seeking Independent Verification and Validation (IV&V) services for the entire MMIS Replacement project, which comprises procurement and implementation of multiple interrelated modules by multiple vendors over several years. The State views the IV&V Contractor as a crucial partner in this process, providing IV&V, quality and risk mitigation services to help ensure the success of each procurement, the development and implementation of the MMISR solution, and CMS certification of the new MMISR solution as a whole.

## B. IV&V INDEPENDENCE

IV&V services must be provided and managed by an organization that is *technically* and *managerially independent* of the MMISR project. This independence takes two mandatory forms: technical independence and managerial independence. First, *technical independence* requires that the IV&V services provider or its personnel are not, and have not been, organizationally involved in MMISR development, procurement or implementation, including having participated in the project's initial planning and/or subsequent design. Such technical independence helps ensure every IV&V review report is free of personal or professional bias. Second, *managerial independence* is required of the IV&V Contractor to ensure that the IV&V effort is vested in an organization departmentally and hierarchically separate from the MMISR development and program management organizations and vendors. Such managerial independence helps ensure that the IV&V service provider is able to deliver to both State and Federal executive leadership and management, as well as to provide findings and recommendations without restriction or fear of retaliation or coercion (such as reports being subject to prior review or approval from the development group before release to outside entities).

The IV&V Contractor cannot participate in any way with a prospective vendor in the development or implementation of any of the MMISR modules, nor may the IV&V Contractor assist in preparation of any vendor's application or proposal to the State for any of the MMISR services.

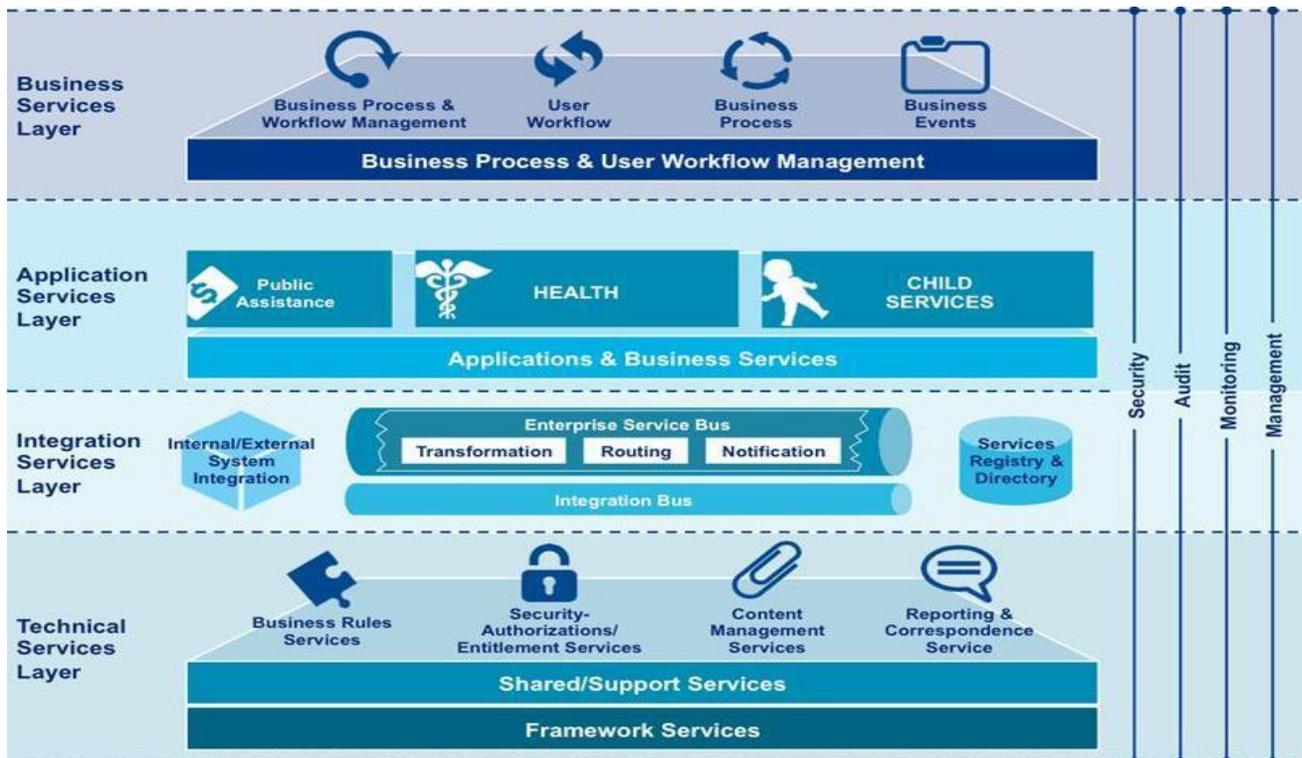
# I. OVERVIEW OF MMISR PROJECT

## A. Enterprise Approach

An overriding project goal of the NM MMISR Project is to develop an effective service-oriented MMIS solution that works on an enterprise level, providing support, services, and expanded capacity to all relevant departments, agencies and functions in the State of New Mexico' health and human services (HHS) enterprise. While a MMIS primarily provides information technology (IT)-based management support for Medicaid programs, its services in NM extend to other agencies that serve the same clients/populations, including NM Human Services Department (HSD) and its divisions (Income Support Division (ISD), Behavioral Health Services Division (BHSD), and Child Support and Enforcement Division (CSED) as well as the NM Department of Health (DOH), the NM Aging and Long Term Services Department (ALTSD), and the NM Children, Youth and Families Department (CYFD), among others.

It is important to the success of this project that the MMISR is developed and implemented with an enterprise framework in mind, leveraging the federal financial support and shared state resources for this project in the broadest possible ways. A key goal of this project is the immediate and/or future effective use of the MMISR solution by the widest possible group of HHS enterprise users. Ensuring that the MMISR solution is well planned and is successfully developed and implemented (as an effective and efficient enterprise solution) is a crucial role of the IV&V Contractor.

Figure G-1 illustrates the MMISR enterprise framework concept.



*Figure G-1: NM MMISR – HSD Enterprise Framework Schematic*

## **B. MMIS Procurement Strategy**

New Mexico is developing its new MMIS in accordance with CMS' MITA and with the CMS SCS modularity standard. The MMISR solution will be realized through multiple vendors who provide services, and in some cases technology, via interoperable modules to collectively address business functions of the enterprise MMIS. The IV&V Contractor will play a crucial role in ensuring that the various modules function as required, and will work with the State, the Project Management Office (PMO) Contractor, other MMISR vendors and CMS as required to perform this work. Development of the MMIS replacement strategy is continuing, in accordance with a revised schedule built around the approved PMO contract. The team is validating requirements, the procurement strategy and procurement schedule based upon the planned use of multiple modules – encompassing both technology-based elements and business process outsourcing – to replace the existing MMIS with an HHS framework that can accommodate additional service requirements over time. All work is being correlated to the MITA framework, building upon the State Self-Assessment (SS-A) completed in June 2015.

Figure G-2 presents the current planned architecture, color-coded by procurement. Note that this figure includes ASPEN, New Mexico's existing eligibility system, and CSESR, the Child Support Enforcement System Replacement also being managed by the combined PMO.



All HHS Framework vendors will be required to comply with CMS standards, as well as with industry standards supporting interoperability. Participating vendors will leverage the core integration platform, the data warehouse and other tools as applicable to deliver services and/or to share data.

An overview of the modules and planned procurements follows. HSD anticipates award of the first three listed procurements (IV&V, Integration Platform, Enterprise Data) in Federal Fiscal Year (FFY) 2016, with awards for the remaining four procurements in FFY 2017.

1. IV&V Services

The first procurement planned to support implementation of a new, framework-based MMISR solution is the IV&V Services procurement (documented in this RFP).

2. Integration Platform

Previously referred to as the Systems Integrator (SI) procurement, HSD has revised this name to better reflect the nature of the procurement and to avoid preconceptions associated with the term “systems integrator”. Through this RFP, HSD will acquire:

- a. The enterprise service bus that forms the central integrating technology for our modular services and technology architecture;
- b. A number of technology applications and tools that support programmatic needs within the HHS Framework;
- c. The operational/production database that will support MMIS transition, feed the enterprise data warehouse (may be acquired separately) and monitor performance of the integration platform;
- d. Contractor services to implement and operate the core technology platform;
- e. Contractor services to support integration of subsequent modules or components; and
- f. Contractor services to manage the contract and interaction with other vendors and stakeholders.

This procurement will require the vendor to comply with accepted standards that promote both interoperability across the HHS Framework and integration with subsequent modules.

3. Enterprise Data Services

This procurement will provide the enterprise data warehouse and associated data marts or other data structures required to support enhanced reporting, analysis and analytics for the Medicaid program, for the NM HHS enterprise, and ultimately for health management

population. The procurement will include the underlying technology platform, as well as contractor services to:

- a. Implement the enterprise data warehouse and related structures;
- b. Operate and maintain the data warehouse;
- c. Support reporting and analytics; and
- d. Manage the contract and interact with other HHS Framework vendors.

#### 4. Quality Assurance

Through a business process outsourcing contract, HSD will contract with a vendor to provide the following services using a CMS-compliant platform and process:

- a. Program Integrity (including Third-Party Liability, Program Integrity, Fraud and Abuse Detection Services, audit coordination, quality reporting and compliance);
- b. Provider Management; and
- c. Member Enrollment.

The contractor also will provide services necessary for contract management and interaction with other HHS Framework vendors.

#### 5. Financial Services

Through a business process outsourcing contract, HSD will contract with a vendor to provide claims processing and comprehensive financial services (e.g., accounting, payment handling) using a CMS-compliant platform and process. The contractor also shall provide services necessary for contract management and for interaction with other HHS Framework vendors.

#### 6. Unified Public Interface

One part of the vision driving the HHS Framework and the MMISR project is to present a more customer-centric view of the associated services and processes. As part of this, HSD plans to procure vendor services to develop and implement a unified public interface serving the citizens of New Mexico, providers, State agencies and employees, and other stakeholders.

The Unified Public Interface will encompass a consolidated call center, integrated web front end, and use of social media and mobile technology to enhance and streamline interaction. The contractor also shall provide services necessary for contract management and interaction with other HHS Framework vendors.

## 7. Population Health Management

Population Health Management represents realization of a vision for an outcome-focused, relational approach to serving the needs of New Mexico citizens while managing and delivering services and benefits. Population Health Management will be realized through a combination of services and information available through the other elements of the HHS Framework. The Population Health Management procurement will encompass services related to:

- a. Pharmacy Services (i.e., pharmacy rebate, pharmacy benefits management);
- b. Managed Care Organization management;
- c. Health outcomes;
- d. Electronic health records;
- e. Case management; and
- f. Changes to the fee-for-service program.

Additionally, the selected contractor will provide services associated with contract management and with interaction with other HHS Framework vendors and modules.

### C. MMISR Procurement Schedule

The current estimated schedule for this multiple-module, multiple-vendor approach is shown in Table G-1 below. *This schedule is subject to change and to CMS approval.*

MODULE PROCUREMENT NAME	RFP ISSUED	PROPOSALS DUE	AWARD MADE	CONTRACT NEGOTIATED	CMS CONTRACT APPROVAL	NM REVIEW	CONTRACT EXECUTED
Integration Platform	12/28/15	02/08/16	04/18/16	05/16/16	07/15/16	08/12/16	08/13/16
Data Services	05/28/16	07/09/16	09/03/16	10/01/16	11/30/16	12/28/16	12/29/16
Financial Services	07/28/16	09/08/16	11/03/16	12/01/16	01/30/17	02/27/17	02/28/17
Quality Assurance	08/28/16	10/09/16	12/04/16	01/01/17	03/02/17	03/30/17	03/31/17
Unified Public Interface	09/27/16	11/08/16	01/03/17	01/31/17	04/01/17	04/29/17	04/30/17
Population Health Management	10/28/16	12/09/16	02/03/17	03/03/17	05/02/17	05/30/17	05/31/17

Table G-1: Estimated MMISR procurement schedule

Notes: Timing and sequence of RFPs after Integration Platform to be revisited based upon Procurement Strategy work done in the Fall of 2015. Estimated go-live dates remain to be projected, based upon (a) final procurement schedule and (b) final scope of work/procurement.

## II. IV&V CONTRACTOR RESPONSIBILITIES

### A. Introduction

The State intends to award one contract to a prime IV&V Contractor to deliver the IV&V services for the entire MMISR project as described in this RFP. The IV&V Contractor will be responsible for providing IV&V services for the entire multiple-vendor MMISR project within this scope of work. The IV&V Contractor must coordinate with other state agencies and MMISR solution vendor teams. Successful outcomes for individual projects and the MMISR project as a whole is a mutual responsibility among all of these entities.

### B. IV&V Objectives for MMISR Project

The State has identified several business objectives for IV&V services supporting the MMISR project. These include:

1. **Implement IV&V through a coordinated approach to assure the MMISR project objectives are achieved.** Ensure IV&V activities complement the MMISR project approach and that the IV&V Contractor assesses quality in all aspects of the respective project components to assure program and business objectives are achieved.
2. **Maintain/Secure funding from the CMS through adherence to Federal regulations.** Demonstrate compliance with CMS requirements by proactively assessing the MMISR project and its deliverables against the criteria specified in the Medicaid Enterprise Certification Toolkit (MECT) checklists, CMS SCS and MITA 3.0 framework *throughout MMISR solution development and implementation*, rather than on completion. Early identification of non-compliance enables the State to take corrective actions needed to secure or maintain federal funding at 75-90 percent. The IV&V Contractor will work closely with the PMO Contractor and other MMISR vendors on CMS certification.
3. **Provide independent, objective guidance and expertise to help assure MMISR project success and decrease implementation risks.** Gain perspective and garner recommendations on the health of the MMISR project and associated deliverables from the experienced, neutral IV&V Contractor to assure the solution development is managed in accordance with practices that reduce risk and support achievement of the stated project objectives. Leverage assessments and deliverable reviews to ensure that the MMISR solution fully reflects programmatic, technical and performance requirements, and is responsive to users' practices and business needs.
4. **Ensure the end-to-end solution functions as planned** by providing oversight of integration across the MMISR solution. Identify potential risks, issues and/or dependencies with integration across the MMISR solution, and make recommendations about how to effectively address these.
5. **Limit re-work by benefiting from lessons learned from other implementation and redesign experiences.** Apply lessons learned from other large IT, business process

outsourcing and Medicaid IT projects to identify potential issues and risks as early in the project life cycle as possible. Provide recommendations on a revised course of action to limit the impact and/or to avert potential issues and risks.

6. **Foster reuse of common components within the NM enterprise and MMIS.** Ensure the MMISR solution, to the extent possible and where appropriate, leverages technology investments the State has already made in order to prevent unnecessary duplication of work or of functionality within the NMHSD IT portfolio.

### **C. IV&V Contractor Expectations**

1. The MMISR IV&V Contractor is separate and distinct from the MMISR PMO and other vendors providing services and/or solutions related to the MMISR project.
2. The IV&V Contractor provides services throughout the MMISR project life cycle, from planning through certification, for all modules, procurements, implementation and certification of the MMISR.
3. The IV&V Contractor demonstrates clear understanding of the goal of implementing an MMISR solution that focuses on modular procurement of *services* rather than monolithic *technologies*.
4. The IV&V Contractor offers services above and beyond a traditional IV&V model:
  - a) High level of engagement throughout the project, start to finish;
  - b) Proactive, not passive or reactive;
  - c) Actively help identify and recommend actions to mitigate problems, not just report on problems; and
  - d) Engage in early project stages for advising, planning, and assisting in procurements as appropriate.
5. The IV&V Contractor helps the State attain:
  - a) An effective MMIS solution that is driven by and effectively supports our NM HHS enterprise, both near term and for the future;
  - b) Effective interoperability of all MMIS modules and business functions;
  - c) An MMISR solution that conforms to CMS' MITA standards, CMS SCS and CMS certification standards;
  - d) An MMISR solution that effectively and efficiently supports MITA process and

technology maturation (noted in 2015 MITA SS-A) and NM Medicaid business requirements; and

- e) An MMISR solution that conforms to current, developing and best practices related to service-oriented architecture, Federal and state requirements and regulations, MMIS and Medicaid business practices and trends, and health information sharing technology and data practices.
6. The IV&V Contractor will work effectively with:
    - a) HSD/MAD, the business owner;
    - b) HSD/ITD, the technology owner;
    - c) HSD, the enterprise system owner, and its enterprise partner agencies;
    - d) The PMO, the contracted partner managing the MMISR project; and
    - e) All MMISR solution vendors involved in planning, delivering, operating and/or supporting the MMISR solution.
  7. The IV&V Contractor shall use IV&V processes iteratively throughout the MMISR project life cycle to determine whether plans, methods and products fulfill the requirements placed on them by previous iterations, phases or steps, and whether they are internally complete, consistent, and sufficiently correct to adequately support the next iteration, phase and step. IV&V Contractor reviews shall include, but are not limited to, consideration of:
    - a) Risk management;
    - b) Cost and schedule;
    - c) Technical approach and product quality;
    - d) Performance measurement;
    - e) Change management;
    - f) Requirements traceability and completeness;
    - g) Documentation quality and completeness;
    - h) Solution deployment;
    - i) Solution integration;
    - j) Solution sustainability;

- k) Data quality (including consideration of interfaces, plans, processes);
  - l) Security and privacy (including consideration of plans, policies, technical design, implementation);
  - m) Testing coverage and integrity (including unit, system, integration, stress, performance, user acceptance, interface);
  - n) Disaster recovery planning and design; and
  - o) System maintenance strategy.
8. The IV&V Contractor shall use IV&V processes to examine and validate the complete MMISR solution (e.g., software, hardware, service arrangements, procedures, documentation) to verify that requirements are met. The Contractor will identify deficiencies or gaps in processes, within and between systems, and will provide corrective recommendations.
  9. The IV&V Contractor will use appropriate and effective project management and communication tools (including dashboards) to ensure timely and effective information sharing with MMISR project stakeholders.
  10. The IV&V Contractor shall have access to NM MMISR project documents, facilities, and staff during normal business hours to carry out their oversight role. The IV&V Contractor also shall have access to all key staff on site at the NM MMISR project location(s) daily, as needed to observe meetings, review deliverables and documentation, conduct interviews, etc.
  11. Although much more frequent interaction is expected, the IV&V Contractor will meet in person at least monthly, on an agreed-upon schedule, with State staff and with the PMO Contractor to report upon and consult about any or all aspects of the MMISR project.
  12. The IV&V Contractor shall participate in weekly MMISR project status meetings led by the PMO Contractor.
  13. At a minimum, MMISR project IV&V services must comply with applicable State (DoIT) and Federal standards. The IV&V Contractor is expected to apply other industry standards (e.g., related to project management, technology, system development) to their work as appropriate. Standards with which work must comply include, but are not limited to:
    - a) NM Department of Information Technology (DoIT) “Independent Verification and Validation Guidelines”: <http://www.doit.state.nm.us/contracts.html>.
    - b) Federal requirements and guidance, including at least those found in:

- 1) 45 Code of Federal Regulations (CFR) Part 95.626 and 95 (f)
- 2) 42 CFR Part 433 (c)
- 3) State Medicaid Manual Part 11
- 4) Federal regulations at 45 CFR Part 307.15

14. The IV&V Contractor shall advise the State to help ensure the MMISR approach aligns with and supports the State's effort to leverage the enhanced Federal Financial Participation (FFP) to the greatest extent possible.

15. The IV&V Contractor shall produce assessment reports and related documentation that:

- a) Provide appropriate context and history to allow the reader to understand assessment results, findings and recommendations;
- b) Include detailed recommendations related to findings;
- c) Specify near-term and longer term actions that the State, or MMISR project vendors, should take to address an existing finding and/or to avert or mitigate downstream risks or issues;
- d) Specify the standards on which the assessment or recommendations are based;
- e) Recommend measures to assess the State's and the MMISR project's progress in relation to recommendations; and
- f) Provide a record (through follow-up reports) of the State and MMISR project progress against all recommendations to that point.

16. The IV&V Contractor shall review all MMISR project deliverables (including PMO and other vendors' products), assessing, at a minimum, quality, alignment to project objectives, fidelity to State and Federal requirements, compliance with CMS certification criteria (in accordance with the MECT) and adherence to the project plan and strategy. Deliverable reviews must be conducted within five (5) business days of deliverable receipt by the IV&V Contractor, with results reported to the State in an agreed-upon format and within an agreed-upon time.

- a) The IV&V Contractor shall review deliverable expectations document(s) (DED), or their equivalent, when they are provided at the outset of work on a particular task and shall provide comments and recommendations to help ensure the final deliverable will meet requirements for compliance, quality, content, etc.
- b) When reviewing final deliverables, the IV&V Contractor shall take into consideration the final DED for that deliverable.

17. In accordance with Federal regulations (45 CFR Part 307.15), the IV&V Contractor shall:

- a) Develop an *IV&V Project Plan*, and provide this directly to the cognizant Federal

Office at the same time it is given to the State.

- b) Review and make recommendations on both management and technical aspects of the NM MMISR project, including both State and vendor. Provide the results of this analysis directly to the cognizant Federal office at the same time it is given to the State.
- c) Perform periodic project management reviews that address:
  - 1) Clarity and integrity of project scope;
  - 2) Progress against budget and schedule;
  - 3) Schedule quality (e.g., dependencies, completeness, accuracy, milestones);
  - 4) Issues and risks.
- d) Consult with all stakeholders and assess user involvement and buy-in regarding solution functionality and the solution's ability to meet program needs.
- e) Analyze MMISR project performance and progress (e.g., schedule, budget, resources, reporting, work flow) to identify and make recommendations for improvement.
- f) Assess project risks and make recommendations for mitigation or aversion.
- g) Review and monitor development processes to ensure they are being documented, carried out, and analyzed for improvement.
- h) Assess the MMISR project's configuration management (CM) function by reviewing CM reports and making recommendations regarding appropriate organization, processes and tools to manage solution changes.
- i) Perform a detailed review of the solution architecture (including software, hardware, communications and data) for feasibility, consistency, interoperability and adherence to industry standards.
  - 1) Inventory and review application software for completeness, interoperability, and adherence to programming standards for the NM MMISR Project.
  - 2) Analyze application, network, hardware and software operating platform performance characteristics relative to expected/anticipated/contractually guaranteed results and industry standards/expectations.
  - 3) Perform code walkthroughs, as applicable.
  - 4) Review the process for tracking business, functional, non-functional, data and technical requirements from their source through the complete life cycle.
  - 5) Review test plans or other documentation and directly observe testing where appropriate, including participating in and coordination of peer reviews.
  - 6) Assess and recommend improvements, as needed, to assure appropriate user and

developer training is planned and carried out.

7) Review and analyze system capacity studies.

18. The IV&V Contractor shall review each MMISR project-related request for proposals (RFP) to validate its quality, completeness, inclusion of State and Federal goals and objectives, accurate reflection of the State's MITA goals and plans, and validity of procurement approach.

19. The IV&V Contractor shall review the implemented MMISR solution to:

- a) Verify that it conforms to requirements, within defined constraints;
- b) Verify the associated documentation is complete and correct;
- c) Verify the solution is deployed in accordance with State and Federal requirements;
- d) Verify it complies with the architectural design;
- e) Validate integration; and
- f) Verify that the solution is installed in accordance with the approved implementation plan and is sustainable.

20. The IV&V Contractor shall review requirements, policies, plans, deliverables, processes, designs, test plans, and the implemented solution for the adequacy of security and privacy.

21. The IV&V Contractor shall assist with CMS certification planning activities including, but not limited to:

- a) Providing draft adjudication of certification criteria for CMS review and final determination;
- b) Providing certification review progress reports, at least twice a year and before each CMS certification milestone gate review, that address risks, recommendations and MITA updates;
- c) Supporting CMS milestone certification reviews, if these are performed; and
- d) Assessing solution development progress against MMIS Critical Success Factors (CSFs).

#### **D. Conflict of Interest Exclusion**

The MMISR project IV&V Contractor (and its subcontractors) is prohibited from soliciting, proposing or being awarded any project management, quality assurance, software design, development, or other manner of planning, design, development, or implementation activity

on the subject NM MMISR project. This exclusion extends to any other project within HSD that may interact with or otherwise provide services to the subject NM MMISR project or to the HSD during the full term of this contract. This exclusion is executed in accordance with Federal regulations at 45 CFR Part 307.15(b)(10)(ii), which require that this IV&V effort, "... be conducted by an entity that is independent from the State...". The primary purpose of this exclusion is to ensure neither the State nor the IV&V Contractor find themselves involved with any real or perceived conflicts of interest. Such conflicts of interest could be alleged were the IV&V Contractor found to be reviewing work products, deliverables, and/or processes for which it is currently, or was previously, responsible to plan, design, develop, implement or operate.

### **III. IV&V VENDOR STAFFING AND EXPERTISE**

#### **A. STAFFING OVERVIEW AND MODEL**

To successfully perform the IV&V tasks defined within this RFP, the IV&V Contractor will need a team with significant expertise across a wide variety of domains, including programmatic, technological, business operations, procurement and other areas of expertise. The Contractor must provide sufficient staffing and expertise to support the proposed IV&V project team structure for this engagement and to address the specific MMISR project environment, strategy and planned implementation approach.

The Contractor will propose a staffing model that provides all expertise needs stated and implied, as well as any additional needs that the Contractor perceives. This staffing model must demonstrate an understanding of MMISR project IV&V requirements and the way in which various skills will apply to the requirements over time. Additionally, the IV&V Contractor needs to demonstrate an approach for accessing appropriate experts to address these needs throughout the project life.

#### **B. CONTRACTOR KEY PROJECT PERSONNEL**

The term "Key Project Personnel" means Contractor personnel deemed by the State as both instrumental and essential to the Contractor's satisfactory performance of the requirements for this project. Key Project Personnel must be supported by a team of subject matter experts (SMEs) with experience and expertise in the requisite areas.

The Contractor and the State agree that the key personnel are critical to the performance of the contract and, therefore, the State has the right of refusal for any personnel replacements, substitutions, or reassignments of duties of key personnel assigned to the IV&V contract.

##### **1. Key Project Personnel Requirements**

The State has identified four Key Project Personnel positions for the MMISR project IV&V Contractor:

- Account Executive

- IV&V Project Manager
- Functional Lead
- Technical Lead

Offerors may identify additional positions that they propose be included as Key Project Personnel. If additional positions are proposed, the Offeror should explain the scope and responsibilities of the Key Project Personnel role.

The State expects that the Key Project Personnel identified will be engaged in supporting the appropriate tasks and deliverables to leverage their expertise. The State will consider suggestions for alternative alignment of duties within the submitted proposal. Changes to the proposed positions, staff and responsibilities will be allowed only with prior written permission from the State.

All proposed Key Project Personnel must have a minimum of five (5) years working experience in the public sector HHS IT industry and in their proposed area of expertise, doing work on similar projects as that described in this RFP. Key Project Personnel should be familiar with:

- Working in team environments;
- Collaboration;
- Project management;
- IV&V methods, tools and processes;
- Measurement strategies; and
- Communications.

All Key Project Personnel will work on site in New Mexico. The Account Executive must be available as needed to fulfill responsibilities and meet the State's needs. At a minimum, the IV&V Project Manager must be full-time and dedicated solely to the New Mexico MMISR IV&V project unless the Contractor provides alternative solutions that meet State's approval. The IV&V Contractor must propose an IV&V Project Manager who will be available for the duration of the project. This individual will be the primary contact for the State on a day-to-day basis. All other Key Project Personnel and SMEs must be available according to the agreed-upon *IV&V Project Plan*.

## **2. Key Project Personnel Selection and Changes**

Prior to contract award, the State must submit information on Key Project Personnel to the cognizant Federal office for review and approval. All subsequent Key Project Personnel changes may require Federal review and approval prior to taking effect, in addition to required State reviews. The State has the right to refuse any replacements, substitutions, or reassignment of duties of Key Project Personnel assigned to the IV&V contract. Prior to making any such changes, the IV&V Contractor shall obtain written approval from the State. In all instances, qualifications of suggested staff must be comparable to those of the individual being replaced or whose duties are being reassigned.

## C. IV&V PROJECT STAFFING REQUIREMENTS

The IV&V Contractor shall define additional staffing levels (beyond the Key Project Personnel) required to accomplish the tasks defined in this RFP. The State retains the right to approve or disapprove proposed staffing. The State reserves the right to require the Contractor to replace specified contractor employees. The Contractor agrees to substitute, with HSD's prior approval, any employee so replaced with an employee of equal or better qualifications. The Contractor agrees to propose within thirty (30) days, and appropriately staff within forty five (45) days, any changes made to Key Project Personnel, regardless of the reason for the change.

All IV&V Contractor staff and subcontractors will perform their work in the United States; no off-shoring of any IV&V work under this contract is allowed, including work performed by sub-contractors.

As noted previously, the IV&V Contractor must provide staff with a wide variety of expertise to effectively perform this project. This expertise must be embodied in the mix of Key Project Personnel, SMEs and any other staff assigned to the project. Following is a list of disciplines and subject areas in which the IV&V Contractor staff should have expertise; however, the list is not meant to be exhaustive and the IV&V Contractor may offer additional subject matter expertise based upon their insights into what may be needed for this project.

- Medicaid business processes
- MITA
- Project and program management for all life cycle phases of large, complex implementation projects
- Communications and communications management
- Development strategies and methodologies
- Requirements definition and management
- Requirements traceability (tools, methods)
- System design, development/configuration and implementation
- Development and operational environments
- Data conversion
- Data design and governance
- Interfaces
- Integration
- Testing and validation (including unit, system, integration, regression, user, acceptance, capacity/performance testing; simulations)
- SDLC documentation
- Training
- Business operations
- Technology operations
- Business process outsourcing
- Performance planning and service level agreements

- Procurement planning, including pricing models
- Project and Program Governance
- Software estimating models and methods

#### IV. IV&V DELIVERABLES

The Contractor must provide, at the minimum, the services and corresponding deliverables listed in the Sample Deliverables table below, and to execute the project management and administrative responsibilities required for delivery.

The Contractor shall provide deliverables in the agreed-upon format to the designated State point of contact and, as required, to Federal agencies. As previously stated, all final deliverables shall be provided to the Federal partner concurrently with being provided to the State IV&V Contract Manager.

The State must provide written acceptance of each deliverable before it can be considered complete. In all cases, payments to the IV&V Contractor will be contingent upon State approval of deliverables. No review will be considered complete until the approved documentation is delivered to and reviewed by the State and appropriate Federal partners and the State has formally accepted the deliverable.

The State must approve, in writing, changes to milestones, deliverables or other material changes to the contract prior to implementation of changes. The State may require concurrence of the Federal partner in any changes prior to their implementation.

The deliverables for this contract shall be provided in hardcopy form and on electronic media, using the following software standards:

	<b>FORMAT</b>
Word Processing	Microsoft Word 2010, or newer
Spreadsheets	Microsoft Excel 2010, or newer
Graphics	Microsoft PowerPoint 2010, or newer
Project Management	Microsoft Project 2010, or newer

The list below (Table X) identifies a minimum required set of deliverables for this project. These deliverables are applicable to every module within the MMISR solution, as well as to the solution as a whole and to the associated vendors and State staff. The Offeror will propose a full set of deliverables to be negotiated with the State and written into the contract. The State reserves the right to revise these and to add deliverables as needed, or as required to comply with evolving CMS and/or DoIT guidance. Additionally, the IV&V Contractor may suggest revisions to the planned deliverables and/or development of additional deliverables depending upon actual MMISR project requirements. Prior to the IV&V Contractor initiating development of any recommended additional deliverable, or suspending development of any previously agreed-upon deliverable, the State must authorize the change in writing.

For IV&V Contractor-led meetings, the Contractor shall provide minutes in an agreed upon format with the agreed upon elements within two (2) business days of the meeting date.

**Table X, SAMPLE DELIVERABLES TABLE**

<b>PHASE</b>	<b>DELIVERABLE</b>	<b>DESCRIPTION</b>	<b>SOURCE</b>
<b>INITIATION</b>	IV&V Project Plan	Plan for managing and delivering IV&V services over life of the MMISR project, from planning through certification. Addresses at a minimum, processes, standards, evaluations to be performed, resources, work plan, deliverables, project management and communications.	DoIT
<b>PLANNING</b>	Initial Risk Assessment	Initial assessment of MMISR project (scope, objectives, approach, procurement strategy, technical integrity, compliance status, etc.) at the time the IV&V Contractor begins work.	CMS
	Initial Project Management Assessment	Initial assessment focused specifically on project management processes, tools, approach, effectiveness of the MMISR project at the time the IV&V Contractor begins work. This should include the Initial Project Schedule Review, also required by CMS.	CMS
	Initial Project Requirements Assessment	Initial assessment of the requirements (e.g., quality, completeness, clarity, management/traceability, relevance to stated objectives and Federal requirements) documented for the MMISR project, at the time the IV&V Contractor begins work.	CMS
	Initial Project Assessment	Encompasses all three initial assessments required by CMS – risk, project management, requirements – and is delivered as an Initial Status Report.	DoIT
	Weekly IV&V Report	Report regarding MMISR project management and risk. (See IV&V	CMS (DoIT)

PHASE	DELIVERABLE	DESCRIPTION	SOURCE
		<p>Contractor Expectations for additional detail regarding what these reports should cover.)</p> <p>This report also will address DoIT requirement for on-going risk analysis.</p>	
	Monthly IV&V Report	Report summarizing MMISR project status – project management, risk, technical approach, etc. – for the preceding month, and presents all findings and/or recommendations identified by the IV&V Contractor to date and their status.	CMS
	Interim Project Progress Report	Report providing status, findings and recommendations, and other content similar to that in the weekly and monthly status reports, but focused on – and delivered in relation to - project milestones.	DoIT
	Evaluation of RFPs and Contracts	<p>To be performed for each MMISR project procurement.</p> <p>Report documenting IV&amp;V Contractor’s review of the draft RFP or contract, identifying any issues or recommendations related to content, clarity, completeness, quality, presentation, tie-in with stated objectives and requirements, etc.</p>	CMS
	Deliverable Forecast	Report detailing planned deliverables, their status, and any issues or recommendations related to timely completion of relevant, high-quality deliverables and/or to remedies for deliverables deemed to be an issue.	DoIT
<b>IMPLEMENTATION</b>	Architecture	Review of planned, designed, and	DoIT

PHASE	DELIVERABLE	DESCRIPTION	SOURCE
	Review	<p>implemented architecture within and across MMISR modules, as applicable.</p> <p>NOTE: This may be documented in a separate report and/or in regular weekly and monthly reporting.</p>	
	Code Review/ Software Development Review	<p>Review of software development processes, requirements traceability, quality, as applicable to individual MMISR modules and to software related to interfaces, integration, data sharing, etc.</p> <p>NOTE: This may be documented in a separate report and/or in regular weekly and monthly reporting.</p>	CMS
	Test Review	<p>Review of test strategy; test plans, processes and tools; test results; and test quality for each MMISR module and for the MMISR solution as a whole. See IV&amp;V Contractor Expectations for further detail regarding the minimum types of testing the IV&amp;V Contractor is to review.</p> <p>NOTE: This may be documented in separate reports and/or in regular weekly and monthly reporting.</p>	DoIT
	Training Review	<p>Review of training plans, processes and techniques; training delivery quality; training results. This applies to each MMISR module and to the MMISR solution as a whole.</p> <p>NOTE: This may be documented in separate reports and/or in regular</p>	DoIT

PHASE	DELIVERABLE	DESCRIPTION	SOURCE
		weekly and monthly reporting.	
	Data Management Review	<p>Review of plans, processes, tools used to manage data within individual MMISR modules and for the MMISR solution as a whole.</p> <p>NOTE: This may be documented in separate reports and/or in regular weekly and monthly reporting.</p>	DoIT
	Conversion Review	<p>Review of data conversion plans, processes, tools, execution and results for each MMISR module and for the MMISR solution as a whole, as applicable.</p> <p>NOTE: This may be documented in separate reports and/or in regular weekly and monthly reporting.</p>	DoIT
	Operations Oversight Review	<p>Review of processes, roles and responsibilities, reporting or communications, tools, etc. related to providing operations oversight of the implemented MMISR solution, including all modules and the solution as a whole.</p> <p>NOTE: This may be documented in separate reports and/or in regular weekly and monthly reporting.</p>	DoIT
	Certification/ Readiness Review	<p>Review of MMISR solution as a whole and of the component MMISR modules in relation to CMS certification requirements, identifying any potential gaps or issues, and presenting recommendations for how to address these points.</p>	CMS
	Service Level Agreement/	<p>Review of implemented MMISR solution, as a whole and each</p>	HSD

PHASE	DELIVERABLE	DESCRIPTION	SOURCE
	Service Preparedness/ Service Delivery Review	module, to assess the quality of performance against agreed-upon service levels and performance targets, the effectiveness and accuracy of reporting, management processes and structures used to administer performance, and related aspects of service delivery and management.	
<b>CLOSEOUT</b>	Lessons Learned	Final summary of lessons learned through the life of the MMISR project and recommendations for future project teams.	HSD
<b>IV&amp;V PROJECT MANAGEMENT</b>	Weekly IV&V Contractor Status Report	Report detailing IV&V Contractor work planned for previous week versus what was accomplished, work planned for upcoming week, and any issues or risks that would affect the IV&V Contractor's ability to complete the planned work on time. This report also will show the IV&V Contractor's work in relation to the agreed-upon work plan and budget for the IV&V contract.	HSD
	Monthly IV&V Contractor Status Report	Report summarizing work performed by the IV&V Contractor during the preceding month, and identifying any issues or risks affecting the IV&V Contractor's ability to effectively deliver service. This report also will show the IV&V Contractor's work in relation to the agreed-upon work plan and budget for the IV&V contract.	HSD

# APPENDIX H

## REQUIREMENTS and STANDARDS

The IV&V Contractor for the NM MMISR Project must ensure that the new NM MMIS meets all applicable State and Federal requirements and standards, including, but not limited to those listed in this appendix.

### A. Uphold Software and Ownership Rights

45 CFR Part 95.617 - Software and Ownership Rights

#### § 95.617 Software and ownership rights.

(a) *General.* The State or local government must include a clause in all procurement instruments that provides that the State or local government will have all ownership rights in software or modifications thereof and associated documentation designed, developed or installed with Federal financial participation under this subpart.

(b) *Federal license.* The Department reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes, such software, modifications, and documentation.

(c) *Proprietary software.* Proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public shall not be subject to the ownership provisions in paragraphs (a) and (b) of this section. FFP is not available for proprietary applications software developed specifically for the public assistance programs covered under this subpart.

**Also see CFR 433.112 (b)(5) and (6)** for additional applicable Federal requirements pertaining to ownership rights of the State.

### B. CMS MMIS Certification Toolkit

<http://www.cms.gov/Research-Statistics-Data-and-Systems/Computer-Data-and-Systems/MMIS/Downloads/mecttoc.pdf>

### C. Alignment with Seven Conditions and Standards

Following is an excerpt from the Medicaid IT Supplement (“MITS”) of April 2011, MITS-11-01-v1.0 (April 2011).

#### 1. Introduction

##### 1.1 Background

Under sections 1903(a)(3)(A)(i) and 1903(a)(3)(B) of the Social Security Act, the Centers for Medicare & Medicaid Services (CMS) has issued new standards and

conditions that must be met by the states in order for Medicaid technology investments (including traditional claims processing systems, as well as eligibility systems) to be eligible for the enhanced match funding. The final regulation establishing these standards and conditions was made public on April 14, 2011 at: <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Data-and-Systems/Downloads/EFR-Seven-Conditions-and-Standards.pdf>

Our purpose in moving to this standards and conditions-based approach to approving federal funding is intended to foster better collaboration with states, reduce unnecessary paperwork, and focus attention on the key elements of success for modern systems development and deployment. In this document, we provide more detail about the seven conditions and standards and the kinds of information, activities and documentation the federal government will examine over the course of a systems development lifecycle to allow for initial and ongoing approval of enhanced funding. More importantly, these dimensions of development and artifacts are essential to help states ensure they are making efficient investments and will ultimately improve the likelihood of successful system implementation and operation. This document, and the principles contained in our April 2011 final regulation build on the work CMS, states and private industry have done over the last six years under the Medicaid Information Technology Architecture (MITA) initiative.

MITA is intended to foster integrated business and information technology (IT) transformation across the Medicaid enterprise to improve the administration and operation of the Medicaid program. (The Medicaid enterprise is comprised of the states, the federal government, and stakeholders who are directly and indirectly part of the administration and health care delivery ecosystem.) The MITA initiative provides a common framework for all Medicaid stakeholders to focus on opportunities to build common services by decoupling legacy systems and processes, and liberating data previously stored and contained in inaccessible silos. The MITA framework facilitates a more modern and agile approach to traditional systems development lifecycle approaches that have had great difficulty in keeping up with the rate of change demanded by the changing business landscape of health care delivery and administration. By providing a common Framework for the Medicaid Enterprise to plan, architect, engineer, and implement new and changing business requirements, the effort to modernize Medicaid IT systems and processes becomes more stable, uniform, and lowers the risk of poor implementation. Over time, this effort will drive the states' systems toward a widespread network of shared, common technology and processes that support improved state administration of the Medicaid program. Our initial emphasis is on streamlining the eligibility and enrollment process, improving user experiences, increasing administrative efficiencies, and supporting with greater effectiveness the ability to manage care and produce improved health outcomes for Medicaid beneficiaries.

The MITA initiative began in 2005 with the concept of moving the design and development of Medicaid information systems away from the siloed, sub-system components that comprise a typical Medicaid Management Information Systems

(MMIS) and moving to a service oriented architecture (SOA) framework of designing Medicaid information systems along the core Enhanced Funding Requirements: Seven Conditions and Standards 1 Version 1.0 April 2011/ Centers for Medicare & Medicaid Services principle that business processes inform and drive the implementation of business services. The MITA initiative produced an architecture framework— business, technical, and information—along with a business maturity model for process improvement, that guides the planning of technology and infrastructure build-out to meet the changing business needs of Medicaid programs. MITA enables all state Medicaid enterprises to meet common objectives within the MITA framework while still supporting local needs unique to the particular state. All MITA framework documents are available to the public at <http://www.cms.gov/MedicaidInfoTechArch/>.

CMS is also issuing *Guidance for Exchange and Medicaid Information Technology (IT) Systems* (IT Guidance) relevant to Medicaid agencies as it articulates expectations and supports development and design for Medicaid and Exchange operations. Medicaid and Exchange IT Guidance focuses on those business functions and supporting IT solutions needed for successful implementation of expanded coverage through premium tax credits and reduced cost sharing, and enrollment in Medicaid and Children’s Health Insurance Program (CHIP). CMS recognizes that there is not a “one size fits all” technology solution to every business challenge. Each technology investment must be viewed in light of existing, interrelated assets and their maturity. There are trade-offs concerning schedules, costs, risks, business goals, and other factors that should be considered when making technology investments; however, CMS must ensure that enhanced Federal Financial Participation (FFP) funding is approved only when Medicaid infrastructure and information systems projects meet statutory and regulatory requirements to support efficient and effective operation of the program.

## **1.2 Purpose and Scope**

The purpose of this document is to assist states as they design, develop, implement and operate technology and systems projects in support of the Medicaid program. This document provides additional insight and context to states to allow them to meet the conditions and standards for enhanced federal match for Medicaid technology investments. Future editions of this guidance will be developed with additional input from and consultation with states.

## **2. Conditions and Standards**

### **2.1 Modularity Standard**

This condition requires the use of a modular, flexible approach to systems development, including the use of open interfaces and exposed application programming interfaces (API); the separation of business rules from core programming; and the availability of business rules in both human and machine-readable formats. The commitment to formal system development methodology and open, reusable system architecture is extremely important in order to ensure that states can more easily change and maintain systems, as well as integrate and interoperate with a clinical and administrative ecosystem designed to deliver person-centric

services and benefits.

Modularity is breaking down systems requirements into component parts. Extremely complex systems can be developed as part of a service-oriented architecture (SOA). Modularity also helps address the challenges of customization. Baseline web services and capabilities can be Enhanced Funding Requirements: Seven Conditions and Standards 2 Version 1.0 April 2011/ Centers for Medicare & Medicaid Services developed for and used by anyone, with exceptions for specific business processes handled by a separate module that interoperates with the baseline modules. With modularity, changes can be made independently to the baseline capabilities without affecting how the extension works. By doing so, the design ensures that future iterations of software can be deployed without breaking custom functionality. A critical element of compliance with this condition is providing CMS with an understanding of where services and code will be tightly coupled, and where the state will pursue a more aggressive decoupling strategy.

**Use of Systems Development Lifecycle Methodologies.** States should use a system development lifecycle (SDLC) methodology for improved efficiency and quality of products and services. The system development lifecycle methodology should have distinct, well-defined phases for inception through close-out; include planning that describes schedules, target dates, and budgets; should exhibit controls over the life of the project via written documentation, formal reviews, and signoff/acceptance by the system owner(s); and should have well-documented, repeatable processes with clear input and output criteria (e.g., artifacts). States should assess deliverables against CMS guidelines such as MITA and *Medicaid and Exchange IT Guidance*.

CMS is implementing a streamlined systems development life cycle process for Exchange Grants that accommodates CMS feedback and direction to the states. All grantees have received guidance on this process. We will also distribute information on our combined Exchange/ Medicaid governance processes to states through a variety of different mechanisms, including informational bulletins and by posting materials on our CMS website. States will be required to participate in this process for eligibility and enrollment systems needed to implement expansions under the Affordable Care Act. States may refer to this SDLC process as a model they can employ internally for other Medicaid IT projects. Otherwise, the system development methodology framework selected by the state should suit the specific kinds of project, based on varying technical, organizational, project, and team factors. Some mature methodologies for consideration include the traditional “waterfall” model; Rapid Application Development (RAD); Spiral Approach; Unified Process or Rational Unified Process (RUP), which reinforces the usage of Unified Modeling Language (UML); and Agile Development.

The objective of any SDLC process is to provide structure and discipline, and states are to build secure IT solutions based on SOA principles. The application of and adherence to SOA principles should facilitate the delivery of flexible, agile, and interoperable MMISs. States should employ an open, reusable system architecture

that separates the presentation layer, business logic (i.e., service layer), and data layer for greater flexibility, security, performance, and quality of design, implementation, maintenance, and enhancement in the software life cycle. The system architecture should utilize a user interface (UI) framework that deploys presentation components to allow for communication with disparate populations using different media formats such as web, email, mobile, and short message service (i.e., text messaging).

**Identification and description of open interfaces.** States should emphasize the flexibility of open interfaces and exposed APIs as components for the service layer. States should identify all interfaces in their development plan and discuss how those interfaces will be maintained. States must develop and maintain an exposed API to any data services hub available for the reporting of data, verifications, and exchange of data among states. Service interfaces should be documented Enhanced Funding Requirements: Seven Conditions and Standards 3 Version 1.0 April 2011/ Centers for Medicare & Medicaid Services in an Interface Control Document (ICD). This ICD, for which CMS can provide a template, should contain details of hardware, operating systems, software, memory, service packs, product keys, and versions.

**Use of business rules engines.** States should ensure the use of business rules engines to separate business rules from core programming, and should provide information about the change control process that will manage development and implementation of business rules. States should be able to accommodate changes to business rules on a regularized schedule and on an emergency basis. States should identify and document the business rules engines used, the manner in which the business rules engine(s) is implemented in the state's architecture, the type of business rules engine (e.g., forward-chaining, backward-chaining, deterministic/ domain specific, event processing, inference-based, etc.); the licensing and support model associated with the business rules engine(s); and the approximate number of rules the business rules engine(s) executes for a given business process.

**Submission of business rules to a HHS-designated repository.** States should be prepared to submit all their business rules in human-readable form to an HHS repository, which will be made available to other states and to the public. In their APD, states must specify when they expect to make those business rules available. CMS will provide additional detail and specifications about how to submit those rules. If the states want to protect distribution of any specific business rules, (e.g., those that protect against fraud) states may specify their desire to protect those rules.

## **2.2 MITA Condition**

This condition requires states to align to and advance increasingly in MITA maturity for business, architecture, and data. CMS expects the states to complete and continue to make measurable progress in implementing their MITA roadmaps. Already the MITA investments by federal, state, and private partners have allowed us to make important incremental improvements to share data and reuse business models, applications, and components. CMS strives, however, to build on and accelerate the modernization of the Medicaid enterprise that has thus far been achieved.

**MITA Self Assessments.** CMS will be reviewing and producing MITA 3.0 in 2011. This next version of MITA will take into account the changes required by the Affordable Care Act and the availability of new technologies such as cloud computing and build out maturity levels 4 and 5. Once completed, CMS expects all states to update their self-assessments within 12 months. If a state has not yet completed a self-assessment, it may wait until version 3.0 is published (expected in 2011).

**MITA Roadmaps.** States will provide to CMS a MITA Maturity Model Roadmap that addresses goals and objectives, as well as key activities and milestones, covering a 5-year outlook for their proposed MMIS solution, as part of the APD process. This document will be updated on an annual basis. States should demonstrate how they plan to improve in MITA maturity over the 5-year period and their anticipated timing for full MITA maturity. States should ensure that they have a sequencing plan that considers cost, benefit, schedule, and risk.

**Concept of Operations (COO) and Business Process Models (BPM).** States should develop a concept of operations and business work flows for the different business functions of the \state to Enhanced Funding Requirements: Seven Conditions and Standards 4 Version 1.0 April 2011/ Centers for Medicare & Medicaid Services advance the alignment of the state's capability maturity with the MITA Maturity Model (MMM). These COO and business work flows should align to any provided by CMS in support of Medicaid and Exchange business operations and requirements. States should work to streamline and standardize these operational approaches and business work flows to minimize customization demands on technology solutions and optimize business outcomes. CMS will provide more direction in future guidance about the form and format for the COO and BPMs.

### **2.3 Industry Standards Condition**

States must ensure alignment with, and incorporation of, industry standards: the Health Insurance Portability and Accountability Act of 1996 (HIPAA) security, privacy and transaction standards; accessibility standards established under section 508 of the Rehabilitation Act, or standards that provide greater accessibility for individuals with disabilities, and compliance with federal civil rights laws; standards adopted by the Secretary under section 1104 of the Affordable Care Act; and standards and protocols adopted by the Secretary under section 1561 of the Affordable Care Act. CMS must ensure that Medicaid infrastructure and information system investments are made with the assurance that timely and reliable adoption of industry standards and productive use of those standards are part of the investments. Industry standards promote reuse, data exchange, and reduction of administrative burden on patients, providers, and applicants.

**Identification of industry standards.** CMS will communicate applicable standards to states. Standards would be updated periodically to ensure conformance with changes in the industry. States will be required to update systems and practices to

adhere to evolving industry standards in order to remain eligible for enhanced FFP funding. The state must identify all industry standards relevant to the scope and purpose of their project and produce development and testing plans to ensure full compliance. States must also have risk and mitigation strategies in place to address potential failures to comply.

**Incorporation of industry standards in requirements, development, and testing phases.** States must implement practices and procedures for the system development phases such as requirements analysis, system testing, and user acceptance testing (UAT). States' plans must ensure that all systems comply fully and on-time with all industry standards adopted by the Secretary of HHS. To comply with to the Rehabilitation Act's section 508(c) for accessibility of user interfaces for disabled persons, states must produce a Section 508 Product Assessment Package as part of their SDLC. The state should perform regularly scheduled (i.e., automatic) scans and manual testing for Section 508(c) compliance for all types of user interface screens (static, dynamic, Web, client- server, mobile, etc.) to meet the standards for full compliance. Software is available that assist with Section 508(c) compliance testing.

## **2.4 Leverage Condition**

State solutions should promote sharing, leverage, and reuse of Medicaid technologies and systems within and among states. States can benefit substantially from the experience and investments of other states through the reuse of components and technologies already developed, consistent with a service-oriented Enhanced Funding Requirements: Seven Conditions and Standards 5 Version 1.0 April 2011/Centers for Medicare & Medicaid Services architecture, from publicly available or commercially sold components and products, and from the use of cloud technologies to share infrastructure and applications. CMS commits to work assertively with the states to identify promising state systems that can be leveraged and used by other states. Further, CMS would strongly encourage the states to move to regional or multi-state solutions when cost effective, and will seek to support and facilitate such solutions. In addition, CMS will expedite APD approvals for states that are participating in shared development activities with other states, and that are developing components and solutions expressly intended for successful reuse by other states. CMS will also review carefully any proposed investments in sub-state systems when the federal government is asked to share in the costs of updating or maintaining multiple systems performing essentially the same functions within the same state.

**Multi-state efforts.** States should identify any components and solutions that are being developed with the participation of or contribution by other states.

**Availability for reuse.** States should identify any components and solutions that have high applicability for other reuse by other states, how other states will participate in advising and reviewing these artifacts, and the development and testing path for these solutions and components will promote reuse. As the capability becomes available, states should supply key artifacts to a common, national cloud-based repository accessible by all states and CMS. Further definition of these artifacts

(SLDC deliverables, business requirements and process flows, and conceptual and logical data models) and how to provide them to the national repository will follow in subsequent guidance.

**Identification of open source, cloud-based and commercial products.** States should pursue a service-based and cloud-first strategy for system development. States will identify and discuss how they will identify, evaluate, and incorporate commercially or publicly available off-the-shelf or open source solutions, and discuss considerations and plans for cloud computing. States should identify any ground-up development activity within their development approaches and explain why this ground-up activity has been selected.

**Customization.** States will identify the degree and amount of customization needed for any transfer solutions, and how such customization will be minimized.

**Transition and retirement plans.** States should identify existing duplicative system services within the state and seek to eliminate duplicative system services if the work is cost effective such as lower total cost of ownership over the long term.

## **2.5 Business Results Condition**

Systems should support accurate and timely processing of claims (including claims of eligibility), adjudications, and effective communications with providers, beneficiaries, and the public. Ultimately, the test of an effective and efficient system is whether it supports and enables an effective and efficient business process, producing and communicating the intended operational results with a high degree of reliability and accuracy. It would be inappropriate to provide enhanced federal funding for systems that are unable to support desired business outcomes. Enhanced Funding Requirements: Seven Conditions and Standards 6 Version 1.0 April 2011/ Centers for Medicare & Medicaid Services.

**Degree of automation.** The state should be highly automated in systematic processing of claims (including claims of eligibility) and steps to accept, process, and maintain all adjudicated claims/transactions.

**Customer service.** States should document how they will produce a 21st-century customer and partner experience for all individuals (applicants, beneficiaries, plans, and providers). This 21st-century customer experience should include the ability to submit and manage interactions with Medicaid through the web and to self-manage and monitor accounts and history electronically. It should also outline how customer preferences for communications by email, text, mobile devices, or phones will be accommodated. States should also commit to testing and evaluation plans to ensure providers, applicants, and others interacting with and using their systems will have the opportunity to provide feedback and assessment of accessibility, ease of use, and appropriateness of decisions.

**Performance standards and testing.** CMS intends to provide additional guidance concerning performance standards—both functional and non-functional, and with respect to service level agreements (SLA) and key performance indicators (KPI). We expect to consult with states and stakeholders as we develop and refine these measures and associated targets. As this list of measures will be focused on very core elements/indicators of success, states should also consider adding state-specific measures to this list.

For the implementation of IT system enhancements, states will execute tests against test cases intended to verify and validate the system’s adherence to its functional and non-functional requirements.

For operational IT systems, states will periodically evaluate system performance against established SLAs. When SLAs are not met, states will create and execute a Plan of Action with Milestones (POAM). CMS reserves the right to inspect a state’s performance assessment outcomes and POAMs. States will periodically evaluate operational business processes against established KPIs. When KPIs are not met, states will create and execute a POAM. CMS reserves the right to inspect a state’s performance assessment outcomes and POAMs.

## **2.6 Reporting Condition**

Solutions should produce transaction data, reports, and performance information that would contribute to program evaluation, continuous improvement in business operations, and transparency and accountability.

Systems should be able to produce and to expose electronically the accurate data that are necessary for oversight, administration, evaluation, integrity, and transparency. These reports should be automatically generated through open interfaces to designated federal repositories or data hubs, with appropriate audit trails. MITA 3.0 will provide additional detail about reporting requirements and needs that arise from the Affordable Care Act. Additional details about data definitions, specifications, timing, and routing of information will be supplied later this year.

## **2.7 Interoperability Condition**

Systems must ensure seamless coordination and integration with the Exchange (whether run by the state or federal government), and allow interoperability with health information exchanges, Enhanced Funding Requirements: Seven Conditions and Standards 7 Version 1.0 April 2011/Centers for Medicare & Medicaid Services public health agencies, human services programs, and community organizations providing outreach and enrollment assistance services.

CMS expects that a key outcome of the government’s technology investments will be a much higher degree of interaction and interoperability in order to maximize value and minimize burden and costs on providers, beneficiaries, and other stakeholders. CMS is emphasizing in this standard and condition an expectation that Medicaid agencies work in concert with Exchanges (whether state or federally administered) to share business services and technology investments in order to

produce seamless and efficient customer experiences. Systems must also be built with the appropriate architecture and using standardized messaging and communication protocols in order to preserve the ability to efficiently, effectively, and appropriately exchange data with other participants in the health and human services enterprise.

As stated in MITA Framework 2.0, each state is “responsible for knowing and understanding its environment (data, applications and infrastructure) in order to map its data to information-sharing requirements. The data-sharing architecture also addresses the conceptual and logical mechanisms used for data sharing (i.e., data hubs, repositories, and registries). The data-sharing architecture will also address data semantics, data harmonization strategies, shared-data ownership, security and privacy implications of shared data, and the quality of shared data.

**Interactions with the Exchange.** States should ensure that open interfaces are established and maintained with any federal data services hub and that requests to the hub are prepared and available for submission immediately after successful completion of the application for eligibility. States must ensure and test communications between Exchange and Medicaid systems so that determinations and referrals can be effectively transmitted from the Exchange. States should describe how shared services will support both the Exchange and Medicaid.

**Interactions with other entities.** States should consult with and discuss how the proposed systems development path will support interoperability with health information exchanges, public health agencies, and human services programs to promote effective customer service and better clinical management and health services to beneficiaries. States should also consult with and discuss how eligibility systems will allow community service organizations to assist applicants seeking health care coverage to complete forms and to submit those forms

#### **D. Support NM MITA State Self-Assessment**

The NM MMIS must be aligned with and support State Medicaid goals, functions and business practices as outlined in the 2015 NM MITA 3.0 State Self-Assessment, found on the HSD website: <http://www.hsd.state.nm.us/> .

#### **E. Security**

The NM MMIS must meet all applicable State and Federal standards and requirements for security.

# APPENDIX I

## SAMPLE CONTRACT

STATE OF NEW MEXICO

HUMAN SERVICES DEPARTMENT

INFORMATION TECHNOLOGY PROFESSIONAL SERVICES CONTRACT

Contract No. PSC XX-630-4000-XXXX

THIS INFORMATION TECHNOLOGY AGREEMENT (“Agreement” or “Contract”) is made by and between the State of New Mexico, **Human Services Department**, hereinafter referred to as the “**HSD**,” and **[Insert Contractor Name]**, hereinafter referred to as the “Contractor”, and collectively referred to as the “Parties.”

**WHEREAS**, pursuant to the [CHOICE #1: New Mexico Procurement Code, NMSA 1978, 13-1-28 et seq., and the Procurement Code Regulations, NMAC 1.4.1 et seq; OR CHOICE #2 ONLY FOR NEW MEXICO HORIZONS (Central Nonprofit) contracts: New Mexico State Use Act (13-1C-1 NMSA 1978);] the Contractor has held itself out as an expert in implementing the Scope of Work as contained herein and the HSD has selected the Contractor as the entity most advantageous to the State of New Mexico; and

[**CHOICE #1** - If procurement method is a RFP or Sole Source, use the following language: **WHEREAS**, all terms and conditions of the **[RFP Number and Name]** **[SOLE SOURCE]** and the Contractor’s response to such document(s) are incorporated herein by reference; and]

[**CHOICE #2** – If procurement method is a state price agreement, use the following language: “**WHEREAS**, this Agreement is issued against the state price agreement, established and maintained by the New Mexico State Purchasing Division of the General Services Department, SPD **[Insert state price agreement number and name]**, and through this language hereby incorporates this price agreement by reference and gives the price agreement’s terms and conditions precedence over the terms and conditions contained in this present Agreement;”]

**WHEREAS**, all Parties agree that, pursuant to the Procurement Code, 1.4.1.52 *et. seq.* the total amount of this Agreement is \$60,000.00 or more, excluding taxes; and [IF USING NEW MEXICO HORIZONS (Central Nonprofit), replace **paragraph** with: **WHEREAS**, all Parties agree that, pursuant to the New Mexico State Use Act (13-1C-1 NMSA 1978) the total amount of this Agreement is \$60,000.00 or more, excluding taxes; and]

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

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## ARTICLE 1 – DEFINITIONS

- A. “Acceptance” or “Accepted” shall mean the approval, after Quality Assurance, of all Deliverables by an Executive Level Representative of the HSD.
- B. “Application Deployment Package” shall mean the centralized delivery of business critical applications including the source code (for custom software), documentation, executable code and deployment tools required to successfully install application software fixes including additions, modifications, or deletions produced by the Contractor.
- C. “Business Days” shall mean Monday through Friday, 7:30 a.m. (MST or MDT) to 5:30 p.m. except for federal or state holidays.
- D. “Change Request” shall mean the document utilized to request changes or revisions in the Scope of Work – Exhibit A, attached hereto and incorporated herein.
- E. “Chief Information Officer (“CIO”)” shall mean the Cabinet Secretary/CIO of the Department of Information Technology for the State of New Mexico or Designated Representative.
- F. “Confidential Information” means any communication or record (whether oral, written, electronically stored or transmitted, or in any other form) that consists of: (1) confidential client information as such term is defined in State or Federal statutes and/or regulations; (2) all non-public State budget, expense, payment and other financial information; (3) all attorney-client privileged work product; (4) all information designated by the HSD or any other State agency as confidential, including all information designated as confidential under federal or state law or regulations; (5) unless publicly disclosed by the HSD or the State of New Mexico, the pricing, payments, and terms and conditions of this Agreement, and (6) State information that is utilized, received, or maintained by the HSD, the Contractor, or other participating State agencies for the purpose of fulfilling a duty or obligation under this Agreement and that has not been publicly disclosed.
- G. “Contract Manager” shall mean a qualified person from the HSD responsible for all aspects of the administration of this Agreement. Under the terms of this Agreement, the Contract Manager shall be [*contract manager name*] or his/her Designated Representative.
- H. “Default” or “Breach” shall mean a violation of this Agreement by either failing to perform one’s own contractual obligations or by interfering with another Party’s performance of its obligations.
- I. “Deliverable” shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined by the Scope of Work.

- J. “Designated Representative” shall mean a substitute(s) for a title or role, e.g. Contract Manager, when the primary is not available.
- K. “DoIT” shall mean the Department of Information Technology.
- L. “DFA” shall mean the Department of Finance and Administration; “DFA/CRB” shall mean the Department of Finance and Administration, Contracts Review Bureau.
- M. “Escrow” shall mean a legal document (such as the software source code) delivered by the Contractor into the hands of a third party, and to be held by that party until the performance of a condition is Accepted; in the event Contractor fails to perform, the HSD receives the legal document, in this case, Source Code.
- N. “Enhancement” means any modification including addition(s), modification(s), or deletion(s) that, when made or added to the program, materially changes its or their utility, efficiency, functional capability, or application, but does not constitute solely an error correction.
- O. “Executive Level Representative” shall mean the individual empowered with the authority to represent and make decisions on behalf of the HSD's executives or his/her Designated Representative.
- P. “GRT” shall mean New Mexico gross receipts tax.
- Q. “HSD” shall mean the New Mexico Human Services Department.
- R. “Intellectual Property” shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- S. “Independent Verification and Validation (“IV&V”)” shall mean the process of evaluating a Project and the Project’s product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an entity independent of the HSD.
- T. “IRS” shall mean the federal Internal Revenue Service.
- U. “ISO” shall mean the HSD ITD Information Security Officer.
- V. “ITD” shall mean the HSD Information Technology Department.
- W. “Know How” shall mean all technical information and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.
- X. “Payment Invoice” shall mean a detailed, certified and written request for payment of Services by and rendered from the Contractor to the HSD. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the Payment Invoice is submitted.

- Y. “Performance Bond” shall mean a surety bond which guarantees that the Contractor will fully perform the Contract and guarantees against breach of contract.
- Z. “Project” shall mean a temporary endeavor undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The Project terminates once the Project scope is achieved and the Project approval is given by the Executive Level Representative and verified by the HSD CIO to the DoIT. If applicable, under the terms of this Agreement the Project is [*Insert Name of Project, if applicable; otherwise delete sentence*].
- AA. “Project Manager” shall mean a Qualified person from the HSD responsible for the application of knowledge, skills, tools, and techniques to the Project activities to meet the Project requirements from initiation to close. Under the terms of this Agreement, the Project Manager shall be [*Insert Name*] or his/her Designated Representative.
- BB. “Qualified” means demonstrated experience performing activities and tasks with Projects.
- CC. “Quality Assurance” shall mean a planned and systematic pattern of all actions necessary to provide adequate confidence that a Deliverable conforms to established requirements, customer needs, and user expectations.
- DD. “Services” shall mean the tasks, functions, and responsibilities assigned and delegated to the Contractor under this Agreement.
- EE. “State Purchasing Agent (SPA)” shall mean the State Purchasing Agent for the State of New Mexico or his/her Designated Representative.
- FF. “State Purchasing Division (SPD)” shall mean the State Purchasing Division of the General Services Department for the State of New Mexico.
- GG. “Software” shall mean all operating system and application software used by the Contractor to provide the Services under this Agreement.
- HH. “Software Maintenance” shall mean the set of activities which result in changes to the originally Accepted (baseline) product set. These changes consist of corrections, insertions, deletions, extensions, and Enhancements to the baseline system.
- II. “Source Code” shall mean the human-readable programming instructions organized into sets of files which represent the business logic for the application which might be easily read as text and subsequently edited, requiring compilation or interpretation into binary or machine-readable form before being directly useable by a computer.
- JJ. “Turnover Plan” means the written plan developed by the Contractor and approved by the HSD in the event that the work described in this Agreement transfers to another vendor or the HSD.

## ARTICLE 2 SCOPE OF WORK

Scope of Work. The Contractor shall perform the work as outlined in Exhibit A, attached hereto and incorporated herein by reference.

- A. Performance Measures. The Contractor shall perform to the satisfaction of the HSD the Performance Measures set forth in Exhibit A, as determined within the sole discretion of the HSD. In the event the Contractor fails to obtain the results described in Exhibit A, the HSD may provide written notice to the Contractor of the Default and specify a reasonable period of time in which the Contractor shall advise the HSD of specific steps it will take to achieve these results and the proposed timetable for implementation. Nothing in this Section shall be construed to prevent the HSD from exercising its rights pursuant to Article 6 or Article 16.
- B. Schedule. The Contractor shall meet the due dates, as set forth in Exhibit A, which due dates shall not be altered or waived by the HSD without prior written approval, through the Amendment process, as defined in Article 25.
- C. License. [**CHOICE #1** – *If a software license is required, use the following language:* Contractor hereby grants HSD a [**CHOICE #2**- *If a perpetual license is required, use the following language:* non-exclusive, irrevocable, perpetual license to use, modify, and copy the following Software: ]

[**CHOICE #3**- *If the license is required for the term of the Agreement, use the following language:* non-exclusive, irrevocable, license to use, modify, and copy the [I] Software and any and all updates, corrections and revisions as defined in Article 2 and Exhibit A, for the term of this Agreement.]

The right to copy the Software is limited to the following purposes: archival, backup and training. All archival and backup copies of the Software are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

1. Contractor agrees to maintain, at Contractor's own expense, a copy of the Software Source Code to be kept by an escrow agent and to list the HSD as an authorized recipient of this Source Code. The Source Code shall be in magnetic form on media specified by the HSD. The escrow agent shall be responsible for storage and safekeeping of the magnetic media. Contractor shall replace the magnetic media no less frequently than every six (6) months to ensure readability and to preserve the Software at the current revision level. Included with the media shall be all associated documentation which will allow the HSD to top load, compile and maintain the software in the event of a Breach.
  
2. If the Contractor ceases to do business or ceases to support this Project or Agreement and it does not make adequate provision for continued support of the Software it provided the HSD; or, if this Agreement is terminated, or if the Contractor Breaches this Agreement, the Contractor shall make available to the HSD: 1) the latest available Software program Source Code and related documentation meant for the Software provided or developed under this Agreement by the Contractor and listed as part of the Services; 2) the Source Code and compiler/utilities necessary to maintain the system; and, 3) related documentation for Software developed by third parties to the extent that the Contractor is authorized to disclose such Software. In such circumstances, HSD shall have an unlimited right to use, modify and copy the Source Code and documentation.

**[CHOICE #4 – replaces ALL language in C above if no license: Not Applicable. The Parties agree there is no License.]**

- D. Source Code. **[CHOICE #1 – If for a maintenance and operations contract, use the following language.** The Contractor shall deliver any and all software developed as a result of maintenance releases by the Contractor. The Application Deployment Package must be able to reproduce a fully operational application that includes all base application functionality, all cumulative release functionality and including the functionality, as documented, verified and supported by the Contractor, which comprises the new application release.]

**[CHOICE #2 – If Contractor will hold software in escrow, use the following language:** For each maintenance release, the Application Deployment Package shall be updated and shall be kept by an identified escrow agent at the Contractor's expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the HSD. The escrow agent shall be responsible for storage and safekeeping of the storage media. The HSD shall be listed with said escrow agent as an authorized recipient of the storage media which shall contain the most recent application maintenance release deployment package.]

[**CHOICE #3** – *If Contractor will not hold software in escrow, use the following language:* For each maintenance release, the Application Deployment Package shall be updated and shall be delivered to the HSD’s at the Contractor’s expense. The Application Deployment Package shall be in magnetic or digital form on media specified by the HSD and shall be updated with each new application release deployment package at the Contractor’s expense.]

[**CHOICE #4:** Not Applicable. The Parties agree there is no Source Code.]

E. The HSD’s Rights.

1. Rights to Software. [**CHOICE #1** – *If the HSD has right to the Software, use the following language:* The HSD will own all right, title, and interest in and to the HSD’s Confidential Information, and the Deliverables, provided by the Contractor, including without limitation the specifications, the work plan, and the Custom Software, except that the Deliverables will not include third party software and the associated documentation for purposes of this Section. The Contractor will take all actions necessary and transfer ownership of the Deliverables to the HSD, without limitation, the Custom Software and associated Documentation on Final Acceptance or as otherwise provided in this Agreement.] [**CHOICE #2:** Not Applicable. The Parties agree the HSD does not have rights to the Software.]
2. Proprietary Rights. The Contractor will reproduce and include the State of New Mexico’s copyright and other proprietary notices and product identifications provided by the Contractor on such copies, in whole or in part, or on any form of the Deliverables.
3. Rights to Data. [**CHOICE #1** – *If the HSD has right to the data, use the following language:* Any and all data stored on the Contractor’s servers or within the Contractors custody, in order to execute this Agreement, is the sole property of the HSD. The Contractor, subcontractor(s), officers, agents and assigns shall not make use of, disclose, sell, copy or reproduce the HSD’s data in any manner, or provide to any entity or person outside of the HSD without the express written authorization of the HSD.] [**CHOICE #2:** Not Applicable. The Parties agree the HSD does not have rights to the data.]

### **ARTICLE 3 – COMPENSATION**

- A. Compensation Schedule. The HSD shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit A, less retainage, if any, as identified in Paragraph D.
- B. Payment. The total compensation under this Agreement shall not exceed [*Insert Dollar Amount*] [**CHOICE #1:**excluding New Mexico gross receipts tax.] [**CHOICE #2:**including

New Mexico gross receipts tax.] This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the HSD when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.

*[Use if a state price agreement is the procurement method: Compensation for a statewide price agreement shall not exceed the SPD or DoIT approved price maximums as established in the state price agreement utilized for this contract. Contractor hereby agrees to perform work at or below the published maximum rates of the statewide price agreement as follows:]*

- *[Insert professional service category(s) and define rate(s).]*

Payment shall be made upon Acceptance of each Deliverable according to Article 4 and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the HSD no later than fifteen (15) days after the end of the fiscal year in which services were delivered. Payment Invoices received after such date **WILL NOT BE PAID**.

- C. Taxes. [**CHOICE #1-** *Use if Agreement is between two public entities: Not Applicable; contract is between two public entities.*]

**[CHOICE #2:**The Contractor [*use either - shall OR shall not*] be reimbursed by the HSD for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the HSD harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation. ]

- D. Retainage. [**CHOICE #1**: The HSD shall retain [*INSERT % - recommended percentage is 20%*] of the fixed-price Deliverable cost for each Deliverable that is the subject of this Agreement as security for full performance of this Agreement. All amounts retained shall be released to the Contractor upon Acceptance of the final Deliverable.] [**CHOICE #2**: Not applicable; the Parties agree there is no retainage.]
- E. Performance Bond. [**CHOICE #1**: *If the amount of the Agreement exceeds \$1Million OR, if the Agreement is for custom developed software/application, OR for Commercial Off the Shelf (COTS) software with greater than 20% Enhancement, OR for any other critical project execution concerns, use the following language:* Contractor shall execute and deliver to HSD, contemporaneously with the execution of this Agreement, a Performance Bond in the amount of [**Insert Total Amount of agreed upon Performance Bond**] in the name of the HSD. The Performance Bond shall be in effect for the duration of this Agreement and any renewals thereof. The required Performance Bond shall be conditioned upon and for the full performance, Acceptance and actual fulfillment of each and every Deliverable, term, condition, provision, and obligation of the Contractor arising under this Agreement. The HSD's right to recover from the Performance Bond shall include all costs and damages associated with the transfer of Services provided under this Agreement to another Contractor or to the State of New Mexico as a result of Contractor's failure to perform.]
- [**CHOICE #2**: Not Applicable. The Parties agree there is no Performance Bond.]

#### **ARTICLE 4 – ACCEPTANCE**

- A. Submission. Contractor will submit the final Deliverable(s) on the due date for the Deliverable(s) as required in Exhibit A, Statement of Work. Additionally, if required by the HSD, the Contractor will submit any draft versions of the Deliverable(s), or portions thereof, on a date or schedule as approved by the HSD.

Upon written acceptance by the HSD of the final Deliverable(s) submitted by the Contractor, as set forth in Article 2 and Exhibit A, Contractor shall submit to HSD a Payment Invoice with a description of the Deliverable(s). Each Payment Invoice shall be for an amount up to the not-to-exceed fixed Deliverable(s) price as set forth in Article 2 and Exhibit A, less retainage as set forth in Article 3(D).

- B. Acceptance. In accord with Section 13-1-158 NMSA 1978, the Executive Level Representative, shall determine if the final Deliverable(s) provided meets specifications. No payment shall be made for any final Deliverable until the individual final Deliverable that is the subject of the Payment Invoice has been Accepted, in writing, by the Executive Level Representative. To Accept the Deliverable(s), the

Executive Level Representative, in conjunction with the Project Manager, will assess the Quality Assurance level of the Deliverable(s) and determine, at a minimum, that the Deliverable(s):

1. Complies with the Deliverable(s) requirements as defined in Article 2 and Exhibit A;
2. Complies with the terms and conditions of procurement [*insert procurement name and number*];
3. Meets the performance measures for the Deliverable(s) and this Agreement;
4. Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
5. Complies with all the requirements of this Agreement.

If the final Deliverable(s) is deemed Acceptable under Quality Assurance by the Executive Level Representative or their Designated Representative, the Executive Level Representative will notify the Contractor of Acceptance, in writing, within [*INSERT # of days - recommend at not less than 15*] Business Days from the date the Executive Level Representative receives the Deliverable(s)-

- C. Rejection. Unless the Executive Level Representative gives notice of rejection within the [*INSERT # of days - recommend at not less than fifteen (15)*] Business Day Acceptance period, the final Deliverable(s) will be deemed to have been Accepted. If the final Deliverable(s) is deemed unacceptable under Quality Assurance, [*INSERT # of days - recommend at not less than fifteen (15)*] from the date the Executive Level Representative receives the final Deliverable(s) and accompanying Payment Invoice, the Executive Level Representative will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection.

Upon rejection and receipt of comments, the Contractor shall have ten (10) Business Days to resubmit the final Deliverable(s) to the Executive Level Representative with all appropriate corrections or modifications made and/or addressed. The Executive Level Representative will again determine whether the final Deliverable(s) is Acceptable under Quality Assurance and will provide a written determination within [*INSERT # of days - recommend at not less than fifteen (15)*] Business Days of receipt of the revised or amended Deliverable(s).

If the final Deliverable(s) is once again deemed unacceptable under Quality Assurance and thus rejected, the Contractor shall provide a remediation plan that shall include a timeline for corrective action acceptable to the Executive Level Representative. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the final Deliverable(s) under the terms of this Agreement and available at law or equity.

In the event that a final Deliverable must be resubmitted more than twice for Acceptance, the Contractor shall be deemed in breach of this Agreement. The HSD may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the HSD may terminate this Agreement.

## ARTICLE 5 TERM

[**CHOICE #1-** *If the Agreement is based on a state price agreement and is for professional services only:* THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT and DFA/CRB. ]

[**CHOICE #2-** *If the Agreement is based on a state price agreement and is only for tangible property and/or services, use the following language:* THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT and SPD, as applicable. ]

[**CHOICE #3-** *If the Agreement is NOT based on a state price agreement and is for professional services only, use the following language:* THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND DFA/CRB.]

[**CHOICE #4-** *If the Agreement is NOT based on a state price agreement and is for only tangible property and does not include professional services, use the following language:* THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT. ]

[**CHOICE #5-** *If the Agreement is NOT based on a state price agreement and is for both professional services and tangible property/services, use the following language:* THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY THE DoIT AND THE STATE PURCHASING AGENT. ]

This Agreement shall terminate on [*Insert Termination Date*], unless terminated pursuant to Article 6. In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

## ARTICLE 6 TERMINATION

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

- B. Change in Law/Appropriations. By the HSD, if required by changes in State or federal law, or because of court order, or because of insufficient appropriations made available by the United States Congress and/or the New Mexico State Legislature for the performance of this Agreement. The HSD's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the HSD terminates this Agreement pursuant to this subsection, the HSD shall provide the Contractor written notice of such termination at least fifteen (15) Business Days prior to the effective date of termination.
- C. Notice; HSD Opportunity to Cure
1. Except as otherwise provided in Paragraph (C)(3), the HSD shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.
  2. Contractor shall give HSD written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the HSD's material breaches of this Agreement upon which the termination is based and (ii) state what the HSD must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the HSD does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the HSD does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.
  3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the HSD; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to Subsection B, above, "Change in Law/Appropriations", of this Agreement.
- D. Liability. Except as otherwise expressly allowed or provided under this Agreement, the HSD's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE HSD'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

## **ARTICLE 7 TERMINATION MANAGEMENT**

- A. Contractor. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
1. Transfer, deliver, and/or make readily available to the HSD property in which the

HSD has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the HSD;

2. Incur no further financial obligations for materials, Services, or facilities under the Agreement without prior written approval of the HSD;
3. Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the HSD may direct, for orderly completion and transition;
4. Take such action as the HSD may direct for the protection and preservation of all property and all records related to and required by this Agreement, including but not limited to, returning all such items to the HSD;
5. Agree that the HSD is not liable for any costs arising out of termination and that the HSD is liable only for costs of Deliverables Accepted prior to the termination of the Agreement;
6. Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of HSD's programs;
7. In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the HSD's receipt of program funds from any governmental agency, the Contractor shall remit to the HSD the full amount of the reduction;
8. Should this Agreement terminate due to the Contractor's Default, the Contractor shall reimburse the HSD for all costs arising from hiring new Contractor/subcontractors at potentially higher rates and for other costs incurred;
9. In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall develop and submit to the HSD for approval an Agreement Turnover Plan at least ten (10) Business Days prior to the effective date of termination. Such Turnover Plan shall describe the Contractor's policies and procedures that will ensure: (1) the least disruption in the delivery of Services during the transition to a substitute vendor; and (2) cooperation with the HSD and the substitute vendor in transferring information and Services. The Turnover Plan shall consist of the orderly and timely transfer of the following, as applicable: files, data, computer software, documentation, system turnover plan, Know How, Intellectual Property and other materials, whether provided by the HSD or created by the Contractor under this Agreement, to the HSD, including but not limited to, user manuals with complete documentation, functional technical descriptions of each program and data flow diagrams. At the request of the HSD, the Contractor shall provide to the HSD a copy of the most recent versions of all files, software, Know How, Intellectual Property and documentation, whether provided by the HSD or created by the Contractor under this Agreement.

- B. HSD. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the HSD shall:
1. Retain ownership of all work products and documentation created solely for the HSD pursuant to this Agreement; and
  2. Pay the Contractor all amounts due for Services Accepted prior to the effective date of such termination or expiration.

## **ARTICLE 8 INDEMNIFICATION**

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

[*Use if the Agreement is between two public entities:* Neither party shall be responsible for liability incurred as a result of the other Party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq.]

- B. [*Delete if the Agreement is between two public entities:* The indemnification obligation under this Agreement shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor, and shall survive the termination of this Agreement. Money due or to become due to the Contractor under this Agreement may be retained by the HSD, as necessary, to satisfy any outstanding claim that the HSD may have against the Contractor.]

## **ARTICLE 9 – INTELLECTUAL PROPERTY**

*[CHOICE #1 – If purchasing only IT hardware/equipment, use the following language: Not Applicable. The Parties agree there is no Intellectual Property.]*

- A. **Ownership.** *[CHOICE #2 - Use this provision if HSD is to own the Intellectual Property: Any and all Intellectual Property, including but not limited to copyright, patentable inventions, patents, trademarks, trade names, service marks, and/or trade secrets created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the HSD shall be considered the creator and owner of such Intellectual Property. Any and all Know How created or conceived pursuant to, or as a result of, performance of this Agreement, shall be work made for hire and the HSD shall be considered the creator and owner of such Know How. The HSD shall own the entire right, title and interest to the Intellectual Property and Know How worldwide, and, other than in the performance of this Agreement, the Contractor, subcontractor(s), officers, agents and assigns shall not make use of, or disclose the Intellectual Property and Know How to any entity or person outside of the HSD without the express written authorization of the HSD. Contractor shall notify the HSD, within fifteen (15) Business Days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure that ownership of the Intellectual Property vests in the HSD and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the HSD. If, by judgment of a court of competent jurisdiction, Intellectual Property or Know How are not deemed to be created or owned by the HSD, Contractor hereby acknowledges and agrees to grant to the HSD and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How.]*

*[CHOICE #3- If the Contractor will own the Intellectual Property then delete the above language and insert the following language: Contractor hereby acknowledges and grants to the HSD and the State of New Mexico, a perpetual, non-exclusive, royalty free license to reproduce, publish, use, copy and modify the Intellectual Property and Know How created or conceived pursuant to, or as a result of, performance of this Agreement.]*

## **ARTICLE 10 INTELLECTUAL PROPERTY INDEMNIFICATION**

- A. Intellectual Property Indemnification. The Contractor shall defend, at its own expense, the HSD, the State of New Mexico and/or any other State of New Mexico body against any claim

that any product or service provided under this Agreement infringes any patent, copyright or trademark, and shall pay all costs, damages and attorney's fees that may be awarded as a result of such claim. In addition, if any third party obtains a judgment against the HSD based upon the Contractor's trade secret infringement relating to any product or Services provided under this Agreement, the Contractor agrees to reimburse the HSD for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the HSD shall:

1. Give the Contractor written notice, within forty-eight (48) hours, of its notification of any claim;
2. Work with the Contractor to control the defense and settlement of the claim; and
3. Cooperate with the Contractor, in a reasonable manner, to facilitate the defense or settlement of the claim.

B. HSD Rights. If any product or service becomes, or in the Contractor's opinion is likely to become, the subject of a claim of infringement, the Contractor shall, at its sole expense:

1. Provide the HSD the right to continue using the product or service and fully indemnify the HSD against all claims that may arise out of the HSD's use of the product or service;
2. Replace or modify the product or service so that it becomes non-infringing; or
3. Accept the return of the product or service and refund an amount equal to the value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any product or service modified by the HSD to the extent such modification is the cause of the claim.

## **ARTICLE 11 WARRANTIES**

A. General. The Contractor hereby expressly warrants the Deliverable(s) as being correct and compliant with the terms of this Agreement, the Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverable(s) and revision(s) of the same, as necessary, including deficiencies found during testing, implementation, or post-implementation phases.

B. Software. [**CHOICE #1**- Use if only purchasing or developing software: The Contractor warrants that any software or other products delivered under this Agreement shall comply

with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software provided under this Agreement will meet the applicable specifications for [INSERT # of years - recommend 6mo.-2yrs.] years after Acceptance by the Executive Level Representative and implementation by the HSD. If the software fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the HSD, so that the software meets the applicable specifications.]

[CHOICE #2: Not Applicable. The Parties agree there is no Software.]

## **ARTICLE 12 CONTRACTOR PERSONNEL**

- A. Key Personnel. Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the HSD. Key personnel are those individuals considered by the HSD to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

*[Insert Contractor Staff Name(s)]*

- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the HSD. For all personnel, the HSD reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) Business Days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to HSD approval. The HSD, in its sole discretion, may approve additional time beyond the ten (10) Business Days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The HSD reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the HSD, meeting the HSD's expectations. Such personnel changes shall not be subject to the amendment process of Article 25 herein.

## **ARTICLE 13 STATUS OF CONTRACTOR**

[**CHOICE #1**- Use if only purchasing IT hardware/equipment: Not Applicable.]

- A. Independent Contractor. The Contractor and its agents and employees are independent contractors performing professional Services for the HSD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.
  
- B. Subject of Proceedings. Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the HSD.

## **ARTICLE 14 CHANGE MANAGEMENT**

- A. Changes. Contractor may not make changes within the Scope of Work as defined by Article 2 and Exhibit A, until Contractor has received written approval for such changes from the Executive Level Representative, pursuant to the "Change Request Process" below.

Such changes may include, but not be limited to, deletion of deliverables or tasks as deemed

appropriate by the HSD. Additionally, such changes, pursuant to this provision, may only be made to Tasks or Sub-Tasks as defined in Exhibit A and may not be made to the following, which shall only be made by amendment to the Agreement, pursuant to Article 25:

1. Deliverable requirements (not including deletion), as outlined in Exhibit A;
  2. Due date of any Deliverable,(not including deletion), as outlined in Exhibit A.
  3. Compensation of any Deliverable, as outlined in Exhibit A;
  4. Agreement compensation, as outlined in Article 3; or
  5. Agreement termination, as outlined in Article 5.
- B. Change Request Process. A Change Request may be initiated by either the Contractor or the HSD. In the event that circumstances warrant a change to accomplish the Scope of Work as described above, a Change Request shall be submitted that meets the following criteria:
1. The Project Manager, after consultation with the Contractor, shall draft a written Change Request for review and approval by the Executive Level Representative to include:
    - (a) the name of the person requesting the change;
    - (b) a summary of the required change;
    - (c) the start date for the change;
    - (d) the reason and necessity for change;
    - (e) the elements to be altered; and
    - (f) the impact of the change.
  
  2. The Executive Level Representative shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) Business Days of receipt of the Change Request. All decisions made by the Executive Level Representative are final. Change Requests, once approved, become a part of the Agreement and become binding as a part of the original Agreement.

## **ARTICLE 15 INDEPENDENT VERIFICATION AND VALIDATION**

- A. If Independent Verification and Validation (IV&V) professional Services are used or required to be used for the Project associated with this Agreement, the Contractor hereby agrees to cooperate with the IV&V vendor. Such cooperation shall include, but is not limited to:
1. Providing the Project documentation;
  2. Allowing the IV&V vendor to attend the Project meetings; and
  3. Supplying the IV&V vendor with any other material as directed by the Project Manager.
- B. If this Agreement is for IV&V professional Services then the Contractor agrees to:
1. Submit all reports directly to the Department of Information Technology, Project Oversight and Compliance Division ([ivandv.reports@state.nm.us](mailto:ivandv.reports@state.nm.us)) according to the DoIT IV&V Reporting Template and Guidelines found on the DoIT website, [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html), and copy the HSD.
  2. Use a report format consistent with the current DoIT IV&V Reporting Template and Guidelines found on the DoIT website, [http://www.doit.state.nm.us/project\\_templates.html](http://www.doit.state.nm.us/project_templates.html).

## **ARTICLE 16 DEFAULT/BREACH**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the HSD and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the HSD and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

## **ARTICLE 17 EQUITABLE REMEDIES**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the HSD irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the HSD, and the Contractor consents to the HSD's obtaining from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. HSD's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that HSD may have under applicable law, including, but not limited to, monetary damages.

#### **ARTICLE 18 LIABILITY**

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible personal property at any time, in any way, if and to the extent that the injury or damage was caused by or due to the fault or negligence of the Contractor or a defect of any equipment provided or installed, provided in whole or in part by the Contractor pursuant to the Agreement. Contractor shall not be liable for damages arising out of, or caused by, alterations made by the HSD to any equipment or its installation or for losses caused by the HSD's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and/or employees of the HSD or the State of New Mexico, or any remedy that may exist under law or equity in the event a defect in the manufacture or installation of the equipment, or the negligent act or omission of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

#### **ARTICLE 19 ASSIGNMENT**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of this Agreement's approval authorities.

#### **ARTICLE 20 SUBCONTRACTING**

- A. General Provision. The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the HSD. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the HSD.

- B. Responsibility for subcontractors. The Contractor must not disclose Confidential Information of the HSD or of the State of New Mexico to a subcontractor unless and until such subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of the Contractor under this Agreement, which may include execution of a Business Associate Agreement in substantial similarity to Exhibit D, attached, where appropriate.

#### **ARTICLE 21 RELEASE**

The Contractor's Acceptance of final payment of the amount due under this Agreement shall operate as a release of the HSD, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

#### **ARTICLE 22 CONFIDENTIALITY**

Any Confidential Information provided to the Contractor by the HSD or, developed by the Contractor based on information provided by the HSD in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the HSD. Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the HSD within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the HSD will result in direct, special and incidental damages.

#### **ARTICLE 23 CONFLICT OF INTEREST**

The Contractor warrants that it presently has no interest and 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. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer, state employee or former state employee have been followed.

## **ARTICLE 24 RECORDS AND AUDIT**

- A. The Contractor shall maintain detailed records that indicate the nature and price of Services rendered during this Agreement's term and effect and retain them for a period of five (5) years from the date of final payment under this Agreement..
- B. Contract for an independent audit in accordance with 2 CFR 200 at the Contractor's expense, as applicable or upon HSD request, submit its most recent 2 CFR 200 audit. The Contractor shall ensure that the auditor is licensed to perform audits in the State of New Mexico and shall be selected by a competitive bid process. The Contractor shall enter into a written contract with the auditor specifying the scope of the audit, the auditor's responsibility, the date by which the audit is to be completed and the fee to be paid to the auditor for this service. Single audits shall comply with procedures specified by the HSD. The audit of the contract shall cover compliance with Federal Regulations and all financial transactions hereunder for the entire term of the Agreement in accordance with procedures promulgated by 2 CFR 200 or by Federal program officials for the conduct and report of such audits. An official copy of the independent auditor's report shall be available to the HSD and any other authorized entity as required by law within (fifteen) 15 days of receipt of the final audit report. The Contractor may request an extension to the deadline for submission of the audit report in writing to the HSD for good cause and the HSD reserves the right to approve or reject any such request. The HSD retains the right to contract for an independent financial and functional audit for funds and operations under this Agreement if it determines that such an audit is warranted or desired.
- C. Upon completion of the audit under the applicable federal and state statutes and regulations, the Contractor shall notify the HSD when the audit is available for review and provide online access to the HSD, or the Contractor shall provide the HSD with four (4) originals of the audit report. The HSD will retain two (2) and one (1) will be sent to the HSD/Office of the Inspector General and one (1) to the HSD/Administrative Services Division/Compliance Bureau.
- D. Within thirty (30) days thereafter, or as otherwise determined by the HSD in writing, the Contractor shall provide the HSD with a response indicating the status of each of the exceptions or findings in the said audit report. If either the exceptions or findings in the audit are not resolved within thirty (30) days, the HSD has the right to reduce funding, terminate this Agreement, and/or recommend decertification in compliance with state and/or federal regulations governing such action.
- E. This audit shall contain the Schedule of Expenditures of Federal Awards for each program to facilitate ease of reconciliation by the HSD. This audit shall also include a review of the schedule of depreciation for all property or equipment with a purchase price of \$5,000 or

more pursuant to 2 CFR 200, specifically subpart F, §200.500, and appendices where appropriate.

- F. This audit shall include a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with 2 CFR 200, specifically subpart F, §200.500 and appendices.

### **ARTICLE 25 AMENDMENT**

This Agreement, including any exhibit or appendix thereto, shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. Where required by state authorities, no amendment shall be effective or binding unless approved by all of the approval authorities. Amendments specifically subject to approval of state authorities in addition to the HSD, include but are not limited to the following:

1. Deliverable requirements, as outlined in Exhibit A;
2. Due Date of any Deliverable, as outlined in Exhibit A;
3. Compensation of any Deliverable, as outlined in Exhibit A;
4. Agreement Compensation, as outlined in Article 3; or
5. Agreement termination, as outlined in Article 5.

### **ARTICLE 26 NEW MEXICO EMPLOYEES HEALTH COVERAGE**

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

- B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.
  
- C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenewmexico.state.nm.us/>.
  
- D. For Indefinite Quantity, Indefinite Delivery contracts (state price agreements without specific limitations on quantity and providing for an indeterminate number of orders to be placed against it); Contractor agrees these requirements shall apply the first day of the second month after the Contractor reports combined sales (from state and, if applicable, from local public bodies if from a state price agreement) of \$250,000.

#### **ARTICLE 27 NEW MEXICO EMPLOYEES PAY EQUITY REPORTING**

- A. The Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this Agreement, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. If Contractor has (250) or more employees Contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for Agreements up to one (1) year in duration. For Agreements that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, Contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual Agreements anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the Agreements, whichever comes first. Should Contractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor agrees to provide the required report within ninety (90) days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

- B. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than ten percent (10%) of the dollar value of this Agreement if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of this Agreement. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting as of the effective date of this Agreement but subsequently grows such that they meet or exceed the size requirement for reporting, Contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though Contractor itself may not meet the size requirement for reporting and be required to report itself.
- C. Notwithstanding the foregoing, if this Agreement was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

#### **ARTICLE 28 – SEVERABILITY, MERGER, SCOPE, ORDER OF PRECEDENCE**

- A. Severable. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or agency or commission having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. Merger/Scope/Order. This Agreement, inclusive of any attached exhibits, schedules, or appendices, including but not limited to those specifically listed below, constitutes the entire Agreement among the parties. All agreements, covenants and understanding between the Parties have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement. The terms and conditions as stated in the main agreement have precedence over any potentially conflicting terms and conditions in any exhibits, schedules, or appendices attached hereto, except where the Federal Supremacy clause requires otherwise.

In the event of any conflict among the documents and materials, the following order of precedence shall apply:

1. The terms and conditions of this Agreement and its Exhibits;
2. (Other documents or agreements);
3. (Other documents or agreements).

[List any other exhibits, schedules or appendices that are part of the agreement]

### **ARTICLE 29 NOTICES**

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail (return receipt requested), when sent by overnight carrier, or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

#### **For HSD**

[Insert: Name of Individual, Position  
Division  
E-mail Address  
Telephone Number  
Mailing Address.]

#### **For CONTRACTOR**

[Insert Name of Individual, Position,  
Company Name,  
E-mail Address,  
Telephone Number,  
Mailing Address.]

Any change to the Notice individual or the address, shall be effective only in writing.

## ARTICLE 30 GENERAL PROVISIONS

- A. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, including but not limited to:
1. Civil and Criminal Penalties. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
  2. Equal Opportunity Compliance. The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.
  3. Workers Compensation. The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the HSD.
- B. Applicable Law. The laws of the State of New Mexico shall govern this Agreement. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all such lawsuits arising under or out of any term of this Agreement.
- C. Waiver. A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.
- D. Headings. Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

### **ARTICLE 31 SURVIVAL**

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

[**OPTIONAL:** Other unexpired agreements, promises, or warranties that will survive the termination of this Agreement are: *(list here)*]

### **ARTICLE 32 TIME**

Calculation of Time. Any time period herein calculated by reference to "days" means calendar days, unless Business Days are used; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as 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.

### **ARTICLE 33 FORCE MAJEURE**

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or Default in performing hereunder if such delay or Default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

### **ARTICLE 34 DEBARMENT AND SUSPENSION**

- A. Consistent with all applicable federal and/or state laws and regulations, , as applicable, and as a separate and independent requirement of this Agreement the Contractor certifies by signing this Agreement, that it and its principals, to the best of its knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the

effective date of this 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; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated above in this Paragraph A; (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and (5) have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a-7.

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

- 1) The Contractor shall provide immediate written notice to the HSD's Program Manager if, at any time during the term of this Agreement, the Contractor learns that its certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances.
- 2) If it is later determined that the Contractor's certification in Paragraph A, above, was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the HSD, the HSD may terminate the Agreement.

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

**ARTICLE 35 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO  
INFLUENCE CERTAIN FEDERAL TRANSACTIONS**

- A. The applicable definitions and exceptions to prohibited conduct and disclosures contained in 31 U.S.C. § 1352 and 45 C.F.R. Part 93, as applicable, are hereby incorporated by reference in subparagraph (B) of this certification.
- B. The Contractor, by executing this PSC, certifies to the best of its knowledge and belief that:
- 1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement; and
  - 2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
- C. The Contractor shall require that the language of this certification be included in the award documents for all 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.
- D. This certification is a material representation of fact upon which reliance is placed when this Agreement is made and entered into. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. It shall be a material obligation of the Contractor to keep this certification current as to any and all individuals or activities of anyone associated with the Contractor during the pendency of this Agreement. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be

subject to: (1) a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure; and/or (2) at the discretion of the HSD, termination of the Agreement.

### **ARTICLE 36 NON-DISCRIMINATION**

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

### **ARTICLE 37 DRUG FREE WORKPLACE**

- A. **Definitions.** As used in this paragraph—  
"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act, 21 U.S.C 812, and as further defined in regulation at 21 CFR 1308.11 - 1308.15.  
"Conviction" means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.  
"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.  
"Drug-free workplace" means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from

engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

B. The Contractor, if other than an individual, shall:

- 1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- 2) Establish an ongoing drug-free awareness program to inform such employees about:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The Contractor’s policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
    - a) Provide all employees engaged in performance of the Agreement with a copy of the statement required by subparagraph B(1);
    - b) Notify such employees in writing in the statement required by subparagraph (B)(1) of this clause that, as a condition of continued employment on this Agreement, the employee will:
      - (i) Abide by the terms of the statement; and
      - (ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;
- c) Notify the HSD Program Manager in writing within ten (10) days after receiving notice under (B)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- d) Within thirty (30) days after receiving notice under B(4)(ii) of this paragraph of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Require such employee to satisfactorily participate in a drug abuse assistance

or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

- e) Make a good faith effort to maintain a drug-free workplace through implementation of B(1) through B(6) of this paragraph.
- C. The Contractor, if an individual, agrees by entering into this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.
- D. In addition to other remedies available to the HSD, the Contractor's failure to comply with the requirements of subparagraph B or C of this paragraph will render the Contractor in default of this Agreement and subject the Contractor to suspension of payments under the Agreement and/or termination of the Agreement in accordance with paragraph 4, above.

### **ARTICLE 38 FINDINGS AND SANCTIONS**

- A. The Contractor agrees to be subject to the findings, sanctions and disallowances assessed or required as a result of audits pursuant to this agreement. .
- B. The Contractor will make repayment of any funds expended by the HSD, subject to which an auditor acting pursuant to this agreement finds were expended, or to which appropriate federal funding agencies take exception and so request reimbursement through a disallowance or deferral based upon the acts or omissions of the Contractor that violate applicable federal statutes and/or regulations, subject to sufficient appropriations of the New Mexico Legislature.
- C. If the HSD becomes aware of circumstances that might jeopardize continued federal funding, the situation shall be reviewed and reconciled by a mutually agreed upon panel of Contractor and the HSD officials. If reconciliation is not possible, both parties shall present their view to the Director of the Administrative Services Division who shall determine whether continued payment shall be made.

### **ARTICLE 39 – PERFORMANCE**

In performance of this Agreement, the Contractor agrees to comply with and assume responsibility for compliance by its employees, its subcontractors, and/or Business Associates (BA), as applicable, with the following requirements:

- A. All work will be performed under the supervision of the Contractor, the Contractor's responsible employees, and the Contractor's subcontracted staff.
- B. Contractor agrees that, if Federal Tax Information (FTI) is introduced into Contractor's information systems, work documents, and/or other media by written agreement, any FTI as described in 26 U.S.C. § 6103, limited to FTI received from, or created on behalf of HSD by Contractor; Protected Health Information (PHI) as defined in 45 C.F.R. § 160.103, limited to PHI received from or created on behalf of HSD by Contractor; or Personally Identifiable Information (PII) as defined by the National Institute of Standards of Technology, limited to PII received from or created on behalf of HSD by Contractor pursuant to the Services; all together referred to hereafter in Article 39 as Confidential Information, made available to Contractor shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and will not be divulged or made known in any manner to any person or entity except as may be necessary in the performance of this contract. Inspection by, or disclosure to, any person or entity other than an officer, employee, or subcontractor of the Contractor is prohibited.
- C. Contractor agrees that it will account for all Confidential Information upon receipt and store such Confidential Information in a secure manner before, during, and after processing. In addition, all related output will be given the same level of protection by the Contractor as required for the source material.
- D. The Contractor certifies that the Confidential Information processed during the performance of this Agreement will be deleted from, or otherwise wiped, removed, or rendered unreadable or incapable of reconstitution by known means on all electronic data storage components in Contractor's facilities, including paper files, recordings, video, written records, printers, copiers, scanners and all magnetic and flash memory components of all systems and portable media, and no output will be retained by the Contractor at the time the work is completed or when this Contract is terminated. If immediate purging of all electronic data storage components is not possible, the Contractor certifies that any Confidential Information remaining in any storage component will be safeguarded, using IRS Pub 1075 information storage safeguarding controls for FTI to prevent unauthorized disclosures beyond the term of this Agreement as long as Contractor is in possession of such Confidential Information.
- E. Any spoilage or any intermediate hard copy printout that may result during the processing of Confidential Information will be given to the HSD or his or her designee. When this is not possible, the Contractor will be responsible for the destruction (in a manner approved by the HSD) of the spoilage or any intermediate hard copy printouts, and will provide the HSD or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- F. All of Contractor's computer systems, office equipment, written records, and portable media receiving, processing, storing, or transmitting Confidential Information must meet the requirements defined in relevant federal regulations such as IRS Publication 1075, HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), and/or any other Federal requirements that may apply to this contract. To meet functional and assurance requirements, the security features of the Contractor's environment must provide for security across relevant managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Confidential Information.

- G. No work involving Confidential Information furnished under this Agreement will be subcontracted without prior written approval of the HSD.
- H. The Contractor will maintain a list of its personnel, subcontractors, and/or business related entities with authorized access (electronic or physical) to HSD Confidential Information. Such list will be provided to the HSD and, upon request, to the federal agencies as required.
- I. The Contractor will provide copies of signed acknowledgments for its staff and its subcontractors and/or Business Associates, to provide certification that relevant information security awareness and training was completed. These certifications will be provided to the HSD upon contract start and, at a minimum, annually thereafter during the term of this Agreement.
- J. Upon request, the Contractor will provide the HSD copies of current policies and/or summaries of its current plans that document Contractor's privacy and security controls as they relate to HSD Confidential Information. This includes, at a minimum, any System Security Plans which describe the administrative, physical, technical, and system controls to be implemented for the security of the Department's Confidential Information. The plan shall include the requirement for a Contractor notification to the Department Security Officer or Privacy Officer of breaches or potential breaches of information within 24 hours of their discovery.
- K. All incidents affecting the compliance, operation, or security of the HSD's Confidential Information must be reported to the HSD. The Contractor shall notify the HSD of any instances of security or privacy breach issues or non-compliance promptly upon their discovery, but no later than a period of 24 hours (as stated above). Notification shall include a description of the privacy and security non-compliance issue and corrective action planned and/or taken.
- L. The Contractor must provide the HSD with a summary of a corrective action plan (if any) to provide any necessary safeguards to protect PII from security breaches or non-compliance discoveries. The corrective action plan must contain a long term solution to possible future privacy and security threats to PII. In addition to the corrective action, the Contractor must provide daily updates as to the progress of all corrective measures taken until the issue is resolved. The Contractor shall be responsible for all costs of implementing the corrective action plan.
- M. The HSD will have the right to seek remedies consistent with the liability terms of this contract Agreement and/or terminate the Agreement if the Contractor or its Subcontractors or Business Associates fail to provide the safeguards or to meet the security and privacy requirements to safeguard Confidential Information as described above, consistent with the liability and/or termination clauses herein.
- N. All client files and patient records created or used to provide services under this Agreement, as between the parties, are at all times property of HSD. Upon HSD's request, all such client files and patient records shall be returned to HSD upon HSD's request or no later than the final agreed upon termination date of this contract.

## ARTICLE 40 CRIMINAL/CIVIL SANCTIONS

- A. Each officer, employee, and/or subcontractor of the Contractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by the Contractor that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by Internal Revenue Code (IRC) Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- B. Each officer, employee, and/or subcontractor to whom tax returns or tax return information is or may be disclosed shall be notified in writing by Contractor that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone without an official need to know may constitute a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Contractor shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRC Sections 7213A and 7431.
- C. Additionally, it is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C.552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to HSD records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. Furthermore, the Contractor will inform its officers and employees of the penalties imposed by the HIPAA Privacy Rule (45 CFR Part 160 and Subparts A and E of Part 164), and

HIPAA Security Rule (45 CFR Part 160 and Subparts A and C of Part 164), which provide that any officer or employee of a contractor, who willfully discloses Protected Health Information in any manner to any person not entitled to receive it, may be subject to civil and criminal penalties of up to \$50,000 and up to one year imprisonment.

- D. Contractor agrees that granting access to Confidential Information to any individual must be preceded by certifying that each individual understands the HSD's applicable security policy and procedures for safeguarding the Confidential Information. Contractors must maintain authorizations issued to such individuals to access Confidential Information through annual recertification. The initial certification and recertification must be documented and placed in a file for the HSD's review. As part of the certification and at least annually afterwards, Contractor will be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 6, IRC Sec. 7431 Civil Damages for Unauthorized Disclosure of Returns and Return Information and Exhibit 5, IRC Sec. 7213 Unauthorized Disclosure of Information). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches per Section 10 of IRS Publication 1075.)

#### **ARTICLE 41 INSPECTION**

The HSD and/or its regulating federal partners (such as IRS, CMS, FNS, etc.) shall have the right to send its officers and/or employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work related to Confidential Information under this contract. On the basis of such inspection, the HSD and/or regulating federal partners may communicate specific measures to be performed or met by the Contractor as may be required in cases where the Contractor is found to be noncompliant with contract safeguard.

#### **ARTICLE 42 CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS**

- A. The Contractor is responsible for compliance with applicable laws, regulations, and administrative rules that govern the Contractor's performance of the Scope of Work of this Agreement and Exhibit A, including but not limited to, applicable State and Federal tax laws, State and Federal employment laws, State and Federal regulatory requirements and licensing provisions.
- B. The Contractor is responsible for causing each of its employees, agents or subcontractors who provide services under this Agreement to be properly licensed, certified, and/or have proper permits to perform any activity related to the Scope of Work of this Agreement and Exhibit A.

- C. If the Contractor's performance of its obligations under the terms of this agreement qualifies it as a Business Associate of the HSD as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder, the Contractor agrees to execute the HSD Business Associate Agreement (BAA), attached hereto as Exhibit B, and incorporated herein by this reference.

#### **ARTICLE 43 CONTRACTOR'S RESPONSIBILITY FOR COMPLIANCE WITH LAWS AND REGULATIONS RELATING TO INFORMATION SECURITY**

- A. The Contractor agrees to monitor and control all its employees, subcontractors, consultants, or agents performing the Services under this PSC in order to assure compliance with the following regulations and standards insofar as they apply to Contractor's processing or storage of HSD's Confidential Information or other data:
1. The Federal Information Security Management Act of 2002 (FISMA);
  2. The Health Insurance Portability and Accountability Act of 1996 (HIPAA);
  3. The Health Information Technology for Economic and Clinical Health Act (HITECH Act);
  4. IRS Publication 1075 – Tax Information Security Guidelines for Federal, State and Local Agencies to include any Service Level Agreement requirements;
  5. Electronic Information Exchange Security Requirements, Guidelines, And Procedures For State and Local Agencies Exchanging Electronic Information With The Social Security Administration; and
  6. NMAC 1.12.20, *et seq.* "INFORMATION SECURITY OPERATION MANAGEMENT".

#### **ARTICLE 44 ENFORCEMENT**

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

#### **ARTICLE 45 AUTHORITY**

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

*[IF APPLICABLE, ADD ANY HSD SPECIFIC, GRANT SPECIFIC, OR CONTRACT SPECIFIC ARTICLES STARTING AT THIS POINT.]*

**The remainder of this page intentionally left blank.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the signature by the required approval authorities below:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Brent Earnest, Cabinet Secretary Human Services Department

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Insert Name of Authorized Person to sign for Contractor

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Danny Sandoval, HSD Chief Financial Officer

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Susan L. Pentecost, HSD Chief Information Officer

Approved for legal sufficiency:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Christopher P. Collins, HSD General Counsel

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the NM Taxation and Revenue Department to pay gross receipts and compensating taxes:

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

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

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

Tax and Revenue Department Representative

Approved as to information technology contractual specifications and compliance with the Department of Information Technology Act, Chapter 9, Article 27 NMSA 1978 and Executive Orders relating to Information Technology issued by the Governor of the State of New Mexico.

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

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

Darryl Ackley, State CIO, Cabinet Secretary DoIT

This Agreement has been approved by the State Purchasing Agent:

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

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

OR

This Agreement has been approved by the DFA Contracts Review Bureau:

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

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

## EXHIBIT A – SCOPE OF WORK

### I. Purpose of this Agreement:

*If Applicable, insert name of project as approved by the DoIT Project Certification Committee.*

*Insert a short paragraph of the purpose of this agreement. Include expected general results or outcomes for HSD. If related to an RFP, include purpose of procurement and expected outcomes.*

### II. Performance Measures:

*[Under the Accountability in Government Act, the LFC evaluates agency performance based on consistency with the agency strategic plan. Agency strategic plans are divided into Mission, Goals, Tasks, and Activities. This section follows the same format to clarify how this agreement supports the agency plan. Review the current HSD Strategic Plan to determine which goals or tasks this contract will satisfy.]*

*Examples:*

*Goal 5: Improve Administrative Effectiveness and Simplicity*

*Task 5.2: Upgrade, and/or replace IT systems for improved simplicity and better efficiencies*

*DOIT has indicated it requires performance measures of the contractor. These should be included here as well.]*

A. HSD Performance Measures

B. Contractor Performance Measures

III. Activities.

*[Insert general description of activities related to this agreement. They should be broad enough to cover potential discrepancies between expected outcomes and actual deliverables listed in the statement of work below. ]*

*HSD NOTES:*

*Due dates may float against contract approval dates --- don't use hard dates for first deliverables because DFA will kick back if, in their opinion, contract doesn't allow contractor time to complete first deliverables. Try: Due no later than xxx weeks after contract approval."*

*Compensation should be written to accommodate multiple GRT rates in the state: "Not to exceed xxx,xxx.xx, inclusive of NM GRT." GRT should, whenever possible, be left out as contractors operate under multiple city or county tax rates .*

IV. Deliverables

*[Deliverable samples are provided, but are only samples; HSD is to add Deliverables that represent the work that needs to be performed and are traceable by the Procuring Agency.*

*HSD may identify as many Deliverables, with associated tasks and subtasks, as are needed to accomplish the Project goals, objectives, and activities.]*

The following sections describe the required tasks and subtasks to be performed by the Contractor

for each Deliverable under the terms of this Agreement. The Contractor must perform each task and/or subtask, but is not limited to performing only the identified task or sub tasks in a given project area. The Parties hereby agree that the Deliverable(s) are the controlling factor and that the Contractor's obligation is to perform and deliver the Deliverable as described in the following sections.

**Sample For General Professional IT Service Contracts**

*Use the following section as a guide for contracts that require Support Services.*

**A. Sample Deliverable Number 1 [*Insert Name of Deliverable*]**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
[ <i>Insert Name of Deliverable</i> ]	[ <i>Insert Date this Deliverable is due</i> ]  Option: Due no later than XX weeks after contract approval.	<ul style="list-style-type: none"> <li><i>Example:</i> Not to Exceed \$xxx Total Gross Amount (including GRT) Less Retainage Amount = \$ xxx (xx%) for payable net amount of \$xxxxxx upon HSD acceptance.</li> </ul>

Task Item	Sub Tasks	Description
<b><i>Insert Name of Task or tasks to be performed for each Deliverable.</i></b>	<i>Sub 1 (through however many subtasks are needed to accomplish Task 1 which leads to the number of Tasks needed to accomplish Deliverable 1.</i>	<ul style="list-style-type: none"> <li><i>Insert Description. Use active verbs to identify tasks and subtasks to be performed by the vendor.</i></li> <li><i>Due dates for tasks and/or subtasks should be included to assist the Procuring Agency and Contractor to monitor contract progress.</i></li> <li><i>Compensation amounts for tasks and/or subtasks can be identified here. The total amount paid for all tasks and/or subtasks performed under this Deliverable should be consistent with the Compensation due for total delivery of the Deliverable.</i></li> <li><i>The Contractor will bill the Procuring Agency per Deliverable; clear and well-defined language will assist the Procuring Agency and Contractor in determining if the Deliverable is met for payment purposes.</i></li> </ul>

**Sample For IT Contracts that Require Support Services**

*Use the following section as a guide for contracts that require Support Services.*

**A. Deliverable Number XX – [Insert name of Support Services.]**

<u>Deliverable Name</u>	<u>Due Date</u>	<u>Compensation</u>
[Insert Name of Deliverable]	<p><i>Choice #1 – Payment due at the start of the maintenance period</i></p> <p><i>Choice #2 - Arrears payment due at the end of the month or quarter]</i></p>	<ul style="list-style-type: none"> <li>• [Insert Total \$ Amount]</li> <li>• [Insert Amount less GRT, if applicable]</li> <li>• [Insert \$ Amount less retainage, if applicable]</li> </ul>

Task Item	Sub Tasks	Description
<b>Problem Support</b>	<b>Sub 1</b>	The Contractor shall make technical support personnel available by phone and email on the following schedule: [ <i>Such as - Monday through Friday, 8:00A.M. To 5:00P.M., excluding state holidays.</i> ]
	<b>Sub 2</b>	The Contractor shall log requests and provide to the Procuring Agency technical support services for the Software based on the priority levels and problem resolution processes described in the Performance Measures, above.
	<b>Sub 3</b>	The Contractor shall update documentation (Systems Administration Guide, User Guide, and Product Manual) to reflect changes made to the system as a result of problem resolution.
	<b>Sub 4</b>	The Contractor shall respond to technical and functional questions about the [ <i>Insert Application Name</i> ]. Such requests will be assigned a default Priority of [ <i>Insert appropriate priority level</i> ] unless the Procuring Agency requests a higher priority be assigned to the request.

<b>Monthly Report</b>	<b>Sub 1</b>	The Contractor shall provide or make available online a monthly report on the activity and status of all logged requests received from the Procuring Agency.
<b>Activities Tracking</b>	<b>Sub 1</b>	Contractor shall maintain a log of requests in a Procuring Agency approved tracking system with a unique number assigned to each Procuring Agency request. The unique number shall be provided by the contractor to Procuring Agency for reference and communication.
	<b>Sub 2</b>	<p>The Procuring Agency will assign one of four levels of priority to each request:</p> <ul style="list-style-type: none"> <li>• <b>Priority 1</b> is the most severe program error and represents a situation where mission critical features and functions of the [<i>name of application</i>] are unavailable and no practical alternate mode of operation is available. Priority 1 problems will be corrected or a solution will be provided by Contractor for corrective action within [<i>modify as appropriate – e.g., two (2) hours</i>].</li> <li>• <b>Priority 2</b> indicates a problem in which certain features and functionality are not available and no practical alternate mode of operation is available. Priority 2 problems will be corrected or a plan will be provided by the Contractor for corrective action within [<i>modify as appropriate – e.g., one (1) Business Day(s)</i>].</li> <li>• <b>Priority 3</b> is the normal “next-in-line” problem priority assignment. At this level, requests are worked on in the order in which they are received. Priority 3 problems will be corrected or a plan will be provided by Contractor for corrective action within [<i>modify as appropriate – e.g., ten (10) Business Days</i>].</li> <li>• <b>Priority 4</b> is the Release assignment. At this level, requests are worked on as deemed appropriate by Procuring Agency. Priority 4 issues will be incorporated into specific releases, documented in an Application Deployment Package, which will be scheduled for delivery at the discretion of the Procuring Agency after time and cost estimates are provided by the Contractor and approved by the Agency, if applicable. As such, priority 4 issues will be due at the time the specific Release is delivered.</li> </ul>

**Sample For Task Level Payable IT Professional Service Contracts**

*The following subsections can be used as guide for more specific deliverable payments. Format may or may not be accepted by DoIT or DFA. Consider this format if there are optional tasks that may not be required based on how the contract or project progresses.*

**Deliverable Number x**

<b><u>Deliverable Description</u></b>	<b><u>Due Date</u></b>	<b><u>Compensation</u></b>
[Insert Name of Deliverable]	<p>[Insert Date this Deliverable is due]</p> <p>Option: Due no later than XX weeks after contract approval.</p>	<ul style="list-style-type: none"> <li>Example: Deliverable compensation not to Exceed \$xxx Total Gross Amount (including GRT) Less Retainage Amount = \$ xxx (xx%) for payable net amount of \$1,071,132.91 upon HSD acceptance.</li> </ul>

Task	Sub-Tasks	Description	Fee

**Deliverable Number x**

<b><u>Deliverable Description</u></b>	<b><u>Due Date</u></b>	<b><u>Compensation</u></b>

<b>Task</b>	<b>Sub-Tasks</b>	<b>Description</b>	<b>Fee</b>

**Sample For Task Level Payable IT Professional Service Contracts**

*Use the following subsections as a guide for more specific deliverable payments within scheduled dates. This allows change approvals per the ARTICLE 14 CHANGE MANAGEMENT process.*

**Deliverable Number xxx**

<b><u>Deliverable Description</u></b>	<b><u>Due Date</u></b>	<b><u>Compensation</u></b>
	No Later Than <i>X weeks</i> after contract approval.	Not to Exceed \$xxxxx inclusive of New Mexico Gross Receipts Tax

<b>Item</b>	<b>Task Description</b>	<b>Task Procedure</b>	<b>Task Due Date</b>	<b>Task Fee</b>
1			<i>Within deliverable schedule</i>	<i>Within compensation amount</i>
2				

## Exhibit B

### HIPAA Business Associate Agreement

This Business Associate Agreement (“BAA”) is entered into between the New Mexico Human Services Department (“Department”) and Contractor, hereinafter referred to as “Business Associate”, in order to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended by Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), including the Standards of the Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR Parts 160 and 164.

**BUSINESS ASSOCIATE**, by this Agreement [REDACTED] has agreed to provide services to, or on behalf of the HSD which may involve the disclosure by the Department to the Business Associate (referred to in Agreement [REDACTED] as “Contractor”) of Protected Health Information. This Business Associate Agreement is intended to supplement the obligations of the Department and the Contractor as set forth in Agreement [REDACTED], and is hereby incorporated therein.

**THE PARTIES** acknowledge HIPAA, as amended by the HITECH Act, requires that Department and Business Associate enter into a written agreement that provides for the safeguarding and protection of all Protected Health Information which Department may disclose to the Business Associate, or which may be created or received by the Business Associate on behalf of the Department.

#### 1. Definition of Terms

- a. **Breach.** “Breach” has the meaning assigned to the term breach under 42 U.S.C. § 17921(1) [HITECH Act § 13400 (1)] and 45 CFR § 164.402.
- b. **Business Associate.** "Business Associate", herein being the same entity as the Contractor in the same or Related Agreement, shall have the same meaning as defined under the HIPAA standards as defined below, including without limitation Contractor acting in the capacity of a Business Associate as defined in 45 CFR § 160.103.
- c. **Department.** "Department" shall mean in this agreement the State of New Mexico Human Services Department.
- d. **Individual.** "Individual" shall have the same meaning as in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502 (g).
- e. **HIPAA Standards.** “HIPAA Standards” shall mean the legal requirements as set forth in the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act of

2009, and the regulations and policy guidance, as each may be amended over time, including without limitation:

- i. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Part 160 and Part 164, Subparts A and E.
- ii. Breach Notification Rule. "Breach Notification" shall mean the Notification in the case of Breach of Unsecured Protected Health Information, 45 CFR Part 164, Subparts A and D
- iii. Security Rule. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C, including the following:
  - 1. Security Standards. "Security Standards" hereinafter shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.306.
  - 2. Administrative Safeguards. "Administrative Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.308.
  - 3. Physical Safeguards. "Physical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.310.
  - 4. Technical Safeguards. "Technical Safeguards" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.312.
  - 5. Policies and Procedures and Documentation Requirements. "Policies and Procedures and Documentation Requirements" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR §164.316.
- f. Protected Health Information. "Protected Health Information" or "PHI" shall have the same meaning as in 45 CFR §160.103, limited to the information created, maintained, transmitted or received by Business Associate, its agents or subcontractors from or on behalf of Department.
- g. Required By Law. "Required By Law" shall have the same meaning as in 45 CFR §164.103.
- h. Secretary. "Secretary" shall mean the Secretary of the U. S. Department of Health and Human Services, or his or her designee.
- i. Covered Entity. "Covered Entity" shall have the meaning as the term "covered entity" defined at 45 CFR §160.103, and in reference to the party to this BAA, shall mean the State of New Mexico Human Services Department.

Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the HIPAA Standards. All terms used and all statutory and regulatory references shall be as currently in effect or as subsequently amended.

## 2. Obligations and Activities of Business Associate

- a. General Rule of PHI Use and Disclosure. The Business Associate may use or disclose PHI it creates for, receives from or on behalf of, the Department to perform functions, activities or services for, or on behalf of, the Department in accordance with the specifications set forth in this BAA and in this Agreement [REDACTED]; provided that such use or disclosure would not violate the HIPAA Standards if done by the Department; or as Required By Law.
- i. Any disclosures made by the Business Associate of PHI must be made in accordance with HIPAA Standards and other applicable laws.
  - ii. Notwithstanding any other provision herein to the contrary, the Business Associate shall limit uses and disclosures of PHI to the “minimum necessary,” as set forth in the HIPAA Standards.
  - iii. The Business Associate agrees to use or disclose only a “limited data set” of PHI as defined in the HIPAA Standards while conducting the authorized activities herein and as delineated in Agreement [REDACTED], except where a “limited data set” is not practicable in order to accomplish those activities.
  - iv. Except as otherwise limited by this BAA or Agreement [REDACTED], Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
  - v. Except as otherwise limited by this BAA or Agreement [REDACTED], Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - vi. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j).
  - vii. Business Associate may use PHI to provide Data Aggregation services to the Department as permitted by the HIPAA Standards.
- b. Safeguards. The Business Associate agrees to implement and use appropriate Security, Administrative, Physical and Technical Safeguards, and comply where applicable with subpart C of 45 C.F.R. Part 164, to prevent use or disclosure of PHI other than as required by law or as provided for by this BAA or Agreement [REDACTED]. Business Associate shall identify in writing upon request from the Department all of those Safeguards that it uses to prevent impermissible uses or disclosures of PHI.
- c. Restricted Uses and Disclosures. The Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or Agreement [REDACTED], the HIPAA Standards, or otherwise as permitted or required by law. The Business

Associate shall not disclose PHI in a manner that would violate any restriction which has been communicated to the Business Associate.

- i) The Business Associate shall not directly or indirectly receive remuneration in exchange for any of the PHI unless a valid authorization has been provided to the Business Associate that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that individual, except as provided for under the exceptions listed in 45 C.F.R. §164.502 (a)(5)(ii)(B)(2).
  - ii) Unless approved by the Department, Business Associate shall not directly or indirectly perform marketing to individuals using PHI.
- d. Agents. The Business Associate shall ensure that any agents that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, in accordance with 45 C.F.R. § 164.502(e)(1)(ii), and shall make that agreement available to the Department upon request. Upon the Business Associate's contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.
- e. Availability of Information to Individuals and the Department. Business Associate shall provide, at the Department's request, and in a reasonable time and manner, access to PHI in a Designated Record Set (including an electronic version if required) to the Department or, as directed by the Department, to an Individual in order to meet the requirements under 45 CFR § 164.524. Within three (3) business days, Business Associate shall forward to the Department for handling any request for access to PHI that Business Associate receives directly from an Individual. If requested by the Department, the Business Associate shall make such information available in electronic format as required by the HIPAA Standards to a requestor of such information and shall confirm to the Department in writing that the request has been fulfilled.
- f. Amendment of PHI. In accordance with 45 CFR § 164.526, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Department directs or agrees to, at the request of the Department or an Individual, to fulfill the Department's obligations to amend PHI pursuant to the HIPAA Standards. Within three (3) business days, Business Associate shall forward to the Department for handling any request for amendment to PHI that Business Associate receives directly from an Individual.
- g. Internal Practices. Business Associate agrees to make internal practices, books and records, including policies, procedures and PHI, relating to the use and disclosure of PHI, available to the Department or to the Secretary within seven (7) days of receiving a request from the Department or receiving notice of a request from the Secretary, for purposes of the Secretary's determining the Department's compliance with the Privacy Rule.
- h. PHI Disclosures Recordkeeping. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Department to respond to a request by an Individual for an accounting of

disclosures of PHI in accordance with the HIPAA Standards and 45 CFR § 164.528. Business Associate shall provide such information to the Department or as directed by the Department to an Individual, to permit the Department to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by the Department. Within three (3) business days, Business Associate shall forward to the Department for handling any accounting request that Business Associate directly receives from an individual.

- i. PHI Disclosures Accounting. Business Associate agrees to provide to the Department or an Individual, within seven (7) days of receipt of a request, information collected in accordance with Section 2 (h) of this Agreement, to permit the Department to respond to a request for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
- j. Security Rule Provisions. As required by 42 U.S.C. § 17931 (a) [HITECH Act Section 13401(a)], the following sections as they are made applicable to business associates under the HIPAA Standards, shall also apply to the Business Associate: 1) Administrative Safeguards; 2) Physical Safeguards; 3) Technical Safeguards; 4) Policies and Procedures and Documentation Requirements; and 5) Security Standards. Additionally, the Business Associate shall either implement or properly document the reasons for non-implementation of all safeguards in the above cited sections that are designated as “addressable” as such are made applicable to Business Associates pursuant to the HIPAA Standards.
- k. Civil and Criminal Penalties. Business Associate agrees that it will comply with the HIPAA Standards as applicable to Business Associates, and acknowledges that it may be subject to civil and criminal penalties for its failure to do so.
- l. Performance of Covered Entity's Obligations. To the extent the Business Associate is to carry out the Department 's obligations under the HIPAA Standards, Business Associate shall comply with the requirements of the HIPAA Standards that apply to the Department in the performance of such obligations.
- m. Subcontractors. The Business Associate shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate, agree in writing to the same restrictions and conditions that apply to the Business Associate with respect to PHI, with 45 C.F.R. § 164.502(e)(1)(ii), and shall make such information available to the Department upon request. Upon the Business Associate’s contracting with an agent for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement. Upon the Business Associate’s contracting with a subcontractor for the sharing of PHI, the Business Associate shall provide the Department written notice of any such executed agreement.

### **3. Business Associate Obligations for Notification, Risk Assessment, and Mitigation**

During the term of this BAA or Agreement [REDACTED], the Business Associate shall be required to perform the following pursuant to the Breach Notification Rule regarding Breach Notification, Risk Assessment and Mitigation:

## Notification

- a. Business Associate agrees to report to the Department Contract Manager or HIPAA Privacy and Security Officer any use or disclosure of PHI not provided for by this BAA or Agreement [REDACTED], and HIPAA Standards, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, as soon as it (or any employee or agent) becomes aware of the Breach, and in no case later than three (3) business days after it (or any employee or agent) becomes aware of the Breach, except when a government official determines that a notification would impede a criminal investigation or cause damage to national security.
- b. Business Associate shall provide the Department with the names of the individuals whose unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR §164.404(c), and, if requested by the Department, provide information necessary for the Department to investigate promptly the impermissible use or disclosure. Business Associate shall continue to provide to the Department information concerning the Breach as it becomes available to it, and shall also provide such assistance and further information as is reasonably requested by the Department.

## Risk Assessment

- c. When Business Associate determines whether an impermissible acquisition, use or disclosure of PHI by an employee or agent poses a low probability of the PHI being compromised, it shall document its assessment of risk in accordance with 45 C.F.R. § 164.402 (in definition of “Breach”, ¶ 2) based on at least the following factors: (i) the nature and extent of the protected health information involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the protected health information has been mitigated. Such assessment shall include: 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons documenting the determination of risk of the PHI being compromised. When requested by the Department, Business Associate shall make its risk assessments available to the Department.
- d. If the Department determines that an impermissible acquisition, access, use or disclosure of PHI, for which one of Business Associate’s employees or agents was responsible, constitutes a Breach, and if requested by the Department, Business Associate shall provide notice to the individuals whose PHI was the subject of the Breach. When requested to provide notice, Business Associate shall consult with the Department about the timeliness, content and method of notice, and shall receive the Department’s approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate. The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to the Department.

## Mitigation

- e. In addition to the above duties in this section, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI, by Business Associate in violation of the requirements of this Agreement, the Related Agreement or the HIPAA Standards. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by the Department, Business Associate shall make its mitigation and corrective action plans available to the Department.
- f. The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of the Breach, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate and the Department are doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR §164.404(c).

#### Notification to Clients

- g. Business Associates shall notify individuals of Breaches as specified in 45 CFR §164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of a State or jurisdiction, Business Associate shall, if requested by the Department, notify prominent media outlets serving such location(s), following the requirements set forth in 45 CFR §164.406.

#### **4. Obligations of the Department to Inform Business Associate of Privacy Practices and Restrictions**

- a. The Department shall notify Business Associate of any limitation(s) in the Department's Notice of Privacy Practices, implemented in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. The Department shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. The Department shall notify Business Associate of any restriction in the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d. The Department shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Department.

## 5. Term and Termination

- a. Term. This BAA terminates concurrently with Agreement \_\_\_\_\_, except that obligations of Business Associate under this BAA related to final disposition of PHI in this Section 5 shall survive until resolved as set forth immediately below.
- b. Disposition of PHI upon Termination. Upon termination of this Agreement [REDACTED] and BAA for any reason, Business Associate shall return or destroy all PHI in its possession, and shall retain no copies of the PHI. In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to the Department notification of the conditions that make return or destruction of PHI not feasible. Upon mutual agreement of the Parties that return or destruction of the PHI is infeasible, Business Associate shall agree, and require that its agents, affiliates, subsidiaries and subcontractors agree, to the extension of all protections, limitations and restrictions required of Business Associate hereunder, for so long as the Business Associate maintains the PHI.
- c. If Business Associate breaches any material term of this BAA, the Department may either:
  - i. provide an opportunity for Business Associate to cure the Breach and the Department may terminate this Agreement [REDACTED] and BAA without liability or penalty in accordance with Article 4, Termination, of Agreement [REDACTED], if Business Associate does not cure the breach within the time specified by the Department; or,
  - ii. immediately terminate this Agreement [REDACTED] without liability or penalty if the Department determines that cure is not reasonably possible; or,
  - iii. if neither termination nor cure are feasible, the Department shall report the breach to the Secretary.

The Department has the right to seek to cure any breach by Business Associate and this right, regardless of whether the Department cures such breach, does not lessen any right or remedy available to the Department at law, in equity, or under this BAA or Agreement [REDACTED], nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

## 6. Penalties and Training.

Business Associate understands and acknowledges that violations of this BAA or Agreement [REDACTED] may result in notification by the Department to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by the Department, Business Associate shall participate in training regarding use, confidentiality, and security of PHI.

## 7. Miscellaneous

- a. Interpretation. Any ambiguity in this BAA, or any inconsistency between the provisions of this BAA or Agreement [REDACTED], shall be resolved to permit the Department to comply with the HIPAA Standards.
- b. Business Associate's Compliance with HIPAA. The Department makes no warranty or representation that compliance by Business Associate with this BAA or the HIPAA Standards will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.
- c. Change in Law. In the event there are subsequent changes or clarifications of statutes, regulations or rules relating to this BAA or Agreement [REDACTED], the Department shall notify Business Associate of any actions it reasonably deems necessary to comply with such changes, and Business Associate shall promptly take such actions. In the event there is a change in federal or state laws, rules or regulations, or in the interpretation of any such laws, rules, regulations or general instructions, which may render any of the material terms of this BAA unlawful or unenforceable, or which materially affects any financial arrangement contained in this BAA, the parties shall attempt amendment of this BAA to accommodate such changes or interpretations. If the parties are unable to agree, or if amendment is not possible, the parties may terminate the BAA and Agreement [REDACTED] pursuant to its termination provisions.
- d. No Third Party Beneficiaries. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Department, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- e. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any agents, affiliates, subsidiaries, subcontractors or workforce members assisting Business Associate in the fulfillment of its obligations under this BAA and Agreement [REDACTED] available to the Department, at no cost to the Department, to testify as witnesses or otherwise in the event that litigation or an administrative proceeding is commenced against the Department or its employees based upon claimed violation of the HIPAA standards or other laws relating to security and privacy, where such claimed violation is alleged to arise from Business Associate's performance under this BAA or Agreement [REDACTED], except where Business Associate or its agents, affiliates, subsidiaries, subcontractors or employees are named adverse parties.
- f. Additional Obligations. Department and Business Associate agree that to the extent not incorporated or referenced in any Business Associate Agreement between them, other requirements applicable to either or both that are required by the HIPAA Standards, those requirements are incorporated herein by reference.

[Insert other material documenting requirements here.]